

# *Dennis*: Severability and Scope of s.96A – What did it say?



Alex Shattock



## *Dennis* - what did it say?

### *Dennis v LB Southwark* [2024] EWHC 57 (Admin)

- Large, phased outline regeneration scheme (2015)
- Developer wished to 'drop-in' a higher density phase- including a taller tower
- Risk this would cause *Pilkington/ Hillside* issues later
- Council accepted a non-material amendment application under s.96A TCPA 1990 to insert the word 'severable' into the description of development
- The Council's argument was that this was confirmatory only- phasing and outline nature enough to demonstrate severability, hence change was non-material



## *Dennis* - what did it say?

- Claimant argued permission was not severable to begin with- therefore the change was necessarily material
- Materiality usually a matter for the Council- but harder to make this argument when the change is a legal one to which there is only one right answer
- A planning permission is a bundle of rights- making a non-severable permission severable expands the bundle of rights- allows for mixing and matching without fear of later incompatibility arguments a la *Pilkington*
- So it came down to a question of interpretation- if the outline permission was never severable to begin with, the challenge would necessarily succeed



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- Principles for interpreting permissions well-known: e.g. *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] 1 WLR 4317
- *R v Ashford Borough Council ex parte Shepway District Council* [1999] PLCR 12: Extraneous docs e.g. planning statement, DAS etc can form part of the permission by incorporation: e.g. "granted in accordance with..."
- In this case, large number of planning docs incorporated by the grant: most suggested the permission was intended to operate as a coherent whole within certain parameters
- No contra-indication the permission was intended to be severable e.g. mixed and matched. Phasing relates to order it is built out not how it is eventually intended to operate.
- Planning permission not severable to begin with and therefore amendment under s.96A not lawful.



*Dennis* - what does it say?







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# Thank you

180 Fleet Street  
London  
EC4A 2HG

clerks@landmarkchambers.co.uk  
www.landmarkchambers.co.uk  
**+44 (0)20 7430 1221**

 Landmark Chambers  
 @Landmark\_LC  
 Landmark.Chambers  
 Landmark Chambers

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