Pilkington and *Hillside* : Recap and Rationale

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Pilkington and *Hillside* – Recap and Rationale

Pilkington v Secretary of State for the Environment [1973]

- Landowner had the benefit of two separate planning permissions for a plot of land, and claimed the right to build out both permissions
- Each granted permission for one dwelling (on different parts of the plot), with the rest of the plot required to be unbuilt on / remaining as a smallholding
- Court explained that a landowner can make any number of planning applications on a site, and this may result in numerous inconsistent planning permissions
- *Pilkington* principle = where two or more planning permissions have been granted on the same area of land and development has been carried out under one of those permissions. If that development has made it *physically impossible* to carry out development approved by another consent then that consent may no longer be relied upon.

Hillside Parks Limited v Snowdonia National Park Authority [2022]

- Original permission for 401 dwellings, with the masterplan showing the location of each dwelling and the road within the estate
- Over the years various other permissions ('drop-ins') had been granted and built out for individual dwellings which departed from the masterplan in the original permission
- Supreme Court approved the *Pilkington* principle, finding that it was now physically impossible to build out the development approved by the original permission and so it could no longer be relied upon

Hillside continued…

- Court rejected the argument that the original permission was 'severable', so that the ability to carry out any such element did not depend upon whether it was still physically possible to develop all other parts of the site in accordance with the original permission
- Unless there is some 'clear contrary intention' within the permission, it will be assumed that a permission for a multi-unit development is granted for an integral whole
- Rationale = when granting permission the LPA will have considered a range of factors relevant to the development as a whole (number of buildings, overall layout, public benefits of the scheme as a whole) – not authorised the developer to combine building only part of the proposed development with building something different from and inconsistent with the approved scheme on another part of the site

Hillside : main takeaways

- Left the door open for 'severable' consents where there is a 'clear contrary intention', but the rationale suggests surely difficult to do this retrospectively. This is where the Dennis case comes in…
- Confirmed that everything built out before a physically incompatible 'drop in' permission is implemented remains lawful. Useful in some scenarios.
- Pilkington principle should not be pressed too far. It is only if the departure from the permitted scheme is material in the context of the scheme as a whole, that the original permission cannot be relied upon.
- Suggested large schemes could be varied by making a new replacement application covering the whole site, setting out the modifications sought (but CIL, EIA etc…)

Note: *Fiske v Test Valley BC* [2023] – no legal duty on LPA to consider the inconsistency or effect of a 'drop-in' application on existing permission

Thank you

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