Overlapping Permissions: where are we now?

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Hillside and Overlapping Planning Permissions

- Case of Hillside Parks Limited v Snowdonia National Park Authority [2020]
- Implications for overlapping planning permissions

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Hillside – what did it decide?

- *Pilkington* approach confirmed
- Court of Appeal followed:
  - *Sage* - planning permissions should be interpreted "holistically"
  - *Singh* - for a development to be lawful it must be carried out "fully in accordance with any *final* permission under which it is done"
- *Lucas* not overruled but held to be "decided on its own facts": doubt whether developer can lawfully "pick and choose" different parts of a development to be implemented

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The troubling passage in Hillside

…it is conceivable that, on its proper construction, a particular planning permission does indeed grant permission for the development to take place in a series of independent acts, each of which is separately permitted by it. I would merely add that, in my respectful view, that is unlikely to be the correct construction of a typical modern planning permission for the development of a large estate such as a housing estate. Typically there would be not only many different residential units to be constructed in accordance with that scheme, there may well be other requirements concerning highways, landscaping, possibly even employment or educational uses, which are all stipulated as being an integral part of the overall scheme which is being permitted. I doubt very much in those circumstances whether a developer could lawfully "pick and choose" different parts of the development to be implemented.

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Hillside – potential effects

- Casts shadow on common practice of drop-in/slot-in and extent to which remainder of development can continue to be carried out following the slot-in

- Until *Hillside* accepted practice was that slot-in applications were acceptable provided it was clear which element of the existing development is being superseded

- P1 = original development and P2 = slot in

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Hillside – potential effects (cont.)

- Worrying that development lawfully carried out in accordance with an extant planning permission (P1) could be rendered unlawful because of the inability following the slot-in (P2) to complete the whole of the original planning permission (P1)

- *Singh* para 20 "*for a development to be lawful it must be carried out fully in accordance with any final permission under which it is done failing which the whole development is unlawful (Sage per Lord Hobhouse, giving the only substantive speech, at [23]-[25])* endorsed in para 67 of *Hillside*

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Enforcement – another issue unresolved

- *Hillside* (para 68): leaves open question of whether "…*all the development which has already taken place, apparently in accordance with the first grant of permission, is rendered unlawful simply by virtue of the fact that subsequent operations take place pursuant to another permission which is inconsistent with the first*" opening the door to enforcement action/potential criminal liability
- Hillside acknowledges discretion around enforcement activity but does not refer to case *of Whitley* - prima facie unlawfulness isn't unlawful if it would be irrational to enforce

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Incomplete development: unlawful?

- No requirement to complete development once started
- Circular 11/95 – Use of conditions in planning permission:
  - conditions requiring completion of whole development should not normally be imposed (see also Appendix B conditions which are unacceptable)
  - development forming single indivisible whole e.g. a single dwelling – completion notice may be appropriate
  - development forming large estate of houses – failure to complete maybe due to market forces – clearly not desirable to compel delivery where no demand/need

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Incomplete development: unlawful? (cont.)

- *Hitchens v. Worcestershire CC* (Court of Appeal)– a development may be commenced but not completed yet still remain lawful
- (para 49) "…*if planning permission was granted for 200 houses of which 150 were progressively built out in accordance with the plans and were occupied, all the dwellings so built and occupied would be unlawful unless and until the remaining dwellings were built, even if the 150 were all individually in accordance with the plans and there was no breach of any condition of the permission. That proposition is unsupported by authority and cannot in my view be right*." (Lord Justice Richards)

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Completion notices

- S94 TCPA – ability for LPA to serve completion notices to require a development started to be completed within a specified time period

- *Hitchens* notes there would be no need for completion notices if development was unlawful until it was completed

- A completion notice does not render development carried out prior to notice unlawful (*Cardiff CC v National Assembly for Wales* [2007] 1 P. & C.R. 9)

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Ability to pick and choose?

- Ability to “pick and choose” is questioned in relation to housing estates requiring supporting infrastructure
- Ability to “pick and choose”:
  - can be addressed by appropriate use of conditions and obligations to link and/or restrict elements of development contingent on others (Circular 11/95)
  - no need for such conditions if once started a development had to be finished
  - use of slot-out application to ensure continued compliance with P1
- *Hillside* distinguishes *Lucas* but expressly does not overrule it and does not refer to *Hitchens*

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Hillside - has the law changed?

- No BUT
  - overlapping permissions must be approached with care
  - potential for planning permissions to be construed holistically
  - an act on one part of a development site could render earlier but as yet incomplete development unlawful with risk of enforcement action
  - less flexibility/more red tape: new planning application for the whole rather than drop-in?

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