Overlapping Permissions: How do we approach them and possible consequences of Hillside

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How do we approach ‘drop-in’ permissions

- ‘Drop-in’ planning permissions happen all the time: large multi-phased outline planning permissions in multiple ownerships/investors/residents

- A new planning permission (P2) overlaps part of an existing permission (P1).

- *Pilkington* decision describes "special cases […] where one application deliberately and expressly refers to or incorporates another” (para 512)

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How do we approach ‘drop-in’ permissions

- How is ‘Pilkington’ risk addressed?
  - structure of drop-in application – acknowledge the interface with the development it is slotting into
  - are non-material amendments required?
  - structure of original permission – does it contemplate drop-ins?
  - by covenant under s.106 that P1 will not be implemented insofar as it relates to the redline covered by P2 from implementation of P2, LPA therefore clear which permission governs which aspect of development

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Issues if Hillside is taken to the extreme

- Essentially a developer would need to re-apply for the whole development every time a change was needed that went beyond the scope of s.73
- If the whole development is unlawful then what about conditions s.106 obligations?
- EIA/CIL
- Due diligence considerations e.g. investors/disposals
- Increased need for CLUEDs?

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Legislative Reform – A Solution?

- Legislate for a new ‘superseded development permission’ (SDP):
  - new type of planning application/permission;
  - specifically for development that supersedes part of an existing permission (P1)
  - should include the ability to make changes to P1 to ensure the two can integrate/dovetail
  - would specifically provide that P1 is still live save for that part that is superseded when SDP implemented
- Keep s.96A and s.73 although s.73 would not result in the grant of a new permission

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