



HERBERT  
SMITH  
FREEHILLS

# Inconsistent planning permissions

## Practical Implications

10 March 2021

**Annika Holden**

Senior Associate, Planning

[annika.holden@hsf.com](mailto:annika.holden@hsf.com)

07720 733 740

## Pilkington (recap)

- *“a landowner is entitled to make any number of applications for planning permission which his fancy dictates, even though the development referred to is quite different when one compares one application to another. It is open to a landowner to test the market by putting in a number of applications and seeing what the attitude of the planning authority is to his proposals.”* **Widgery CJ, Pilkington**
- *“Equally it seems to me that a planning authority receiving a number of planning applications in respect of the same land is required to deal with them, and to deal with them even though they are mutually inconsistent one with the other.”* **Widgery CJ, Pilkington**
- There is no duty on the local authority to assess consistency. Risk lies with the landowner

# How to assess inconsistency

## The process set out in *Pilkington*

- **In respect of Permission A** - look to see the full scope of that which has been done or can be done pursuant to Permission A.
- **In respect of Permission B** – look at what can be done pursuant to Permission B.
- **Question:** Is it possible to carry out the development pursuant to Permission B having regard to what can be/has been done under Permission A?
- **If no:** Permission B incapable of implementation.

# How to assess inconsistency

## Assessing “impossibility” (or possibility?)

- Physical inconsistency – ***Melap Singh v Secretary of State for Communities and Local Government* [2010] EWHC 1621**
- Need to consider conditions on both permissions - ***Staffordshire County Council v NGR Land Developments Ltd and Roberts* [2002] EWCA Civ 856**
- Possible to complete the whole development in accordance with its terms? – ***Sage v Secretary of State for the Environment, Transport and the Regions* [2003] 1 WLR 983**

# Practical implications

## 2008 Planning Permission

Plot 1

Plot 3

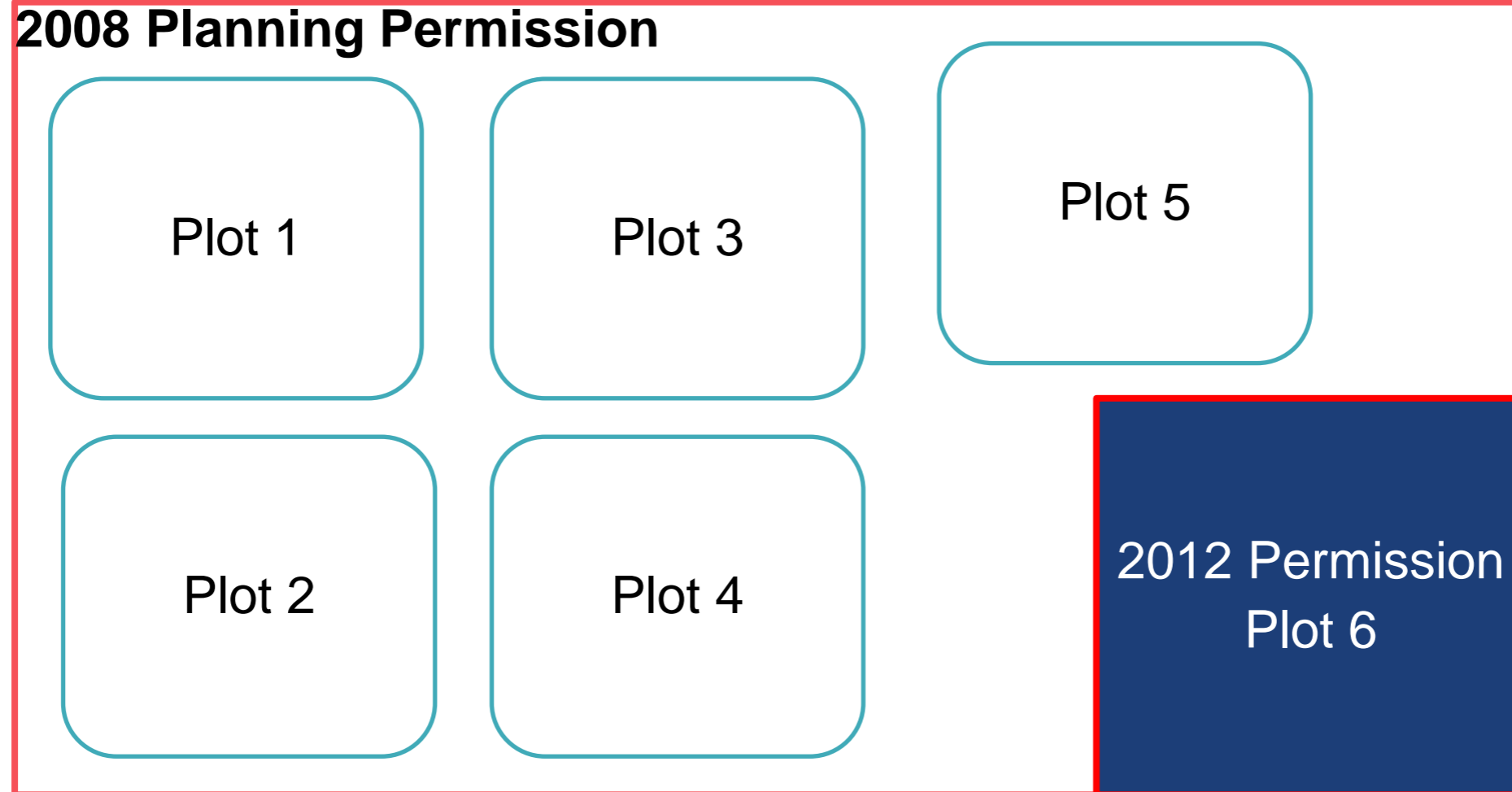
Plot 5

Plot 2

Plot 4

Plot 6

# Practical implications



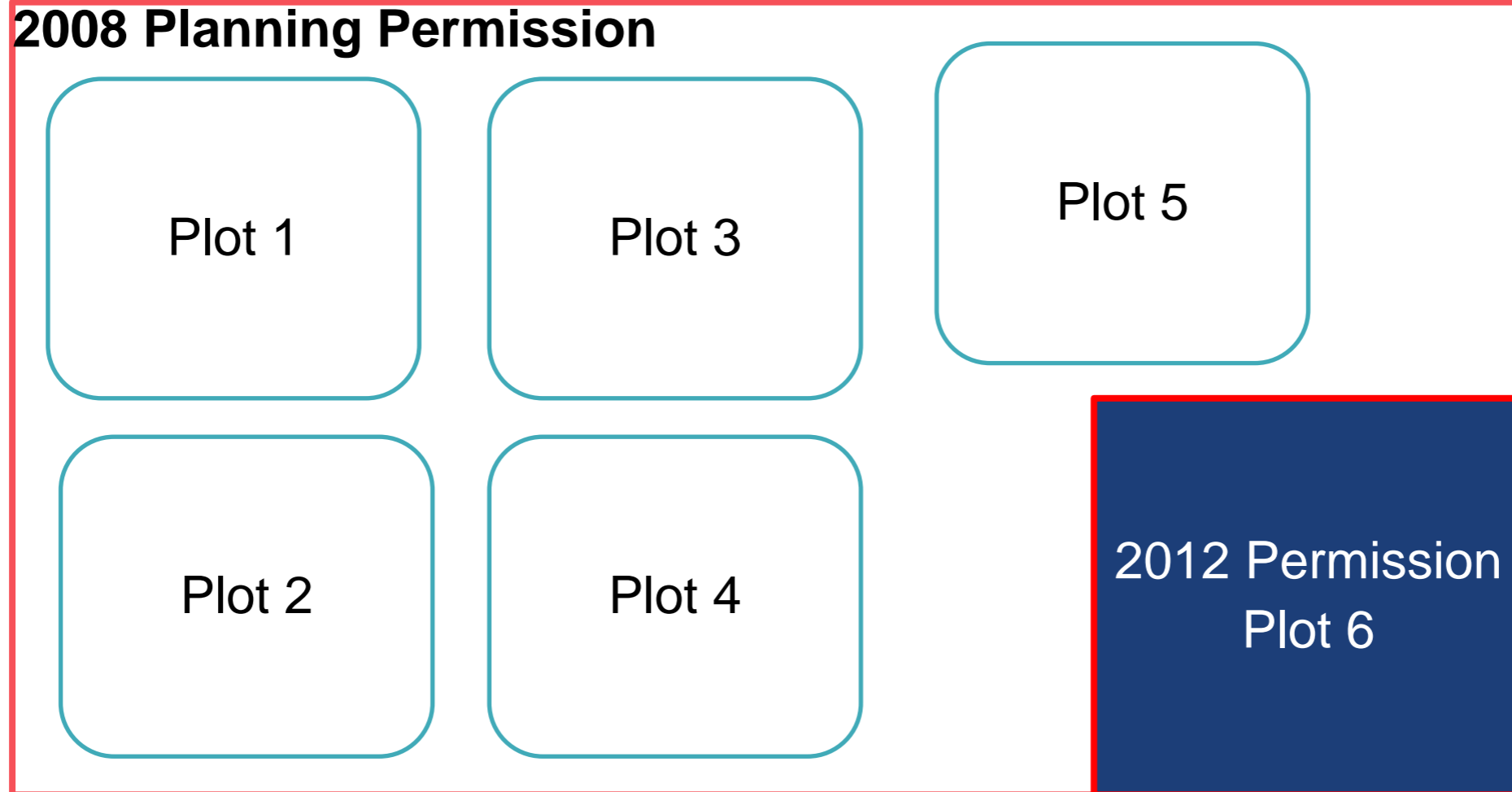
# Slot-in/slot-out

**Goal: Each element must be capable of being developed completely separately from the other, with no interdependencies, shared facilities or cross-cutting conditions.**

## **Steps**

- (1) Physically separate the development into two discrete parts**
- (2) Separate out the conditions into two discrete parts**
- (3) Submit new application**
- (4) Amend the existing section 106, and enter into a new section 106 for the new permission**
- (5) Both permissions to contain statements contemplating the other**

# Slot in/slot out





# Slot-in/slot-out

- The slot-in/slot out process is recognised in practice by planning authorities and implemented widely.
- But it is not formally recognised in legislation, guidance or case law.
- = always some residual risk