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# Overlapping planning permissions

Making the difficult questions go away

10 March 2021

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# The perils of *Pilkington* – why bother?

We should recognise and value the right for a landowner to explore different options for the development of her land

*“I have no doubt that 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.”*

– per Lord Widgery, *Pilkington* at 1531E

# The perils of *Pilkington* – do we need reform?

## The courts plugged a gap in the statutory code ...

*“The Pilkington problem is not dealt with in the planning legislation. It was, therefore, necessary for the courts to formulate a rule which would strengthen and support the planning control imposed by the legislation. And this is exactly what the Divisional Court achieved.”*

*– per Lord Scarman, Pioneer Aggregates at 145B*

# The perils of *Pilkington* – do we need reform?

... but the plug is leaking

*“There is, or need be, no uncertainty arising from the application of the rule. Both planning permissions will be on a public register: examination of their terms combined with an inspection of the land will suffice to reveal whether development has been carried out which renders one or other of the planning permissions incapable of implementation.”*

– per Lord Scarman, *Pioneer Aggregates* at 145B-C

# Canada Water Masterplan



# Reform: a new power to vary planning permissions

## Reducing the scale of the problem

- A new statutory power to make material amendments to planning permissions
- Would avoid the need to use section 73 or to make a fresh planning application in many cases

> fewer overlapping permissions

> fewer inconsistent permissions

= fewer *Pilkington* problems

# Reform: application to supersede development

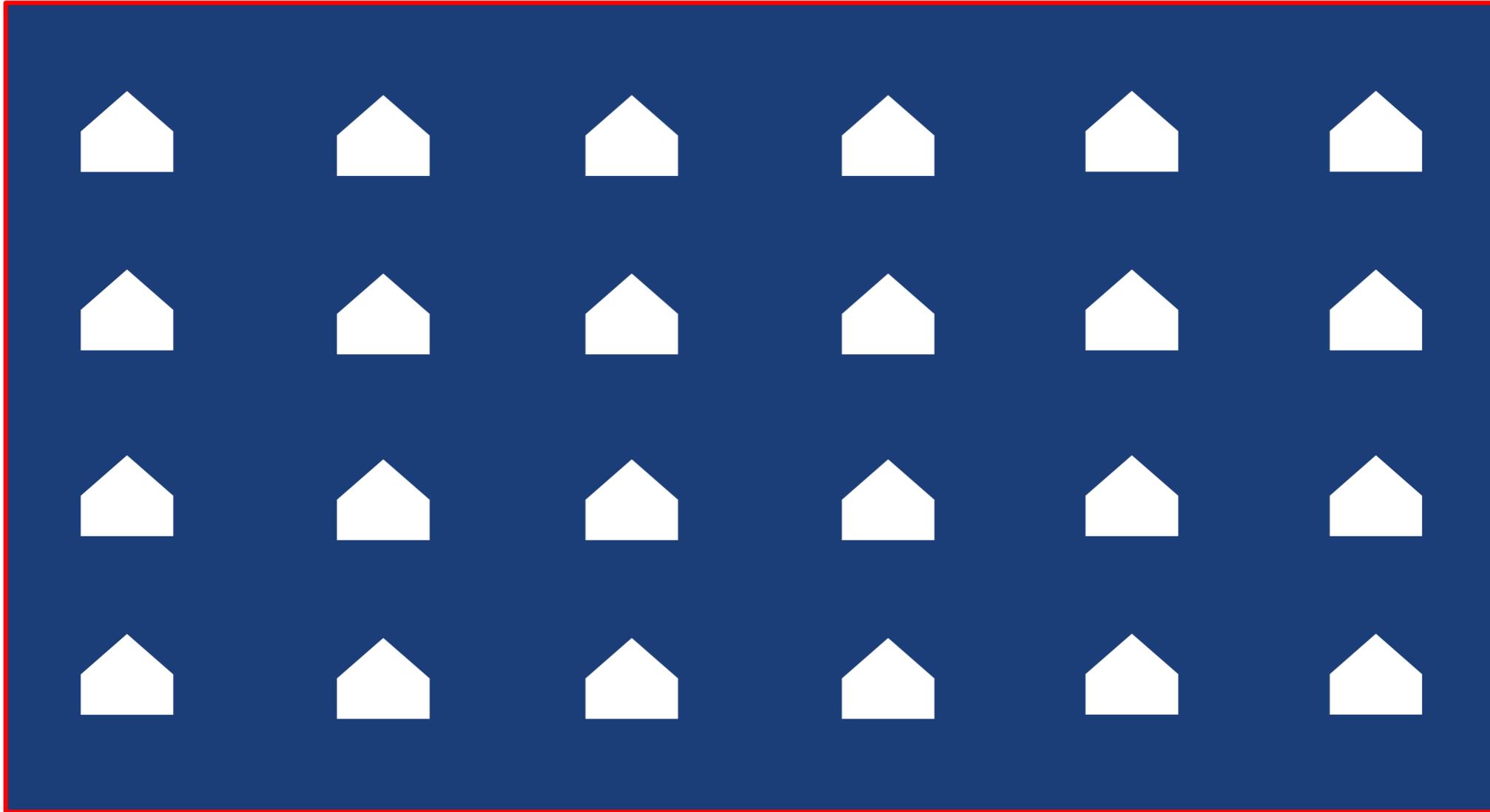
## Removing inconsistency by express application

*“Of course, special cases will arise where one application deliberately and expressly refers to or incorporates another, but we are not concerned with that type of application in the present case.”*

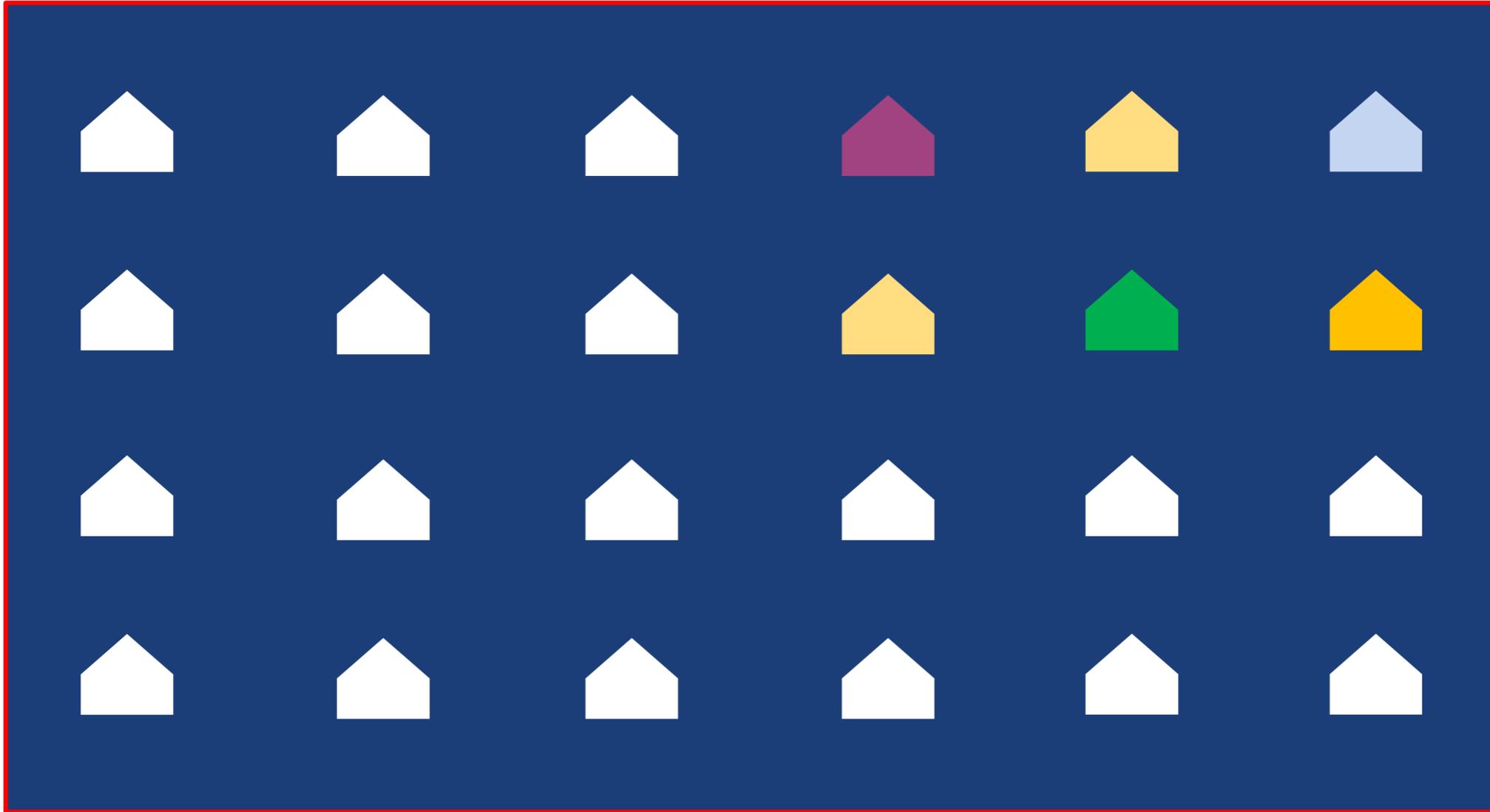
*– per Lord Widgery, Pilkington at 1531G*

- A new statutory power to apply to supersede the unimplemented part of an existing planning permission
- Only available when applying for a new planning permission for the same part of the site

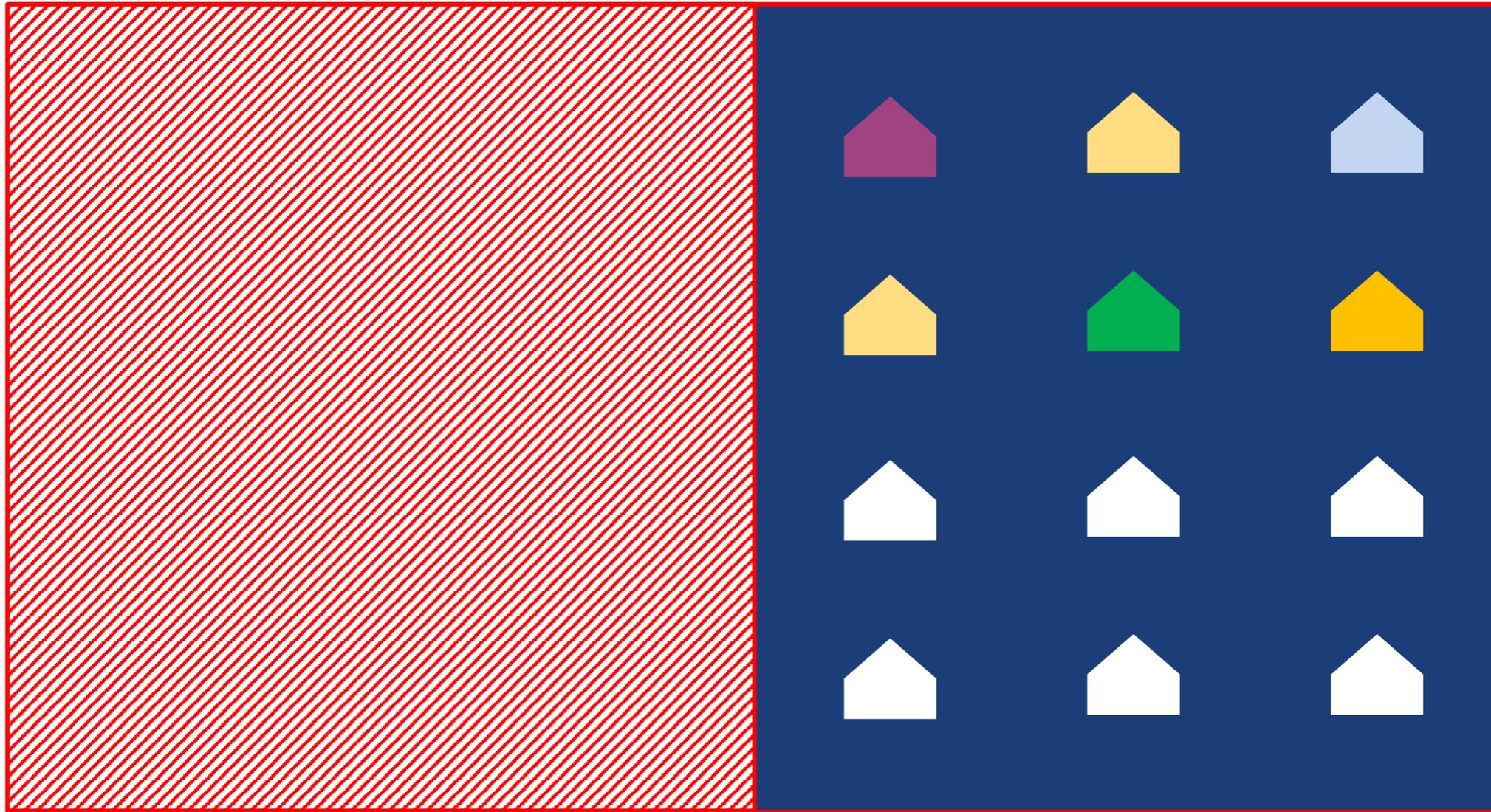
# Existing planning permission “A”



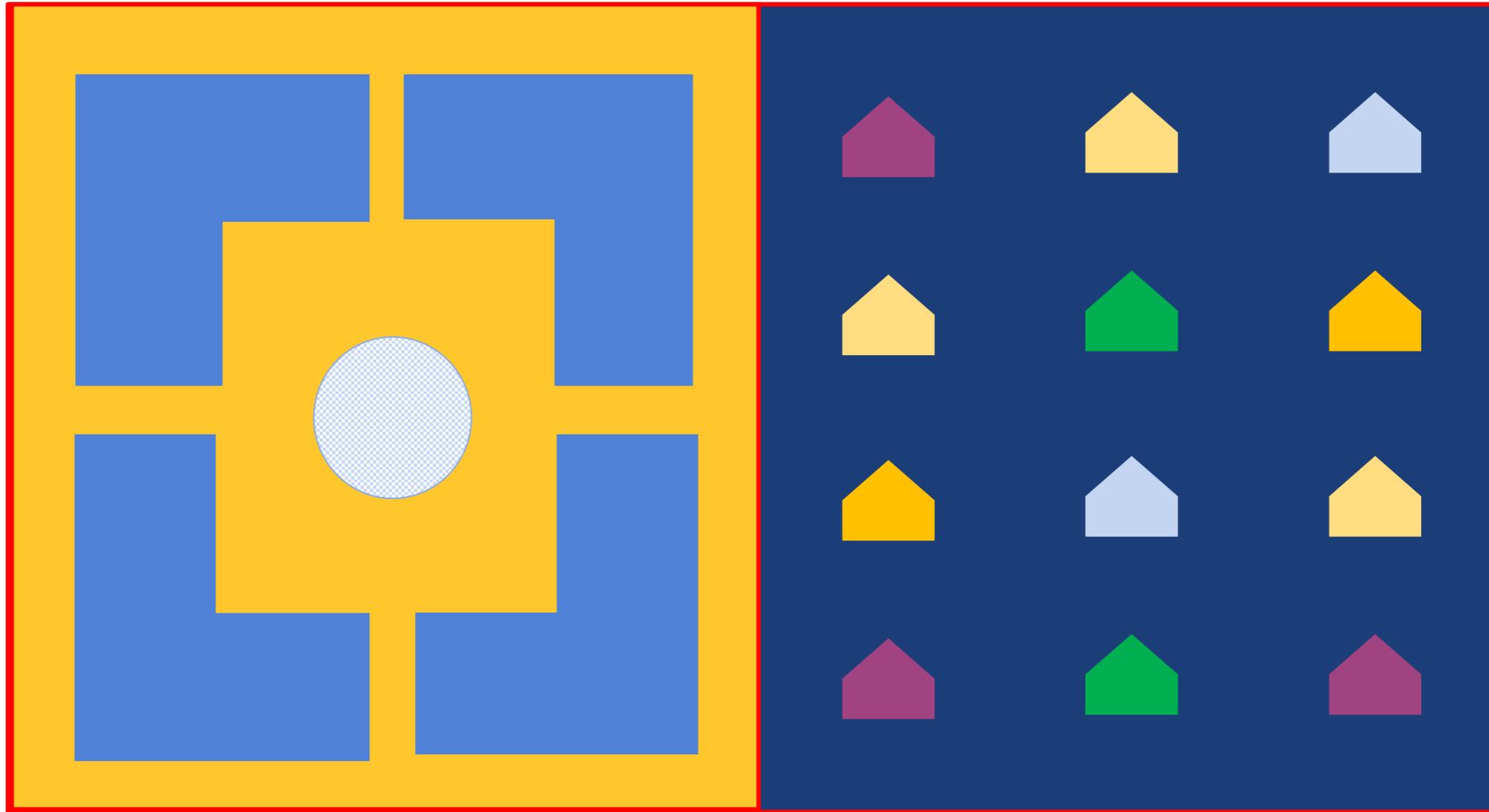
# Development partly built



# Application to supersede development on part



# Insert new permission “B” and complete “A”



# Constraints

## The power would need some limitations

- Effectively codifies the “slot-out” procedure
- Land ownership or owner’s consent required
- Only unimplemented development can be superseded
- Need to demonstrate how new development ties into existing / authorised development
- Preferable to use of a section 106 agreement