SQUIRE PATTON BOGGS

Hillside Parks Ltd and the Impact on "Drop-in" Permissions

The Court of Appeal judgment of 3 November 2020 in *Hillside Parks Ltd v. Snowdonia National Park Authority* [2020] EWCA Civ 1440 held that a planning permission needed to be implemented in full. An holistic approach was required and, for a development to be lawful, it had to be carried out fully in accordance with the relevant permission.

This accordingly raised significant and understandable concerns for large, multi-phased developments granted under a single permission, which is then the subject of "drop-in" planning applications where individual aspects of the wider scheme are varied.

The *Hillside* case was appealed, and the judgment was given by the Supreme Court on 2 November 2022. In a unanimous decision, the Supreme Court dismissed the appeal and confirmed that the Court of Appeal was right to dismiss the developer's claim.

The Supreme Court's decision reaffirms the position that "drop-in" permissions must be treated with significant caution. However, one must not take a simplistic approach that all "drop-in" permissions result in the loss of the original permission.

Turning first to the facts of the case, in 1967 full planning permission was granted for the development of 401 dwellings in the Snowdonia National Park in accordance with a detailed Master Plan. The Master Plan showed the layout of each house, along with the road design. The development progressed at a very slow pace, with only 41 houses being built. None of these houses were constructed in accordance with the Master Plan. Instead, they were built pursuant to subsequent planning permissions on parts of the site.

The subsequent permissions (some of which are termed "variations" of the original consent, and others, not) have allowed houses to be built on the main internal road network permitted in the Master Plan, along with the development of an estate road on areas identified for housing under the Master Plan. However, it still remains physically possible to build houses and roads on much of the site that conforms to the Master Plan.

It was held that, unless there is a clear indication that contradicts this, planning permissions for multi-unit development should be treated holistically, rather than authorising a series of independent acts. In other words, the permission is not severable into separate permissions. The fact that part of the site could still be developed does not overcome the fact that the permission as a whole cannot be complied with.

Arising from this, there are some points to note:

1. Mere inconsistencies between the original permission and subsequent consents is not enough. What must be shown is that development physically carried out makes it impossible to implement the original consent.
2. A failure or inability to complete a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful. However, in the absence of clear express provision making it severable, a planning permission is not to be construed as authorising further development if, at any stage, compliance with the permission becomes physically impossible.
3. An approved scheme can be modified, provided the additional planning permission covers the whole of the site. This, in itself, raises a number of practical issues, which Charles Banner KC (acting for the Appellant) quite rightly highlighted, not least the need for documentation relevant to the whole of the site, including an environmental impact assessment. Admittedly, such documentation could be reused from the original permission, but only if this is accessible to the developer and it remains up to date.

Equally, the costs of a new application on the whole, as well as revised/updated policy, CIL and section 106 obligations, need to be factored in.

4. There must be a material departure from the original permission. What is "material" is a matter of fact and degree. So, there is clear scope for some physical departure in certain circumstances.

5. Development undertaken without the benefit of any planning permission that is now immune from enforcement could still represent a departure from the original permission.

As noted, the *Hillside* case reminds us of the need for caution when considering the impact of historic consents on an original permission as well as future proposals for "drop-in" applications. However, the decision does not represent an absolute prohibition, and one needs to consider the particular circumstances in each case.

Should you wish to discuss this case further, or any other planning matter, please do not hesitate to contact any member of our planning team.

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