# Press Summary

**2 November 2022**

## Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority (Respondent)

## [2022] UKSC 30

***On appeal from:*** *[2020] EWCA Civ 1440*

**Justices:** Lord Reed, Lord Briggs, Lord Sales, Lord Leggatt and Lady Rose.

### Background to the Appeal

In 1967, planning permission was granted (the "**1967 Permission**") for a large housing estate of 401 dwellings in Snowdonia National Park (the "**Site**"). The approved plan (the "**Master Plan**") identified the proposed location of each house and the road system for the estate. Hillside Parks Limited ("**Hillside**") is the current owner and developer of the Site, having acquired it in 1988. Since the 1967 Permission was granted, only 41 houses have been built on the Site, none in accordance with the Master Plan.

High Court proceedings were first brought in 1985. At this time, nineteen dwellings had been built, none of which conformed to the Master Plan but which were constructed in accordance with a series of additional individual planning permissions. Following a trial in 1987, the High Court granted a number of declarations, including one that development under the 1967 Permission could still be lawfully completed in accordance with the Master Plan "*at any time in the future*" (the "**1987 Declaration**").

Following the 1987 Declaration, further planning permissions (the "**Post-1987 Permissions**") were granted by the local planning authority (*the* "**Authority**") in relation to particular parts of the Site. Development was undertaken pursuant to the Post-1987 Permissions which, as before, departed from the Master Plan. In addition, it has emerged that, after about 2004, houses were built on an area of the Site without any planning permission, in a manner that is inconsistent with the Master Plan.

In 2017, the Authority informed Hillside that it could not now implement the 1967 Permission given that it was not physically possible to build the development in a manner consistent with the Master Plan. Hillside brought proceedings seeking declarations that the 1967 Permission remained valid and could be carried out to completion as set out in the 1987 Declaration.

At first instance Hillside's claim was dismissed by the High Court ([2019] EWHC 2587 (QB)). Hillside's appeal to the Court of Appeal was unsuccessful ([2020] EWCA Civ 1440). Hillside now appeals to the Supreme Court.

## Judgment

The Supreme Court unanimously dismisses the appeal. Lord Sales and Lord Leggatt give the judgment, with which Lord Reed, Lord Briggs and Lady Rose agree.

## Reasons

The leading case on the effect of successive and mutually inconsistent planning permissions granted for development on the same site is *Pilkington v Secretary of State for the Environment* [1973] 1 WLR 1527. Two inconsistent permissions can be granted for development of land and a developer can choose which to implement. In *Pilkington* it was decided that, where development has taken place under one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission **[31]** and **[42]**.

The High Court had decided that, in 1987, it remained possible to implement the 1967 Permission despite the development which had by then taken place. But that left open the effect of the development which has subsequently taken place. The courts below held that, under the *Pilkington* test, development carried out under the Post-1987 Permissions has rendered the 1967 Permission incapable of further implementation. Hillside raised three arguments to the contrary. None of them can be sustained.

*(i) Abandonment*

Hillside contended that *Pilkington* should be analysed as resting on a principle of abandonment whereby the right to develop land under a planning permission will be lost if a landowner acts in a way which would lead a reasonable person to conclude that the right has been abandoned. Much of the Site remains unaffected by the building that has occurred on it and it would therefore still be physically possible to develop significant parts of it in accordance with the Master Plan. As such, Hillside submitted that no reasonable person would conclude that, in implementing the Post-1987 Permissions, the landowner had abandoned plans for development under the 1967 Permission on the vacant parts of the Site.

The Court rejected this submission. The principle in *Pilkington* does not rest on a principle of abandonment. Moreover, in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132 the House of Lords held that there is no room for any principle of abandonment in planning law **[34]-[40]**.

*(ii) Multi-unit developments*

Hillside submitted that where planning permission is granted for the development of a site comprising multiple units, the permission should be interpreted as authorising a number of discrete acts of development (e.g. of each dwelling) and not as a permission for a *single* integrated scheme which cannot be broken up into discrete elements. The implementation of the Master Plan on the undeveloped part of the Site should not therefore depend on whether it is still physically possible to develop *all* parts of the Site in accordance with the 1967 Permission.

The Court rejected this submission. Planning permission for a multi-unit development is granted for that development as an integrated whole. The development on part of the Site under the Post-1987 Permissions, which departed from the 1967 Permission and was inconsistent with the Master Plan, has made it physically impossible and so unlawful to carry out any further development under the 1967 Permission **[46]-[72]**.

*(iii) Variation*

Hillside submitted that the Post-1987 Permissions were not intended to be independent of the 1967 Permission but merely authorised variations of parts of the Master Plan. The 1967 Permission, as varied, therefore remains valid and capable of further implementation.

The Court rejected this submission (**[73]-[94]**): (i) It was not sufficient that some of the Post-1987 Permissions were expressed to be "variations" of the original 1967 Permission. The analysis of a planning permission is one of substance, not form **[81]**; (ii) it was irrelevant that certain of the Post-1987 Permissions referred to development in only discrete parts (or "plots") of the Master Plan. In substance the Post-1987 Permissions were departures from, not variations of, the 1967 Permission. The development carried out under these permissions made it impossible for Hillside to carry out development in accordance with the 1967 Permission, as did the buildings erected without permission **[83]-[88]**; (iii) the interpretation of a planning permission depends on how a reasonable person would interpret the permission (**[26]-[27]**), and the Post-1987 Permissions could not be interpreted as local variations of the Master Plan; rather they were independent permissions each applicable only to a specific part of the Site **[89-91]**.

Also, the additional building on the Site without permission made it impossible to implement the 1967 Permission and the Master Plan **[95]-[99]**.

*References in square brackets are to paragraphs in the judgment*