Case Name: *Hillside Parks Ltd v Snowdonia National Park Authority* [2020] EWCA Civ 1440 (03 November 2020)

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Commentary: The Court of Appeal has dismissed an appeal against the decision of the High Court which considered the question of whether the developer (Hillside) could rely on an old permission which was granted in 1967 to complete development on a site in Aberdyfi. The Court of Appeal found in favour of the LPA (Snowdonia National Park Authority) who sought to prevent Hillside from building out the development under the 1967 permission. While the Court of Appeal stressed that the case very much turns on its own facts, please see Simon's blog (https://simonicity.com/) for a helpful discussion of the potentially significant wider implications of the judgment, among other things, for modern multi-phase planning permissions and the modern "drop-in permission plus section 73 permission" process.

Hillside acquired the site in 1988 with the benefit of a planning permission granted in 1967 for 401 dwellings. Following the 1967 permission being granted, Hillside's predecessor discovered that part of the site was an old quarry. This created issues for the development and so additional permissions were sought and granted (8 in total) for a number of dwellings which were built as substantial variations to the masterplan attached to the 1967 permission. In essence, the 8 additional permissions overlapped with the 1967 permission. In 1985, the then local planning authority claimed that the 1967 permission was not valid and had not been implemented. In 1987, the 1967 permission was subject to proceedings in the High Court. The High Court, in the 1987 case, declared the 1967 planning permission was lawfully granted, and had been properly implemented.. Following the 1987 case, there was a gap in works on site until 1996 when another 8 additional permissions were granted and subsequently implemented. These also overlapped with the 1967 permission. In 2017, the LPA claimed that the 1967 permission could no longer be implemented because the developments carried out in accordance with the later planning permissions rendered it impossible to implement the original 1967 permission. This was contested by Hillside who sought a declaration from the High Court that the LPA was bound by the 1987 ruling, and that the 1967 permission remained valid and extant and could be built out.

Hillside's claim was rejected at the High Court. While the High Court held that the 1987 ruling was not wrongly made, it held that the development that had occurred since 1987 rendered the development granted by the 1967 permission a physical impossibility and that future development pursuant to that permission would no longer be lawful.

Hillside appealed the High Court judgment to the Court of Appeal. The Court of Appeal dismissed Hillside's appeal. The Court of Appeal found that there had been nothing inappropriate about the way that the High Court had dealt with the 1987 ruling and did not consider that the LPA should be prevented from raising the "Pilkington" issue (i.e. the extent to which development pursuant to one planning permission can be carried out without jeopardising the ability to carry out work pursuant to another planning permission granted over the same area of land) even though its predecessor had not raised it before the Court in

the 1987 case.

The Court of Appeal also rejected Hillside's reliance on the case of F. Lucas & Sons Ltd v Dorking and Horley Rural District Council (1966) 17 P & CR 111 ('Lucas') as part of its argument that development pursuant to the 1967 permission on parts of the site was not inconsistent with development on other parts of the site pursuant to other permissions. In dismissing Hilside's appeal, the Court of Appeal further referred to the case of Sage v Secretary of State for the Environment [2003] UKHL 22; [2003] 1 WLR 983, which held that a planning permission must be implemented "fully" and that a "holistic approach" should be taken.

Essentially, the Court of Appeal, in dismissing Hillside's appeal, confirmed the principle in Sage, but did not overrule Lucas, commenting that in order to do so it would have to be satisfied that it was wrongly decided on its particular facts and the Court of Appeal considered that it was not possible to be satisfied of that, because it did not have the advantage of seeing the precise terms of the planning permission which was granted in that case

Case summary prepared by Paul Arnett