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Case Law Update

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Multiple permissions



- **Hillside** [2020] EWCA Civ 1140
 - Multiple permissions on one site
 - If by implementing later permission the earlier permission cannot be developed in full =
 - The subsequent works unlawful
 - Maybe even works built before implementation of later permission unlawful
 - Applies unless permission can be read for self-contained elements (e.g. phasing)

Weighing heritage harms and benefits



- ***Bramshill*** [2021] EWCA Civ 320
 - Heritage harm and benefits
 - No need for mini “heritage balance” to see if “net” harm to weigh in the balance
 - Nothing really turns on it as heritage benefits in the “public benefits”

Material Considerations



- ***Friends of the Earth*** [2020] UKSC 52:
 - Only considerations made mandatory by law or policy must be taken into account
 - All other considerations may (not must) be taken into account, provided they are material (on which see **Wright** [2019] UKSC 53)
 - Unless the consideration is “so obviously material”

Tilted Balance



- ***Gladman*** [2021] EWCA Civ 104:
 - Can take account of breach of DP policies when carrying out tilted balance
 - Would not lead to circularity
 - But remember, all a matter of weight
 - On which see Hallam Land and Suffolk Coastal (EWCA)

Tilted Balance



- ***Paul Newman*** [2021] EWCA Civ 15
 - When policies for determining the application “out of date”
 - The up to date policies need not themselves be sufficient to determine the application
 - A single up to date policy might be sufficient to disengage tilted balance

Planning conditions



- ***DB Symmetry*** [2020] EWCA 2724 (Admin)
 - Conditions requiring dedication of land as highway
 - Not reasonable without compensation

Permitted Development



- **RSBS [2020] EWHC 3077**
 - Restriction at Art.3(5) GPDO prevents PD for unauthorised buildings or uses
 - Inspector found PD use rights suspended when building contains unlawful extensions
 - Even though the relevant PD right concerned use rights

Working from home = MCU?



- **Sage** [2021] EWHC 2885 (Admin)
 - Used home gym in private residential garden for training paying clients
 - Was that an MCU or incidental to dwellinghouse?
 - Useful review of the law as applied to home working
 - PPG Home working section “apt to mislead”:
 - Private residence first and business second (cf. incidental test)
 - Treated environmental impact as critical (cf. change in character the key)

Curtilage



- ***Hampshire CC*** [2021] EWCA Civ 398
 - Curtilage means land used part and parcel *of* a building
 - Not land used *with* a building
 - Hence 115 acres of airport land was wrongly de-registered on the basis used together with a 360 sq m airport building

Consultation reponses



- ***Swainsthorpe*** [2021] EWHC 1014 (Admin)
 - Consultation responses amenable to judicial review
 - Highways authority response quashed
 - Improperly took into account economic considerations beyond their remit of highways capacity and safety

Prior Approvals



- ***Smolas*** [2021] EWHC 1663 (Admin)
 - Some PD rights require prior approval before they are exercisable
 - Some prior approvals require assessment of whether the development falls within the relevant PD class (e.g. Part 3)
 - Some are silent on that matter (e.g. Part 6)
 - Required to assess whether falls within “definitional scope” of PD class
 - **Marshall** overruled

Challenging neighbourhood plans



- ***Oyston Estates*** [2021] UKSC 18
 - JR must be brought within 6 weeks of the relevant point in s.61N, i.e.
 - Consideration of the examiner's report
 - Holding a local referendum
 - Making the order or plan
 - Cannot wait for the last step in the process to challenge a decision at an earlier stage

Challenging planning decisions



- ***Croyde Residents*** [2021] EWHC 646 (Admin)
 - Normal period for challenging a decision under the Planning Acts is 6-weeks
 - Court has a discretion to extend where the claim is brought by way of a JR (cf. a planning statutory review).
 - **Thornton Hall** reviewed circumstances for extension
 - Allowed to challenge a 6-year old permission

Immunity from enforcement



- ***Ocado Retail*** [2021] EWHC 1509 (Admin)
 - Limitation period at s.171B of the 1990 Act
 - Breach needs to be continuous
 - No need for breach to continue beyond the relevant period
 - So once 10 years breach, the breach of condition is beyond enforcement
 - Query whether this carries over to uses (rather than just breach of condition)



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Any Questions?

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