Chronology of relevant case law

1974 - Pilkington v SSE

Two planning permissions could not operate on the same land where the operation of a condition made the development of cone incapable of implementation.

1981 – Newbury DC v SSE

Considered the circumstances in which the existing permitted use rights may be lost. Difficult to establish the creation of a new planning unit or a new chapter where permission purports only a change of use but circumstances can arise.

1982 - Jennings Motors Ltd v SSE

Case concerning whether there was a change which constituted a new chapter in planning history – question of fact and degree

2009 – Barnett v SSCLG

Relevance of plans describing building works in determining what was permitted by a permission

2010 – Stevenage BC v SSCLG

A permission did not have primacy over the plans.

Ultimately the question for the planning inspector was, having regard to the application for planning permission and the plan that accompanied it, whether sub-division of the retail unit could be seen as part of the overall package of works in respect of which planning permission had been granted. Whilst the plan showed internal works and so differed from the notice of application for planning permission that it accompanied, that did not mean that the plan was inconsistent with the notice or that it could be said that the words of the notice had primacy, *Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476, [2010] 1 P. & C.R. 8* applied and *Barnett v Secretary of State for Communities and Local Government [2008] EWHC 1601 (Admin), [2009] 1 P. & C.R. 24* followed. In the instant case, whilst other possibilities were theoretically open, the inference from the plan had to be that sub-division had been intended to be done at the same time as external works to the retail units. The fact that the plan showed that "shop internals" had not been surveyed did not militate against the inclusion of the sub-division in the works. The lack of such details did not mean that the planning application and permission could not have encompassed the main structural item, namely the internal wall, rather than matters of fitting out. The internal sub-division objectively formed part of the proposed works for permission on the plans and, in the circumstances, that conclusion was not ousted by a lack of reference to them in the planning permission notice. Accordingly, the planning inspector had been correct in concluding that the grant of planning permission for works on the retail unit encompassed internal sub-division works and in granting an LDC to G.

2010 – R v Prudential Ass Co Ltd v Sunderland CC

In accordance with cl.3, the s.52 agreement could not be interpreted as prohibiting or limiting the right of any person to develop the land in any way which was authorised by a planning permission granted subsequent to the conclusion of the agreement. It was not possible to interpret cl.3 as prohibiting or limiting the use of the land if a planning permission was granted subsequent to the execution of the agreement which authorised a use prohibited or limited by the agreement. To conclude otherwise would be to re-write the clear words of cl.3. However, that conclusion was reached with reluctance. It was clear that the officer of the local authority who granted permission for the conversion of unit 1 into two units simply did not consider the possibility that the terms of the planning permission granted to P had the effect of releasing the two units authorised by the permission from the constraints imposed by the s.52 agreement. However, it did not seem that the subjective state of mind of the officer could have had any relevance to the proper interpretation of the planning permission and the relationship of that permission to the s.52 agreement. Likewise, no extrinsic material was properly admissible to interpret the planning permission so as to achieve an interpretation of the planning permission which meant that use of the two units was subject to the s.52 agreement. That conclusion was reached quite independently of the decision of HHJ Waksman QC in *Stevenage BC v Secretary of State for Communities and Local Government [2010] EWHC 1289 (Admin)*. Nonetheless his conclusions in that case were entirely consistent with the instant court's conclusions, *Stevenage* considered.

2010 cases - Planning permission granted for the creation of two shops by external alterations and internal subdivision of one existing unit will supplant previously permitted use and conditions imposed.

2012 – Peel Land and Property Inv Co v Hyndburn BC – case currently being appealed.

Planning permissions obtained by the owner of a retail park did not have the effect of releasing it from obligations restricting the type of goods that could be sold in certain units; the local planning authority had therefore been entitled to refuse to grant certificates of lawful development to allow unrestricted A1 retail use at the retail park.