

PLANNING NEWSLETTER

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INTERESTING CASES AND DECISIONS

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PLANNING LAW

LEGAL CHALLENGES

Neighbour's Complaints Rejected

A neighbour considered that a planning appeal had been wrongly decided and challenge this on the basis of: an incorrect planning application; absence of a condition limiting occupation; failure to take into account national park status; wrongly construing the extensions policy; the creation of a precedent; and failure to require an EIA screening opinion. Contentions rejected and condition from earlier permission applicable: *Mills-Owens v First Secretary* (6/2/06).

Sufficient Housing Land

Permission for housing refused on the basis that there had to be "an overriding need" whereas regional policy outside defined areas was that the development had to meet the area's current population and housing needs. Decision quashed: *McCarthy & Stone v First Secretary* (20/2/06).

Failure to Interpret Policy

Application/appeal made to use industrial land for housing purposes. Inspector misinterpreted local plan policy on this issue and decision quashed: *Bayfordbury Estates v First Secretary* (20/2/06).

Demolishing/Renovating Houses

A CPO was issued for unfit housing. Before it was confirmed some were demolished and renovation commenced in others. The demolished houses were excluded from the confirmation and the renovated houses included. This was a perfectly legitimate response. Challenge rejected: *Burnley BC v First Secretary* (10/3/06).

Road Safety and Neighbours' Harm

A mini-cab in Soho had led to a congregation of cabs attracted by flashing lights which harmed neighbours' amenity. Conditions were suggested to allow continued use, but the inspector felt these would not work and her judgement was upheld: *Akhatr v First Secretary* (1/11/05).

Flooding Floors Flats

Failure to heed the Environmental Agency's advice against development due to flooding led to quashing of a decision as the committee had not been made aware of the sequential test and in any event officers felt this only applied to greenfield and not brownfield sites which clearly was wrong: *R (Environment Agency) v Tonbridge & Malling BC* (21/12/05).

Development Boundary Questioned

An appeal on the edge of a village was allowed for two dwellings. Another nearby appeal had been dismissed as being outside the village confines and the council contented there were similarities. The inspector had considered the previous decision but found that the present site was not separated from the village by rural land and was contiguous with it. Challenge rejected: *Ashford BC v First Secretary* (16/1/06).

Undermining of Planning Permission

The council agreed that antennae did not require prior approval and they were erected. Subsequent alterations were made and an enforcement notice served to deal with these. The locality was then designated as a conservation area. The council withdrew their first notice and served another requiring total removal of the structure. The court held that this was not possible as the original permission stood and subsequent events could not change this: *R (Orange) v Islington LBC* (19/1/06, CA).

Residential or Agricultural?

An extension to a farmhouse was of residential construction although said to be for agricultural use thus not requiring planning permission. An enforcement notice was served and the inspector said that residential policies should be applied as the building was not suitable for agriculture. His approach was correct and although not explicitly dealing with conditions to restrict the use to agriculture he had been aware of the appellant's arguments in this regard. Challenge rejected: *Watershore v National Assembly* (20/1/06).

Delegated Powers Acceptable

A house was to be demolished in a conservation area and a neighbour objected. He was given misleading information about referring the matter to the committee and did not do so. A delegated decision to approve the scheme was given and he challenged this on the basis that the officer should have referred it to the committee. However there was no uncertainty about the planning policies and the facts to which they had to be applied and therefore officer's decision could not be challenged: *R (Springhall) v Richmond upon Thames LBC* (24/1/06, CA).

GYPSIES & INJUNCTIONS

Fight for Injunction

Gypsies had been for a long time on a site and despite numerous planning refusals were still in occupation. The council applied for an injunction which was granted but its operation suspended until after determination of the current application. If it took effect immediately then it would be disproportionate to the need to safeguard the environment as despite the planning history it could not be said that the defendants' position was now hopeless: *S Bucks DC v Smith* (23/2/06).

All Factors Considered

Gypsies camped on various sites in an authority's area and an injunction was sought to stop this. There were no alternative sites, only houses available. The challenge to the council's decision was rejected on the basis that they had considered all aspects and not merely slavishly followed a policy of automatic eviction: *R(Casey) v Crawley BC* (1/3/06).

Improper Occupation of Land

Gypsies occupied the council's land and asserted that it would be a breach of the human rights to evict them. Held: there was a right to regain land and there was no breach of human rights as the gypsies' were trespassers: *Leeds CC v Price* (8/3/06, HL).

Noise Injunction Rejected

Motorcycling took place on a farm on more than 14 days per year but less than 28, in contravention of the GDO. The council applied for an injunction to stop this and the removal of earth bunds. This was refused on the basis that there was a distinction between racing and trials of speed on the one hand and non-competitive motoring activities on the other. The use was mainly in the latter category and the council had taken time to deal with the matter and it would not be just and proportionate to order removal of the mounds at this stage: *Hart DC v Benford* (22/2/06).

Previous Uses

Curtilage Excluded from Certificate

A residential LDC was granted on appeal but expressly excluding any curtilage which was in fact used in conjunction with other areas. This was the correct approach as was also the remainder of the inspector's decision on other planning issues in the context of the site's location in AONB. Challenge rejected: *Liddiard v First Secretary* (22/11/05).

Resuming Previous Use

A PFS/restaurant had been closed due to road changes. It was proposed to give a B1 permission for the building but it was contented that the officer's report was flawed in that it did not properly address whether the use could be restarted in the green belt. Operational works were required and reuse had not been properly assessed. Decision quashed: *R (Samuel Smith Old Brewery) v Selby DC* (23/11/05).

Lawful Development Certificate?

An inspector said that a document was not an LDC but the court held that although it was not in the required form nor specifically mentioned what it was nevertheless it was an LDC. The inspector had correctly dealt with the question of abandonment but the case was remitted on the LDC point: *James Hay Pension Trustees v First Secretary* (30/11/05).

PLANNING APPEALS

HOUSING: POLICY

Sequentially Preferable Sites?

170 dwellings at Seaton Delaval would be on a greenfield site. There were other brownfield sites sequentially preferable but not available. The site was allocated for housing so there was no objection in principle to the scheme. Application approved (*Blyth Valley BC*, 16/11/05).

An appeal has been allowed for 850 dwellings at site at the Southern Development Area, West of Blyth as there were no sequentially preferable sites available to this site allocated for housing (*Blyth Valley BC*, 16/11/05).

Regeneration Housing

300 units at Dock Road, Garston would be outside a pathfinder renewal area but there was

wide support from a number of stakeholders. This was a sustainable development in line with PPG3/13 with a need for more high value dwellings in an area of low value housing where the evidence suggested this would not prejudice strategic planning objectives. Application approved (Liverpool CC, 30/12/04).

Reserve Site Succeeds

Housing and open space on 54ha at Hitches Lane, Fleet was identified as a “reserve site” but although there was a five year land supply this was dependent on all allocated sites coming forward which was unlikely. The scheme would deliver significant benefits including affordable housing in a sustainable location and appeal allowed (Hart DC, 26/1/06).

Housing Over Supply?

39 flats at Wargrave Road, Newton-Le-Willows would be on a brownfield site. Council claimed sufficient dwellings available, but some would not come forward in the short/medium term and required major site preparation works. Also RPG requested greater provision. Appeal allowed (St Helens MBC, 30/1/06).

Houses Buried

Housing on a garden centre at Birchfield Road, Widnes would be on a site reserved for a cemetery extension. There was a shortfall in burial spaces and the council were prudent to plan for this. Appeal dismissed (Halton BC, 23/1/06).

HOUSING: LOSS OF EMPLOYMENT LAND

Canal-Side Housing and Retail

This scheme at Greenfield, Oldham has been approved as it would contribute to meeting targets for the reuse of previously develop land, assist with affordable housing and contribute towards strategic housing requirements despite being allocated for industrial for which there was no need. Significant quantitative and qualitative need for retail with no sequentially preferable sites available and no harm to existing centres (Oldham MBC, 6/12/05).

Poor Employment Potential

115 dwellings at Argyle Street, Hebburn would be on former employment land within the settlement boundary helping to meet targets for reuse of previously developed land. Good access. Unrealistic to maintain this employment site and thus application approved (S Tyneside MBC, 12/1/06).

HOUSING: CONSTRAINTS TO BUILDING

Hazardous Risk for Flats

68 flats at Cliff Road, Ipswich would be subject to a significant risk from a nearby oil depot and a cautious approach should be taken in view of the recent explosion at Hemel Hempstead. Appeal dismissed (Ipswich BC, 7/2/06).

School's Financial Contribution

A housing development required a financial contribution to a local school. It now exceeded its capacity and such a contribution at Fall Lane East Ardsley was justified. Appeal dismissed (Leeds CC, 9/2/06).

Flooding Paramount

In respect of a car shown at workshop at Kettering Venture Park the area was subject to flooding and although there was an alleviation scheme this did not fully take into account the water quality discharged and maintenance costs. Appeal dismissed (Kettering BC, 14/2/06).

Remediation Question

Despite extensive tests the extent of remediation for housing at Old Bank Road, Mirfield was not proven. Outline permission to allow further funding for this purpose was not justified and appeal dismissed (Kirklees MBC, 14/2/06).

HOUSING DESIGN

Student Accommodation Question

145 micro flatlets at Falmouth Docks Railway Station would be six storeys high well above the surroundings. However, the site was open on three sides and there would be amenity space. Access to an adjoining site could be found via an alternative route and development of part of the railway safety zone was unlikely because of continuing rail use. Appeal allowed (Carrick DC, 19/1/06).

Small Bedsits

At Selborne Road, Hove a flat was to be converted in two bedsits of only 14m². This would have the full range of facilities and be acceptable to a particular sector of the housing market for short-term lets. Appeal allowed (Brighton & Hove CC, 20/1/06).

Play Area Rejected

14 houses on a site previously for flats did not require a play area as there was a degree of flexibility in assessing this and it would impractical to provide one in the limited space available with only a small number of young children who would be in the houses. Appeal allowed at Anderton, Northwich (Vale Royal BC, 30/1/06).

Poor Design

A district centre and housing at Oakwood Park, Little Dunmow was of poor design as it did not reinforce locally distinctive patterns and development with an unclear relevance as a landmark because the social and public usage were overwhelmed by the residential element. Appeal dismissed (Uttlesford DC, 7/2/06).

Bulky Buildings

A scheme for 88 apartments key worker housing and offices at Lower Bristol Road, Bath

would be in two main buildings but these were not in keeping with adjoining buildings being bulky and taller and over-powering a nearby listed building. Appeal dismissed (Bath & NE Somerset C, 11/2/06).

Relocation of Hockey Club

Erection of 24 flats at Church Street, Bocking would allow relocation of a hockey club. Overall there was harm to the character and appearance of the area by the building's bulk and there was no legal agreement to secure the new facilities. Appeal dismissed (Braintree DC, 14/2/06).

HOUSING: SPECIAL NEED

Residents In-house

Four adults with mental disorders living together at Carterhatch Road, Enfield would fall within the definition of a dwellinghouse. The council had superficially assessed the situation and costs awarded against them in allowing the appeal (Enfield LBC, 31/1/06).

Student Housing

7 or 8 students at Harcourt Road, Sheffield did not change the character of the houses or the surrounding area or undermine neighbours' amenities. Enforcement notice quashed (Sheffield CC, 1/2/06).

AFFORDABLE HOUSING

Commuted Sum Accepted

It was said that three storey sheltered housing would be incompatible with its surroundings at Britwell Road, Didcot but the inspector said the height would be the same as nearby two storey houses. A standard internal layout was acceptable as also a commuted sum for affordable housing to be provided off-site. Appeal allowed (S Oxfordshire DC, 4/1/06).

Shared Equity Rejected

Sheltered housing at Frogmore Road, Westbury would provide 21.5% units as sheltered on an equity shared scheme. However the council argued for 26.5% which was permissible under their flexible policy which required up to 30%. This was more acceptable as the developers had not shown how the viability of the scheme would be affected by the additional amount required. The units should be for those with a wider range of needs giving the council rights of nomination. Appeal dismissed (Wiltshire DC, 20/1/06).

Wide Affordable Housing

Sheltered housing at Frogmore Road, Westbury provided 21.5% affordable housing for intermediate renting. The council wanted 27.5% for priority needs, supported by the text of their local plan policy. The inspector accepted this approach and dismissed the appeal (W Wiltshire DC, 20/1/06).

Affordable Housing Rejected

The site at Croft Road, Aylesbury had permission of 24 flats without affordable housing. The appeal for 35 was allowed also without affordable housing as the 24-unit scheme did not have this and would be implemented as a fall-back. The larger scheme had more one bed units which was acceptable and appeal allowed (Aylesbury Vale DC, 8/2/06).

HOUSING SUPPLY

Village Extension Supported

50 dwellings on 3 hectares at School Road, Newburgh would make a significant contribution to land supply in a sustainable location. Although a greenfield site it would nevertheless support the local community providing a range of house types and making good use of spare capacity in the local primary school. It would help maintain a 5-year housing land supply. Appeal allowed (Aberdeenshire C, 18/1/06).

Shortfall Not Harmful

Major residential development at Andover Road, Winchester could not be justified by the 300 units deficit in housing land supply at 2011. As a Major Developed Site it would be premature to bring this forward and against plan-led principles to do so. Appeal dismissed (Winchester CC, 20/2/06).

Oversupply of Housing

56 dwellings on a former school site at Tanhouse Road, Skelmersdale in a residential area would contribute to an oversupply of housing land and appeal dismissed (W Lancashire BC, 6/1/06).

Nursery is Brownfield

Flats at Leatherhead Road, Oxshot would be at a density of 30-50 dph redeveloping a horticultural nursery and so would be brownfield as last use not agricultural. Adequate parking and amenity space with no overlooking but lack of public open space fatal. Appeal dismissed (Elmbridge BC, 9/1/06).

Pathfinder Clearance Approved

Large-scale demolition of older housing in northern England is now proceeding. A CPO on 9.88ha of land at Edge Lane West, Liverpool has been approved as the area was in need of regeneration with unused or ineffectively used properties and land, which were contaminated, derelict neglected or unsightly (Liverpool CC, 15/2/06).

GREEN BELT & COUNTRYSIDE

Cars Mix with Fire Engines

A new fire station and Ford dealership at Stadium Way, Rayleigh would be on green belt land with several appeals dismissed previously. However the need for a new fire station in a strategic position with no alternatives meant allowing the appeal in that there were very

special circumstances and a unilateral undertaking to secure this had been agreed (Castle Point BC, 23/1/06).

Food for Housing?

Demolition of a food processing building at Sandpit Lane, Sowley for a new building although it would be smaller has been rejected. The existing buildings were typical agricultural structures which were established features. A new dwelling would introduce a different feature undermining the national park coastline's natural beauty (New Forest DC, 18/1/06).

Park and Ride Rejected

A proposal for a car park at Hatton Road, Hounslow would conflict with the green belt and highway safety and also the public safety zone for Heathrow Airport. Appeal dismissed (Hounslow LBC, 13/2/06).

COUNTRYSIDE ISSUES

Green Belt Holiday Lets

A former hop farm at Beltring, East Peckham was now a country park with a museum, craft workshops, a restaurant and banqueting hall, a children's zoo and play area. 64 holiday bungalows would assist in maintaining the listed buildings complying with English Heritage's advice. They would not detract from the character of the countryside and would make a significant contribution to the local economy. Application approved (Tonbridge & Malling BC, 30/12/05).

Loss of Habitat

Six storey student accommodation at Lewes Road, Brighton would be harmful to the common lizard, the slow worm, bats, badgers and foxes, and three species of scarce invertebrates. In the absence of a conservation management plan this damage was unacceptable. Replacement might be found on an adjoining car park which was to be run-down over time with the need for the development did not outweigh the harm. Appeal dismissed (Brighton & Hove CC, 9/1/06).

Inadequate Greenspace

14 flats at St Mary's Road, Ascot lay within 3 km of two sites of special scientific interest both part of a special protection area. English Nature was concerned to keep people out of these areas because of the damage they could cause and to create greenspace near housing. However, they had not yet come forward with a management plan and it would be premature to allow this development until its contribution towards funding could be assessed. Appeal dismissed (Windsor & Maidenhead RBC, 18/1/06).

School in Green Belt

While a special needs school at Mayford Green, Woking would be inappropriate in the green belt. With some degree of harm to openness very special considerations such as the urgent need for a replacement school catering for the exceptional educational and social needs of children with autistic spectrum disorder needs and the lack of any suitable

alternative site in the county meant permitting the application (Woking BC, 14/2/06).

LISTED BUILDINGS

Enabling Development Criticised

Housing to assist a listed building at the Combermer Estate, Whitchurch would be in a poorly accessible, greenfield, countryside location, with little public consensus. The harm to the parkland in the main road frontage, in an area of housing restraint, with the planning aim to regenerate towns was too high a price to pay for the benefits of the enabling development. Appeal dismissed (Crewe & Nantwich BC, 28/11/05).

Playing Fields and Residential

Housing at Trinity School Playing Fields, Newbury would not have affordable housing but would allow a listed building to be improved and likewise sport at the school and for the local community. Also improvements to the grade II park and garden and the surrounding conservation area. Application approved (W Berkshire DC, 20/3/06).

RETAIL

Dispute Over Clothing

A condition at the Cardiff Bay Retail Park restricted men's and women's fashion clothing to only ancillary. This meant that only general clothing and footwear items could be sold aimed at working, sporting or recreational goods. The word fashion have been deliberately excluded and the inspector agreed that fashion items could not be sold. Appeal dismissed (Cardiff CC, 1/2/06).

Convenience/Comparison Divide

A condition at Doncaster Road, Gunness required no more than 25% of floorspace of a Tesco to be used for comparison goods. This has been increased to 40% as it would not affect the overall character of the store and there was no need to prove the need for the development. Appeal allowed (N Lincolnshire C, 8/2/06).

Tesco's Horticultural Marquee

The company had been allowed to extend its store several times for garden products. At 83m² this was small and should not undergo the sequential test or a demonstration of need. Competition would be with out-of-town nurseries and appeal allowed at Town Lane, Southport (Sefton MBC, 16/11/05).

Own Group Shopping

A 1,246m² discount food store at Lynn Road, Oban would have sufficient expenditure in the area to support this. The town centre was healthy, and with their own brands the retailer would not unduly compete with others selling food and convenience goods. Appeal allowed (Bute C 23/11/05).

Small Food Store

Redevelopment of a pfs at Easterly Road, Leeds with a small shop (305m²) would be separated from a local parade by one bungalow. The shop would complement the centre and be used for day-to-day purchases. Appeal allowed (Leeds CC, 23/11/05).

Gardens' Amenity Hit

Extending an Aldi Store at Cherry Garden Lane, Dover would harm the living conditions of nearby residents whose outlook over the car park would be enclosed by the extension and recycling facility. Sunlight reaching rear gardens, particularly in the autumn or winter months, would be considerably reduced giving an oppressive and dominating impact of the building. Appeal dismissed (Dover DC, 3/1/).

SERVICES

Anti-Social Behaviour

A betting office at Michaelston Road, Ely would lead, it was said, to a risk of crime and disorder. Apparently, youths had been congregating on the forecourt. However there was no evidence to suggest they would be attracted to a betting office which was in accordance with planning policies. Appeal allowed (Cardiff CC, 8/11/05).

One more Restaurant Detrimental

A specialist vegetarian and organic restaurant at Bath Road, Cheltenham would be near other such units, which already exceeded 20% of the total, above the council's policy limit. Loss of the shop would erode the area's retail character making it difficult for the council to resist other proposals. Appeal dismissed (Cheltenham BC, 25/11/05).

Getting Steamed Up

A Turkish bath and sauna at Crossway, N16 would continue until 3:00am each morning similar to a café next door at this busy cross road. There were flats on the upper floors but these would not be affected as there was considerable noise in the area. Currently a barber's shop there would be no loss of an essential unit in UDP terms. Appeal allowed (Hackney LBC, 9/1/06).

Medics Replace Mechanics

A primary care centre/retail pharmacy/dental clinic at Preston Road, Lytham St Annes would be on rough grassland containing a building used for vehicle accident repairs. The council argued that their policy was to retain B1/B2/BA uses but the inspector noted most of the site was used for car sales which fell outside any class. Thus there would be no loss of employment land and no need to look at sequentially preferable sites as the scheme complied with development plan policies. Appeal allowed (Fylde BC, 11/1/06).

Nail Biting Use

A nail salon in a former charity shop at Victoria Road, Surbiton would not create dead frontage but would have the same façade as a shop and with characteristics of a hairdresser. There were some vacancies nearby and this use would sustain the area. Appeal allowed (Kingston upon Thames RBC, 13/1/06).

Vital party booking

Use of a shop for booking bands, discos etc at St Mary's Road, Ealing would be comparable to a shop drawing customers from a wide area and would make a positive contribution to the centre's viability. This was not a BI type use but more suited to a shopping parade. Appeal allowed (Ealing LBC, 17/1/06).

Noise and Disturbance from ATM

Installation of this at Gateford Road, Worksop would be on a main road near housing. There would be late night use (after the 11pm closing of the store) with visits by car. This would create additional noise and disturbance seriously harming local residents. Appeal dismissed (Bassetlaw DC, 18/1/06).

Nightclub Noise and Disturbance

A centrally located club at Wellington Road, Whitby could create disturbance but had been carefully planned in terms of layout, the use of rooms, noise levels and the proposed sound insulation measures. While there would be some increase in late night noise levels this would not be significant given the characteristics of the town centre location. Appeal allowed (Scarborough BC, 21/11/05).

Hoardings Shield School

Although hoardings at Wessex Gardens, NW11 would normally be detrimental to amenity their function in sheltering the rear of the school, its swimming pool and garden was of great benefit as it reduced noise and gave increased security particularly from rubbish and drug paraphernalia thrown into the garden (Barnet LBC, 22/11/05).

Hot Spot Takeaway

Extended opening hours (2:30 am) at Tanner Row, York were opposed as the police identified this as a "hot spot" but there had only be seven incidents of crime outside the premises. This was small compared to the overall area. There was no alcohol sale. The council had not properly analysed the police information and relied on general assertions so appeal allowed with costs (York CC, 19/1/06).

Critical Hotel Loss

Demolition of a 22 bed hotel at West Cliff Gardens, Bournemouth would materially detract from the tourism role and function of the area. Although not trading profitably, a viable business was a theoretical possibility despite a dispute about the cost of refurbishment. Appeal dismissed (Bournemouth BC, 27/1/06).

CONDITIONS

Bus Priority Downgraded

A 1957 permission now implemented permitted an access. The council tried to impose a condition regarding bus access but the court quashed this. On reconsideration at appeal such a condition was considered legitimate and good practice since the original permission. However, there was no evidence as to the type of bus priority lane required and in the circumstances a condition would not meet the test of need at Marsh Common, Pilning.

Appeal allowed without condition (S Gloucestershire C, 16/11/05).

Wrong Approval Letter

In seeking an LDC for two bungalows granted permission in 1988 the inspector rejected a letter from the building control officer stating that operations had commenced. This did not comply with planning requirements. Failure to comply with a condition about fencing although minor meant that the permission had not been started and appeal dismissed at Orchid Close, Saracens Head (S Holland DC, 31/1/06).

COSTS

Costly Mast Appeal

An appeal has been allowed with costs for a 13.2m high telecommunications mast at Ham Lane, Lewes where the council said the mast would not be visually intrusive but claimed there was a perceived health risk by local people. The risk was minimal and the council had been motivated by the fears of local people which were unjustified (Lewes DC, 12/1/06).

Tall Mast not unreasonable

An 18m high telecommunications mast at Uzmaston Road, Haverfordwest would replace a utilitarian structure 15m high. Although taller and more prominent it would blend into the background being painted and thus the visual impact would not be substantial. The council objected on health grounds but there was no justification for this and costs were awarded against them in allowing the appeal (Pembrokeshire CC, 24/1/06).

Costly Limited Evidence

An agricultural occupancy restriction at Winchester Road, West Meon was lifted because the calf rearing business was no longer operational and held in separate ownership. There was no realistic prospect of new agricultural use. An adequate marketing exercise had been carried out but the council argued for a 50% discount as against the owner's 30%. They put forward no evidence to support this and costs were ordered against them (E Hampshire DC, 18/1/06).

Council's unreasonable stance

Allowing an appeal for 46 flats in three blocks at Clarence Road, Windsor there was a partial award of costs against the council as they refused to enter into negotiations over air quality, flood risk, highway safety and cycle parking. They sent an email saying they would not discuss any material changes to the scheme. These issues had to be dealt with at the appeal which was unreasonable. (Windsor & Maidenhead RBC, 18/1/06).

Flooding Evacuation Questioned

11 flats at Queen's Road, Caversham would be within a 1 in 100 year floodplain. An evacuation route had been agreed with the Environment Agency but the council disputed this upon advice from its emergency planning officer. However, he had not properly assessed the merits of the proposed escape route and this amounted to unreasonable behaviour with partial costs being awarded when allowing the appeal (Reading BC, 19/1/06).

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