

PLANNING NEWSLETTER

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INTERESTING CASES AND DECISIONS

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PLANNING LAW

PLANNING PERMISSIONS CHALLENGED

Competing Scheme Ruled Out

Permission had been given for a 27-storey mixed-use scheme and a rival scheme rejected. Both applications had been properly considered by the council although not at the same time. There had been no prejudice and permission for judicial review refused: R (Chieftain Construction) v Liverpool CC (27/3/06).

Greenfield Site Challenge

Argued that housing permission should only be granted if a community need had been established. Council agreed to quashing of the decision as they had not fully considered this: R (Lungley) v Torridge DC (29/3/06).

Wheel Hurts Neighbours

Approval of a large ferris wheel has been put in doubt because of the council's failure to adequately consider overlooking, noise and lighting and its effect on neighbours. Permission granted to pursue judicial review: *R (Ling) v E Riding of Yorkshire C* (3/4/06).

Claustrophobic Feeling

Successfully argued that the council had failed to give proper, adequate and intelligible reasons for granting planning permission where the design and proximity of the new building would create a "boxed-in feeling" for a small adjoining flat: *R (Havard) v S Kesteven DC* (7/4/06).

Scope of Outline Permission

An outline permission was granted for district centre uses based upon a master plan and accompanying statement. Residential uses were to be ancillary. Subsequently reserved matters were submitted showing over 90 homes. This was challenged by a local resident claiming the proposed uses were not within the outline permission. The court agreed as it was not in line with the illustrative drawings which although not definitive had to illustrate something. Replacing community uses with residential did not accord with the outline permission. Challenge upheld: *R (Morland) v Wiltshire DC* (12/5/06).

CHALLENGING APPEALS

Agricultural Building's Status

A purported agricultural building was erected but without prior consultation and was said by the enforcement inspector not to be designed for this purpose. His decision was upheld although it was contended that he had misused certain sections of the Act and also had given no reasons why a condition restricting the use should not be imposed. His remarks were incidental and the general tenor of his decision indicated why such a condition would not be acceptable. Challenge rejected: *Watershore v National Assembly* (20/1/06).

Employment Allocation Questioned

An appeal for housing on industrial land was rejected. However the inspector failed to deal with several material points – defining what were existing prime industrial areas; the fact that there was a lack of office uses; there were flaws in the employment land study; and points on site viability had been mentioned by the inspector but not dealt with at the inquiry. Decision quashed: *Bayfordbury Estates v First Secretary* (20/2/06).

Raising School Roof

A school was to be used primarily as a nursery but also as an after-school club for those up to 16. A new roof was erected and an enforcement notice served and upheld as it was in the green belt and poorly served by public transport. The inspector referred to the nursery use but was not in error as he said this was the "primary" use and was aware of the overall use. Also his views on transport were reasonable. Challenge dismissed: *Walker v First Secretary* (9/3/06).

Unaccompanied Site Visit

An owner wished to use a different access to property but was refused on appeal. He contended that the inspector had made a private site visit but this did not vitiate her decision as the inspection would not have given an opportunity to make representations but merely the ability to point out matters referred to in the statements. Challenge rejected: *Winter v First Secretary* (17/3/06).

Stadium Topples

Permission for a new Brighton football stadium has been quashed on the basis that the site was not within the “built-up area” of the town but was partially outside this: *Lewes DC v First Secretary* (7/4/06).

Existing Sports Facility

A policy sought to retain such a facility but a health club had been demolished. It was wrong of the inspector to resist housing on the basis that the policy applied as this was not an “existing” facility having been removed: *WE Black v First Secretary* (12/4/06).

Light on Barn Decision

A large barn was built under the prior approval procedure. Windows were inserted together with a large adjoining hard standing. An enforcement notice required demolition of the barn but the inspector did not fully consider the issues and felt that both the hard standing and the barn should be removed but did not accept the argument about blocking all the windows. His decision was unintelligible and it was quashed: *Tapecrown v First Secretary* (11/4/06).

Continued Challenge Blocked

A local resident has been stopped from challenging an appeal decision to expand a neighbour’s house. His argument had already been rejected but he tried to take the matter to the Court of Appeal who said he was “absolutely bound” to lose and thus would not let him take it further: *Mills-Owen v First Secretary* (5/5/06, CA).

Conditions Precedent

Permission to convert a barn was given on 18/9/03 subject to conditions. The work commenced but was said to be in breach of the permission and an enforcement notice served. Applications were then made to discharge the conditions but the council refused to deal with these until the enforcement appeal was heard and an appeal was therefore made to the Planning Inspectorate. They declined jurisdiction on the basis that the works had commenced without approval of the condition details but their decision has now been quashed by consent as there was still a valid planning permission. Even though a start had been made there was still time to seek the necessary discharge: *R (Coulson) v First Secretary* (8/2/06).

GYPSIES AND TRAVELLERS

Serious Breach of Injunction

Gypsies were going to occupy a site so the council obtained an injunction prohibiting this. An application for planning permission was made, refused and appealed. In the meantime

the gypsies moved on to the site and the judge held they were in contempt without a realistic prospect of success on appeal. This was the right approach and the gypsies could not call evidence from others more positive about their appeal. The correct principles had been followed: *Wychavon DC v Rafferty* (27/4/06, CA).

Injunction Not Enforced

A gypsy caravan was authorised on a site and the owner gave notice that he wished to introduce further caravans because of his wife's terminal illness. A planning application was submitted and refused with enforcement and stop notices served. The stop notice was breached by an additional caravan coming to the site and notice was given about another one. An interim injunction was granted. The council sought to enforce this but the court held that committal was not appropriate in the highly unusual circumstances: the appeal was not hopeless; the wife's personal circumstances; the council were kept informed; and there was an undertaking not to introduce more caravans: *Waverley BC v Newland* (3/5/06).

Circular Makes No Difference

Gypsies were in breach of planning control in the green belt. A planning appeal had been dismissed and an enforcement notice upheld. The council gained an injunction for the caravan's removal but the gypsies again applied for permission and appealed. They argued they should be allowed to remain pending outcome of the appeal. However a committal order was granted and on appeal this was not discharged because the court could not determine the outcome of the appeal. Nor did the new Circular 1/06 give any additional help: *S Bedfordshire DC v Price* (5/5/06, CA).

Second Application Allowed

Gypsies lost an appeal for a caravan in the green belt and re-applied within two years for a new decision. The council refused to register this and the gypsies drew attention to the fact that there were new circumstances: their children attended local schools and the publication of Circular 1/06. Held: the council should reconsider its decision because of these factors although ultimately they might decide to refuse permission: *R (Jeeves) v Gravesham BC* (12/5/06).

LOCAL PLAN CHALLENGES

Local Plan Challenge

A site was designated as within a green wedge but the local plan inspector recommended its deletion. The council rejected this and it was said the grounds were inadequate and that they had introduced new evidence in doing so. Held – the reasons were intelligible and the evidence was known to the claimant. No need for new inquiry. Challenge rejected: *Knight v Bridgend CBC* (5/1/06).

Inspector's Critical Illness

A local plan inspector was taken ill after close of the inquiry and his report completed by another. The council subsequently withdrew the plan but argued the report was a material consideration. This was challenged and the court felt the matter was arguable and should

go to a full hearing: RWE NPower v S Derbyshire DC (14/2/06).

JUDICIAL REVIEW

Safety Paramount

Challenges by objectors to a liquefied natural gas project were beyond the 3 month time limit for judicial review. This limit did not conflict with their human rights as previously confirmed in *Lam v UK* (1998); there would be prejudice to the developers as at least £500m was committed to the project; public safety had been fully taken into account from the HSE and the Port Authority. Leave to challenge rejected: *R(Hardy) v Pembrokeshire CC* (17/3/06, CA).

Freemasons & Planning

A decision to approve an agricultural showground was made on the casting vote of the chairman, a freemason. Another freemason voted in favour. There was to be a large grant from the freemasons for a room in the pavilion. The judge held that while there was a suspicion that there was a real possibility that a freemason would assist others, in this particular case there was no apparent bias affecting the decision. Challenge rejected: *R (Port Regis School) v N Dorset DC* (5/4/06).

ENFORCEMENT CASES

Nullity or Invalidity?

An inspector said that part of an enforcement notice was deficient and drafted new provisions. However, it has been held that the notice was a nullity and therefore could not be corrected and no further action should have been taken upon it: *Payne v National Assembly* (5/1/06).

Hopeless Appeal

In respect of enforcement notices and refusal of a lawful development certificate the owner challenged the inspector's decision to dismiss the appeals. She relied primarily upon factual matters in the decision which were clearly a matter for the inspector. There was no error of law. Challenge rejected with useful discussion on costs: *Ford v Lambeth LBC* (24/2/06).

Permission to Remove Injunction

An injunction was granted to stop a breach of planning control by depositing waste on a site. The injunction was granted but subsequently the enforcement notice quashed. The judge did not discharge the injunction but asked both parties to appear to explain the events: *Caerphilly CBC v Payne* (24/3/06, CA).

Appeal Material

Enforcement notices were outstanding against gypsies and the council resolved to remove the caravans. However there were outstanding applications/appeals and the timing of these had not been fully considered which meant the decision was unlawful and disproportionate: R(O'Brien) v Basildon DC (12/4/06).

COUNCILLORS' CONDUCT

Councillor's Improper Conduct

A councillor represented a constituent in a land dispute with the council and obtained confidential evidence. He accused an officer of withholding this and refused to apologise when he was wrong. The Standards Board suspended him for six months. This has been upheld as the allegations were of a criminal nature; there had been no apology; a tribunal had seen and heard the appellant and were concerned about his future conduct. The Tribunal were not wrong in their decision: Hare v Marcar (30/1/06).

Suspension Confirmed

Suspension as a councillor for 6 months was justified due to the comments made about council officers. Leave to appeal refused: Hare v Standards Board (23/3/06).

Intemperate Outburst

A councillor became concerned about a planning issue and corresponded with the chief planning officer. He made certain accusations of political bias and the councillor's conduct was referred to the Standards Board. He was suspended for one year but complained that the chief executive should not have referred the matter; the correspondence was privileged; no publication had taken place outside the council; the board had taken too long and extended its remit with members' biased; and the board was wrongly appointed. All these allegations were rejected and suspension upheld: Wilson v Standards Board (22/2/06).

ENVIRONMENTAL STATEMENTS

Timing of Environmental Statement

Where planning permission comprises an initial stage of outline consent with subsequent approval of reserved matters, it is contrary to European Community law for UK law to provide that an environmental impact assessment should be carried out only at the first stage: R (Barker) v Bromley LBC (4/5/06).

In a parallel case the European Court held that the UK had failed to fulfil its obligations under Community law by only requiring an EIA at the outlined stage. Until reserved matters had been approved the development was still not finally authorised and accordingly the two steps together constituted a multi-stage development consent within the terms of the Directive which might require an assessment at each stage: Commission v UK (4/5/06).

Environmental Statement Information

Permission was given for a new tunnel under the Tyne. An environmental statement had been submitted but it was alleged failed to deal with the question of waste from the tunnel

and how it would be disposed. The environmental statement was complete but further information could elucidate this aspect. Challenge rejected: R (Atkinson) v Secretary of State (5/5/06).

ENVIRONMENTAL LAW

Effect of Telecom's Mast

A mast was erected and neighbours complained about its effect on their health. The Code in Schedule 2 of Telecommunications Act 1984 allowed removal if the apparatus materially prejudiced enjoyment of land but by the time of the trial the house had been sold.

The adjoining owners claimed symptoms after installation but it was not their subjective feelings which were important rather objective facts. They could not prove this and furthermore having moved away did not have the standing for a claim: Petursson v Hutchinson (9/5/05).

Blocked Bridge Floods

A river was partially obstructed by bridge arches and a statutory nuisance was claimed because of the choking which led to flooding. The council resolved to serve an abatement notice on the highway authority but then declined to do so changing their minds again after judicial review proceedings had started. The claimant asked for a declaration on the word "choked" but he did not have the right to this with the court opining that he might be right but this needed to be dealt with on a factual basis: R (Robinson) v Torridge DC (27/4/06).

Liability for Contamination

A former gas works site was sold in 1965 for housing. Contamination appeared and there was a dispute about liability. The successors to the original gas board were liable as the Environment Protection Act 1990 Part IIA made it clear that it was the original polluter rather than subsequent innocent owners who should be liable. Furthermore, although the state of the land did not originally give rise to a statutory nuisance this procedure was no longer available in the light of the new regime. It was parliament's intention in the Gas Acts that liability should be transferred to the present claimants: R (National Grid Gas) v Environment Agency (17/5/06).

Effluent Disposal Controlled

Integrated pollution prevention and control permits were required for waste treatment plants. Those which disposed off the sludge elsewhere were clearly covered by the regime but those which were ancillary to a brewery and dairy were on the same site and therefore covered by their permit: United Utilities Water v Environment Agency (19/5/06, CA).

ENVIRONMENTAL CRIME

Tree Removal Criminal

TPO trees were harmed including wilful removal. The magistrates convicted and on appeal this was upheld because the trees were covered by the TPO and it was therefore

not necessary to specifically consider their age. However clearer findings of fact would have been helpful: *Charles & Son v Barnet LBC* (16/5/05).

When is Waste Stored?

Waste materials at a recycling centre where outside the bins provided and a successful prosecution ensued. This was challenged as it was said there was no proof it was “controlled waste” but could be agricultural or mineral waste. The Magistrates’ were entitled to make the decision founded upon the Environment Agency’s evidence as the accused did not put in any evidence himself. The items were “stored” on the site and in breach of condition and thus the conviction was upheld. The procedure was not in breach of human rights as there was a right of appeal which had been exercised: *Skipaway v Environment Agency* (5/5/06, DC).

GENERAL LAW

Way of Necessity

Backland was purchased with an access that subsequently proved to be deficient on planning grounds. The owners claimed an alternative access by way of necessity over other land but as this was not in their contemplation at the time of purchase this was not permissible: *Adealon v Merton LBC* (12/4/06).

Access Arrangement Questioned

Temporary parking on fields at Donington Park had been allowed. The terms were in dispute but it was agreed this should be for three days. A subsequent dispute led to a ruling that it was for the parking only not for emergency/service vehicles and tankers, mobile laboratories etc. Landlord also had to allow access from the parking area to the circuit over other land so as to make the agreement accord with “business efficacy”: *Donington Park Leisure v Wheatcroft* (7/4/06).

Timing of Advert

In respect of an application for a casino licence the newspaper advert appeared one day late. This meant that there were only 14 days to object, but not clear days. The court held that the modern approach was not to treat such small shortfalls as fatal and to see what prejudice might have been caused. In these circumstances the magistrates were wrong to refuse jurisdiction and their order was quashed: *R (TC Projects) v Newcastle Justices* (26/4/06).

Restrictive Covenant Breached

The Lands Tribunal modified a covenant to allow erection of a rear bungalow and accessway. The tribunal was right to do so as they were aware of the facts and had not wrongly applied the test in relation to the “thin end of the wedge” argument; there was only limited adverse effect; the effect of the access was not significant; and construction works were only temporary. Challenge dismissed: *Shephard v Turner* (23/1/06, CA).

Disclosure of Information

Under the Freedom of Information Act 2000 a request was made to disclose details of

negotiations between a local primary care trust, doctors and a developer about a new surgery. While commercially sensitive information (eg rents) could not be disclosed before negotiations had been completed other heads of terms could be. Informal meetings were not minuted and so could not be disclosed. Financial assistance information was held by the developer and also could not be disclosed: *Re Farndon Green Medical Centre* (3/4/06).

MISCELLANEOUS CASES

Stopping-up a Highway

A council have a discretion when considering a request to promote a stopping-up order before the magistrates. They should not merely refer the matter to the magistrates but take into account representations including those for and against development on an adjoining site: *R (Spice) v Leeds CC* (27/2/06).

Fending off Residents

Following a previously unsuccessful challenge to a planning appeal the owner then sought a declaration that restrictive covenants were not enforceable on the proposed new flats. The court agreed that a previous sale of the land had not expressly transferred the covenants as development had been fully carried out at that time. The covenants were not enforceable: *Sugarman v Porter* (8/3/06).

Blocked Sewer

To remedy the blockage a bypass pipe was installed but when this was removed the blockage continued and there was pollution of controlled waters. The defendants were acting on behalf of a water company who were responsible for managing the site. The defendants had acted upon instructions and thus were not liable for the criminal offence: *Environment Agency v Biffa Waste Services* (23/3/06, DC).

Late Licence Refusal

A local authority is entitled to apply its cumulative impact policy to reject an application to extend the permitted opening hours of licenced premises: *R(JD Wetherspoon) v Guildford BC* (11/4/06).

PLANNING APPEALS

HOUSING ON INDUSTRIAL LAND

Key Industrial Site

This 0.94ha site at High Street, Wollaston was next to a factory the noise from which might disturb residents. Although there was a significant surplus of industrial land this area might be used for a business park and appeal dismissed (*Dudley MBC*, 6/3/06).

Flawed Marketing Exercise

36 flats at Stead Street, Ramsbottom would be on an industrial site. Marketing of the building had only taken place once the appeal process was underway and then in a desultory manner with little enthusiasm. The building although old could be refurbished. There was an adequate supply of housing land and proximity to industrial uses meant it would be

difficult to create a satisfactory living environment for future residents. Appeal dismissed (Bury MBC, 17/3/06).

Factory Bulk Replaced

Replacement of a tall factory with 17 flats and 7 houses at Kimbolton Road, Higham Ferris with a building of similar height was not unacceptable. Although development nearby was mainly two storeys this was a mixed use area and regard should be paid to the scale of the existing building. Appeal allowed (E Northamptonshire DC, 21/3/06).

Industrial Harms Residential

Redevelopment of a depot with 24 dwellings at Deanstones Lane, Queensbury would not harm residential amenity. On the contrary, an enforcement notice had been served to regulate the previous use following complaints from local residents. The buildings were in poor condition with a limited space for vehicle manoeuvring. Residential redevelopment was preferred and appeal allowed (Bradford MDC, 23/3/06).

Poor Residential Environment

Redevelopment of a factory at North Street, Pewsey would create an intensive development out of keeping with the detached and semi-detached houses on more spacious plots. There would be overlooking with a cramped appearance. Loss of the employment site was not fatal to the council's employment policies. Appeal dismissed (Kennet DC, 23/3/06).

HOUSING: REGENERATION ISSUES

Urban Renewal Stops Flats

Conversion of a former nursing home to 12 flats at Olive Lane, Wavertree would make beneficial use of the building. However 9 flats in the garden would conflict with the need to restrain housing outside regeneration areas. Even a small development would cumulatively hinder significant benefits of renewal. Appeal dismissed (Liverpool CC, 31/1/06).

Housing Restraint Applied

A single house at Regent Road, Birkdale has been refused as it was not within an area of housing renewal. An SPG said new housing would be resisted if this ran more than 20% over the build rate in regional planning guidance which was in fact now at 70% (Sefton NBC, 16/2/06).

Small Regeneration Benefits

23 houses at Lock Lane, Partington were in an area of decline and would provide a new quality scheme supporting local services. However the inspector thought these impacts limited and because of the over-supply of housing land the appeal was dismissed (Trafford MBC, 6/3/06).

Discouraging Regeneration

87 houses at Low Moorsley, Houghton Le Spring would redevelop a derelict commercial area on the edge of the town. While brownfield it could discourage investment in strategic housing sites in greater need of regeneration and renewal. New housing should be

concentrated on these. The site had poor accessibility. Appeal dismissed (Sunderland CC, 8/3/06).

Offices' Negative Impact

A listed grain building at Victoria Quays, Sheffield had been converted to residential with a restaurant/bar on the ground floor. However this had been difficult to let and offices were proposed. These would not have the same interest and vitality said the council and the appeal was dismissed on this basis as this was a gateway site attracting boats from the nearby canal (Sheffield CC, 9/3/06).

HOUSING: LOCAL PLANS

Premature Housing Rejected

A mixed-use scheme on 84ha at Barton Farm, Andover Road would have up to 2,000 dwellings plus 13,000m² of retail etc floorspace. Although identified in the emerging local plan as a reserve site there was no compelling justification for its immediate release with only a possible shortfall after 2011. Appeal dismissed (Winchester CC, 20/2/06)

Premature Housing?

300 dwellings at Old Kempshott Lane, Basingstoke although allocated for housing should only be developed as part of a larger area said the council. The current layout and housing types, including 30% affordable, was acceptable and appeal allowed (Basingstoke & Deane BC, 13/3/06).

Vital Marketing Failure

Demolition of a vacant nursing home and erection of 9 flats at Cavendish Avenue, Harrogate was rejected because of insufficient evidence to justify the loss of a community facility. The policy said there should be no reasonable prospect of securing a satisfactory, viable alternative community use. This should involve evidence of property marketing and as this had not taken place the appeal was dismissed (Harrogate BC, 13/3/06).

HOUSING IN THE COUNTRYSIDE

Green Belt Employment

A condition restricted offices to ancillary to an antiques consultancy at Horton Road, near Slough. There were 8 people already employed but full use of the premises for offices including a dwelling would introduce too much activity in this green belt location. Appeal dismissed (Windsor & Maidenhead RBC, 2/3/06).

House Supports Parkland

At Coston the site was located within former parkland and a new house was needed to support the management and rejuvenation of the estate which was falling into decline. The house would be acceptable in respect of the nearby village and enhance the character of the local landscape. Local people would be employed in running the estate and appeal allowed (Melton BC, 13/3/06).

Restoring Heritage Asset

In order to restore Riber Castle, Matlock it was necessary to convert this to 26 flats, the outbuildings into 9 dwellings, the erection of 10 new houses and the gatehouse into one dwelling. Whilst this would conflict with local policies on housing provision and accessibility and new build in the countryside, it would enable the listed building to be restored in line with English Heritage's policy on enabling development. Application approved (Derbyshire Dales DC, 16/3/06).

Countryside Impact Sanctioned

Housing at Love Lane, Newbury would be on school playing fields which would be sold to improve a grade I listed manor house and provide new sports facilities. While the density was well below that in PPG3 the houses would respect the character of the area. With support from both Sport England and English Heritage the scheme's benefits outweighed any policy conflict. Application approved (W Berkshire DC, 20/3/06).

Gypsies in Green Belt

Despite not having permission a site was opened-up for 10 families with children now going to school. As there were no alternative sites nearby their needs were considered paramount and appeal allowed at Parkhall Road, Somersham (Huntingdonshire DC, 1/2/06).

HOUSING DESIGN

Council Officers Conflict

Demolition of a run-down hotel at Warwick Road, Solihull was permitted to enable 52 flats to be built in a conservation area. The conservation officer thought this acceptable but the head of planning concluded the bulk, massing and design of the scheme was unacceptable. As the building did not make a positive contribution to the area alternative uses should not be examined. The frontage blocks would appear as two pairs of semi-detached properties and replicate the rhythm of development in the area. (Solihull MBC, 16/2/06).

Local Listing Sacrificed

A locally listed building at Dingle Lane, Solihull was in a poor condition and not of particular merit although locally listed. It was not worthy of full listing and its replacement by 14 flats in a landmark building was justified (Solihull MBC, 27/2/06).

Bungalow can be Built

Outline and reserved matters approval was given at Waddow Grove, Waddington and a trench dug in 1/91 and then backfilled. This was a lawful start and lawful development certificate granted despite the argument that filling-in the trench meant that it could not be used for the foundations (Ribble Valley BC, 6/3/06).

Costly Design Error

14 flats at Charles Street, Cathays would be in a conservation area where the council

considered only traditional design applicable. This was a modern building recommended for approval but rejected by the committee. There were a mixture of styles and ages in the vicinity and the appeal was allowed with the costs as there was insufficient evidence to support the council's criticism of the design (Cardiff CC, 8/3/06).

River Frontage Urbanisation

A large mixed use scheme at Kew Bridge, Brentford including 238 flats and 1,965m² of commercial floorspace would appear as a slab block up to 8 storey's high in this important riverside location. Although it would open up a new footpath and public square it fell "very far short" of the type of building to be expected in such a sensitive urban and historic location and was not a "thoughtfully sculpted townscape". Appeal dismissed (Hounslow LBC, 9/3/06).

Tall Building Justified

A building of between 7 and 13 storeys with 95 flats at Dock Street, E1 would be above its immediate neighbours but in context with other high buildings in the vicinity. There would be no harm to a nearby listed church. There was no need for wind tunnel testing as a desktop study indicated this would be acceptable. Although only 10% of units were affordable this was because of the scheme's economics and this was unlikely to change in the near future. Appeal allowed (Tower Hamlets LBC, 23/3/06).

Spacious Estate Feel

41 bed flats at Rosehill Park, Emmer Green would replace a 4 bed house on a spacious 1960s estate at a density of 44dph against the existing 15dph. There would be loss of character and scale leading to dismissal of the appeal (Reading BC, 2/3/06).

HOUSING FOR LOCAL NEEDS

Local Needs Satisfied

The appellant proposed to sell his two bedroomed cottage and a similar one of his partner to finance a larger dwelling at Main Street, Easenhall as he could not afford an existing property in the vicinity. He had long-standing connections with the village through his parents and grandparents. Appeal allowed with condition for his initial occupation and thereafter only by a person living in or adjacent to the parish for at least 10 years. (Rugby BC, 22/2/06).

New Home Justified

A specialist joiner wished to live next to his workshop at Castleton Station, Whitby; it was accepted that he performed a valuable function in the national park. However, he did not pass the "essential" test of local policies. He proposed sell his existing house to a local family with an undertaking that this would be at a discount and prevented being purchased as a second home. This meant the appeal could be allowed (N York Moors NPA, 24/2/06).

Exceptional Rural Housing

Three affordable cottages at Kitchener Road, North Fambridge would be adjacent to

the development boundary and meet a local need. Although only limited facilities were available the impact would be limited and appeal allowed (Maldon DC, 2/3/06).

Compelling Affordable Housing

There was a need for 261 more affordable dwellings in the district but only 8 had been provided in the past year. Thus two sites at Birkin Lane, Grassmoor although outside existing settlement limits would be suitable for this type of use as no other site had been allocated. Appeal allowed (NE Derbyshire C, 8/3/06).

Poor Social Housing

Although 25 affordable houses and flats would be acceptable in principle at Bargates, Christchurch with no harm to the character or appearance of the area, the offer of a unilateral obligation for 10 year nomination rights was inadequate leading to dismissal of the appeal (Christchurch BC, 10/4/06).

MULTI OCCUPATION HOUSING

No Harm to Tourism

The conversion of a guesthouse at Downs View, Bude to 9 bed-sits would be near properties in a similar use. There was no evidence of harm to tourism and this relatively small property would not hinder accommodation needs of tourists and holidaymakers. Appeal allowed (N Cornwall DC, 2/2/06).

Homeless People Welcomed

A proposal for four rooms at a guesthouse at Effingham Crescent, Dover to be used for homeless persons was allowed for a two year period despite police and neighbour objection. The inspector said pedestrian movements would be little different from that existing and the concern about crime and disorder would be allayed by improvements to the management (Dover DC, 14/3/06).

AFFORDABLE HOUSING

Affordable Housing Questioned

Instead of the 16 permitted flats at High Street, Barnet 22 were proposed with only 3 affordable as against 1 in the previous scheme. Claimed that the site price, contamination costs and constrained town centre location meant no more could be proffered but no costs were given. As the council were under a direction to provide 30% - 50% affordable units the inspector thought that at least 50% of the additional units, 3, should be provided, plus the existing 1, making a total of 4. Car parking at 0.8 space per flat was adequate as was an undertaking to prevent use of residents' parking bays. The bulk of the rear elevation overwhelmed a nearby property and the appeal was dismissed (Barnet LBC, 20/3/06).

Affordable Housing Down

7/13 storey flats in Dock Street, E1 would be above its immediate surroundings but fit in well overall. Although there was a loss of employment use this was acceptable in terms of

para 42(a) of PPG3 and thus acceptable. The toolkit showed only 10% housing as against the policy requirement of 25% - 50% and was acceptable bearing in mind the economics of development rather than leaving derelict buildings. Appeal allowed (Tower Hamlets LBC, 23/3/06).

Level of Affordable Housing

It was claimed on viability grounds that only 10% affordable units should be provided at Station Road, Moreton-in-Marsh. This was because of a high purchase price. The council argued for 25% which the inspector thought correct. This would need to be reflected in future negotiations. Appeal dismissed (Cotswold DC, 20/4/06).

RESIDENTIAL DEVELOPMENT CONSTRAINTS

Impact on Playground

A seven-storey building Mount Pleasant WCI would make a positive contribution to the conservation area but have an adverse impact on the adjoining primary school. It would add unacceptably to the sense of enclosure already suffered by the school and appeal dismissed (56:30 Camden LBC, 24/4/06).

Noise Guidance Suitable

A site at Stainier Close, Kettering, was alongside a dual carriageway and within noise category C of PPG24 – thus it was unsuitable for housing. This guidance was not out-of-date as claimed. The fact that the council had granted permission on similar sites did not affect the outcome. There was a sufficiency of housing land. Appeal dismissed (Kettering BC, 3/4/06).

Parking Ban Supported

A residential conversion at Davisville Road W12 included a condition banning residents from applying for parking permits in local streets. This was reasonable to reduce car travel and appeal dismissed (Hammersmith and Fulham, 18/4/06).

Hospital goes Residential

42 dwellings on the site of Meadows Lea Hospital, Penyffordd would replace buildings in various states of disrepair following closure in 2004. The council preferred employment re-use but there was sufficient land elsewhere and use of this site for housing would reduce the need to release greenfield sites. Appeal allowed (Flintshire, CC, 29/3/06).

Impact on Birds

Demolition of a house and erection of 2 new homes at Blackwater, Camberley although outside a special protection area for birds was in the vicinity and would affect the nesting populations through greater access and disturbance. Restrictive covenants suggested to stop owners keeping cats and dogs but difficult to enforce. Appeal dismissed (Hart DC, 6/4/06).

RETAIL

Retail Harms Landscape

A 7,106m² retail park at Spital Road, Wycke Hill would meet an identified need for further bulky goods retailing. However while it might be necessary to extend the tightly drawn urban boundary, only recently adopted, this should await the local development framework in 2009 particularly because of the landscape impact of this development. Appeal dismissed (Maldon DC, 27/2/06).

B&Q Gets Thumbs Up

A new store at Park Farm Road, Folkestone would meet a quantitative and qualitative need unlikely to harm the vitality and viability of any centre. There were no sequentially preferable sites available and the proposal would be accessible by a choice of means of transport reducing use of the car. There would be a positive effect in terms of physical regeneration, employment and social inclusion and it would not prejudice the supply of employment land. Application approved (Shepway DC, 23/3/06).

Existing Store Preferred

A supermarket wished to relocate to a new site at Lamont Drive, Irvine from an edge of centre retail park. It claimed that the new site would serve a wider locality but the reporter felt the existing site sequentially preferable. Also the proposed site was an engineering training school on employment zoned land which should be retained for this purpose. Appeal dismissed (N Ayrshire C, 9/3/06).

Retail Need Hits Employment

Sites at Ventura Park Road, Tamworth were proposed for a non-food retail warehouse/ B1/B2/B8 employment and a DIY store. A quantitative assessment had been made and sequentially preferable sites researched. There was a need for the development without suitable alternatives and appeals allowed (Tamworth BC, 31/3/06).

New Housing New Supermarket

A 3642m² food store, a PFS, fast food restaurant, 40-bed hotel and a restaurant have been allowed at Lochend, Dunbar as new housing required this and there were no sequentially preferable sites available. Outflow of expenditure would be reduced. Application approved subject to a marketing plan for the hotel/restaurant, bus service to food store and funding of £200,000 towards improvements in the town centre to offset any impact (E Lothian C, 3/4/06).

Lack of Sequential Sites

Erection of a 9,290m² DIY store with a builder's yard of 1,858 m² and a garden centre of 2,787m² has been allowed at the rear of the JS store at Osmaston Park Road, Derby. Not accepted that this would allow significant innovations in DIY retailing as these could be achieved in smaller stores and insufficient disaggregation had been shown. However there were no preferable sequential sites (Derby DCC, 5/4/06).

Poor Access Arrangements

A Costco warehouse at Torrington Avenue, Coventry had poor access and despite traffic

calming would result in increased travel and disturbance to residents' amenity along the access route. Appeal dismissed (Coventry CC, 8/4/06).

Retail Warehouse Club

At 12,612m² this would include an in-house bakery, photoshop and café at Chester Gates, Lea-by-Beckford. It would be only open to qualifying trade or individual members and would operate as a wholesale use in Class B8 and a retail outlet in Class A1. Thus PPS6 only applied to the retail element. As the goods would be equally available to trade and private members it was not possible to disaggregate the wholesale and retail elements. Thus for the sequential test it was necessary to see if a single site existed. There were no such sites. Also there would be no unacceptable trading effects on existing shopping centres. Application approved (Chester CC, 8/4/06).

B&Q on Employment Site

A 6,710m² store, 790m² builder's yard and 1,068m² garden centre at Park Farm Road, Folkestone has been allowed on employment land. The scheme would allow a wider range of products to be sold and there had been flexibility in considering a reduction in scale/alternative sites. It would create 120 jobs and renovate a run-down site. There would be improvements to public transport. Appeal allowed (Shepway DC, 23/3/06).

Racecourse Improved

A new pavilion, racing academy, stables, hostel, hotel, casino, shops and a cinema at Ayre Racecourse would be in a sustainable location improving tourist facilities. Harm to a listed building could be reduced by limiting height to two stories. No harm to vitality or viability of nearby town centres or open nature of the site. Application approved (S Ayrshire C, 9/5/06).

SERVICES

Harmful Restaurant

This use instead of a coffee bar at Edgware Road, Colindale would increase non-retail uses, which at 43% were well above the 35% level in the UDP. This would undermine the primary role of the shopping centre and appeal dismissed (Brent LBC, 3/3/06).

Encouraging Amusement Centre

At Victoria Street, Paignton it was said that this would draw people to the area and encourage them to visit shops and other businesses in the centre. There would still be over 82% of shop units in the immediate area. Appeal allowed (Torbay C, 21/2/06).

Garish Amusement Centre

The council wished to concentrate such uses near the pier and this one at Marine Parade West, Clacton-on-Sea would be away from this area and would introduce the possibility of gaudy lights and displays undermining the character of the conservation area. Appeal dismissed (Tendring DC, 21/2/06).

Uphill Struggle

Change from offices to a dental surgery at Birmingham Road, Walsall rejected because it would involve an uphill walk of between 900m and 1,050m from the town centre. This was intended to be a specialist orthodontic treatment centre for patients referred from local hospitals. The location was unsustainable and would require car access (also MBC, 5/4/06).

Amusements Appeal

Use of shop units at Sicey Avenue, Firth Park for an amusement centre would not undermine the area's vitality and viability. The council's threshold was 50% of units in shopping use but on this basis and also on floorspace there would be no harm to the centre's retail function. Although within an area of low income the proposal would not exacerbate problems by the gathering and behaviour of unruly patrons. Appeal allowed (Sheffield CC, 26/4/06).

Airport Terminal Controlled

A new terminal at Coventry Airport would adversely affect local residents' amenities. A legal agreement to control flying would offer substantial benefits. In addition there was social and economic advantages in terms of diversification in the local economy, job creation and training close to areas of deprivation. Appeal allowed (Warwick DC, 6/4/06).

COMMUNITY USES

Loss of Community Use Resisted

In a new settlement at Tone Vale, Taunton, a site was reserved via a masterplan for a public house. Although it was not suitable for this use the public expressed a need for a community use. Housing should not be permitted which would compromise this possible alternative. Appeal dismissed (Taunton Deane BC, 23/3/06).

Sports Hall Replaces Field

Part of a sports ground for 18 flats at Woodhouse Road, NI2 would be replaced by a sports hall. PPG17 gave support and the appeal was allowed with a condition for the sports hall contract to be first let before the flats could be commenced. Costs awarded as the council gave no evidence to support its stance (Barnet LBC, 21/4/06).

COUNTRYSIDE DEVELOPMENT

Brownfield Status Questioned

A former sawmill at Ashford Road, Chilham had blended into the landscape following demolition of the buildings. Thus it was not previously developed land. Although allocated for roadside facilities including a pub/restaurant or hotel the site was some distance from the urban area and residents would be dependant upon car travel. Appeal dismissed (Ashford BC, 27/3/06).

Wildlife Trust Unsustainable

Conversion of barns at Melton, Woodbridge would mean 25 workers moving into a remote site in the countryside plus visitors as well. They would all be dependant on the car as

there was poor public transport. This was unsustainable and appeal dismissed (Suffolk Coastal DC, 29/3/06).

No Need for Housing

Permission for employment use had been granted in 2 barns at Manor Farm, Great Habton. It was argued that this was incompatible with the listed farmhouse. Replacement by 16 dwellings, 8 affordable, would substantially increase the village population and conflict with the setting of the farmhouse. The affordable housing had not been justified. Appeal dismissed with costs as proposal was clearly against the council's policies (Ryedale DC, 3/4/06).

Barn Holiday Home

Conversion of a barn at Gosforth, Cumbria to a holiday cottage would not meet local housing needs and therefore offended policy. It would have all the facilities needed for day-to-day occupation but being for holiday purposes would not meet the needs of local people. Appeal dismissed (Lake District NPA, 30/3/06).

Conversion Works Sanctioned

Permission had been granted in 1976 to convert a building at Motcombe into two cottages subject to an agricultural occupancy restriction. In 1999 they were converted back into a single unit and the inspector held that the condition did not apply to this as its nature had been fundamentally altered. Appeal allowed (N Dorset DC, 11/4/06).

FLOODING

Fatal Flooding

52 flats at Garth Road, Bangor would be within zone C2 on development advice maps meaning there was a significant flood risk not benefiting from defence infrastructure. The appellant's flood risk assessment showed there was an over-estimate of flood levels but some flooding might take place in extreme events. In these circumstances the appeal was dismissed (Gwynedd C, 11/4/06).

Flood Risk Minimised

51 sheltered flats and 10 affordable units at Polmoria Road, Wadebridge would be on land liable to flood. The appellants were prepared to make a financial contribution towards local flood defence and the minimum ground floor level would be well above any predicted worse case flood with evacuation by the on-site manager. Appeal allowed (N Cornwall DC, 24/4/06).

Flooding and Global Warming

Three houses and 21 flats at South Street, Bishops Stortford would be in an area of flood risk with the need to make an increased allowance for global warming. The bulk would be harmful to the street scene leading to dismissal of the appeal (E Hertfordshire DC 4/5/06).

Coastal Erosion Forted

An existing house had already slipped down a cliff into the sea at Sea Road, Fairlight. Replacement would be reasonable at the rear of the site as there was likely to be a 45-100 year life. This would not be a profligate use of resources or contrary to the need to secure sustainable and relatively permanent long-term development. Appeal allowed (Rother DC, 20/3/06).

TOURISM

Hotel Loss Justified

Conversion of a hotel to flats at Abbey Road, Llandudno would not undermine tourist facilities. The hotel was some distance from the sea front, lacked facilities for family beach holidays and was poorly located for conference guests. Cost of renovation would be £1m with £0.8m for a leisure facility. Given the supply of other hotels, loss of this would not damage tourism and appeal allowed (National Assembly, 21/4/06).

Hotel Preferred to Flats

An extant permission for a hotel adjacent to a listed building at Box End Road, Kempston Rural had been commenced. Argued that this fallback would be continued if 64 flats were refused. However the inspector considered that the flats would have greater impact on the listed building whereas the hotel would increase the supply of such accommodation, create employment opportunities and support the rural economy. Appeal dismissed (Bedford BC, 21/3/06).

LOSS OF EMPLOYMENT

Buildings in Poor Conditional

A haulage depot/scaffolding business at Deanstones Lane, Queensbury was surrounded by houses. There had been previous noise complaints and enforcement procedures. With poor turning space and the buildings needing repairs it would be unviable to either refurbish them or redevelop for employment purposes. Appeal for residential allowed (Bradford MCC, 23/3/06).

Poor Outlook Criticised

Redevelopment of Station Yard, North Street, Pewsey for flats would cause overlooking and a cramped appearance. Not an important employment site and no overriding need to retain it. Appeal dismissed (Kennet DC, 23/3/06).

Houses Retain Character

23 houses on a vacant depot at Belvedere Road, Faversham would be in a conservation area surrounded by residential properties. Use as employment would therefore be inappropriate. Loss of the utilitarian buildings was justified particularly as the proposed housing responded to the character of the surrounding area. Appeal allowed (Swale BC, 10/4/06).

Unacceptable Employment Use

97BI "work from home units" at Thaxted Road, Saffron Walden could not be classed as

employment and thus contrary to the local policy. They could compromise the use of adjoining employment land and would be largely car-dependent. There was sub-standard amenity space, isolated from the main residential areas of the town. Though the layout was acceptable the appeal was dismissed (Uttlesford DC, 18/4/06).

Employment Loss Sanctioned

36 flats at Mile Lane, Parkside would use good-quality employment land but only three expressions of interest had been received since marketing in 1997. Its configuration made it awkward to develop for larger units and thus housing would bring forward the site's redevelopment. Appeal allowed (Coventry CC, 29/4/06).

PARKING ISSUES

Parking Aids Traffic Calming

5 flats redeveloping of 5 bed dwelling at Bowes Hill, Rowland's Castle would fit in with the area and make efficient use of this accessible site. Adequate parking provision but weight given to view that increased kerbside parking would act as a traffic calming measure. Appeal allowed (E Hampshire DC, 22/2/06).

Poor Parking Provision

12 flats plus 12 parking spaces at Kirkham Street, Plumstead would be acceptable in design terms with a curved roof but parking inadequate due to congested nature of area and poor public transport. Appeal dismissed (Greenwich LBC, 10/4/06).

ENFORCEMENT

Recreational Cars

An enforcement notice alleged that land next to a house was being used for the storage, servicing and repair of motor vehicles. However this was part of the curtilage of the house and there was no question of any commercial or industrial use taking place. The use was incidental to the enjoyment of the house and the enforcement notice quashed at Sway Road, Pennington (New Forest DC, 17/2/06).

Sheep for Home Consumption

A lawful development certificate has been granted at Meads Croft, Bowerchalke as the property had been occupied for more than 10 years in breach of the agricultural occupancy condition. Some sheep had been kept and the lamb slaughtered for home consumption with negligible income from the surplus. Thus there had been no material agricultural activity and appeal allowed (Salisbury DC, 6/3/06).

Breach of Condition Conflict

A B8 permission at Wessex Road, Ringwood precluded use on a Saturday afternoon. This had occurred in 2002 and a breach of condition notice had been imposed with a successful prosecution in 2005. A lawful development certificate has now been allowed

as the appellant could have claimed this up to the time of the notice's service in 2002 as there was then a continuing 10 year breach. The legal proceedings did not affect this (New Forest DC, 14/3/06).

DETAILED PLANNING DISPUTES

Conversion Excludes Rebuilding

Permission was granted to convert a barn to residential. However the barn was demolished. The owner submitted a fresh application for a new barn but this was refused on appeal. He then asked for a lawful development certificate that the original permission could be used but the inspector concluded that the application was for a "conversion" and this was supported by the plans. Appeal rejected at Bryngwenith Farm, Pencoed (Bridgend, CBC, 30/3/06).

Parking Replaces Caravans

From 1969 to 2002 a site was used to store caravans when not in use. Thereafter airport parking took place at Fairview Road, Ingliston. The reporter said there was little difference between these storage uses. The change to smaller and lower vehicles was minimal or even beneficial; there was no evidence about additional traffic generation. 18 months vacation of the site was not abandonment. Use immune from enforcement (Edinburgh CC, 7/4/06).

CONDITIONS

Unreasonable Condition

A condition stated that no building work should take place between mid May and mid September nor on Good Friday and Easter Monday. This, it was said, would protect the privacy of guests in two holiday homes which overlooked the site at Alexandra Road, Porth. This would only protect commercial interests and not planning principles. Condition modified for work only between 9:00am and 5:00pm (Restormel BC, 3/3/06).

Personal Use Criticised

Part of the basement at Regent Palace Hotel Glasshouse Street WI was authorised for restaurant/bar on a personal basis following a successful enforcement notice appeal. This was subject to a personal condition but an appeal to relax this has been successful as the inspector pointed out such conditions were contrary to Circular 11/95. The council had been wrong to ask for more information and had not demonstrated why the proposal was unacceptable in this location and costs were awarded against them (Westminster CC, 10/3/06).

Limiting Occupation Unlawful

Permission for a storage/distribution building at Scarr Road, Newent contained a condition for personal use only in order to restrict traffic generation. Advice in Circular 11/95 was against such conditions and in any event it would not prevent the company generating different levels of traffic. Appeal allowed (Forest of Dean DC, 27/3/06).

MISCELLANEOUS APPEALS

Costly Noise & Dust

In refusing housing because of excessive noise levels from a road by vehicles to a nearby quarry and the dust arising there from the council had not undertaken independent studies but accepted the appellants assessment. The appeal at Granite Way, Mountsorrel was allowed with costs as the authority should have fully assessed the matter themselves (Charnwood BC, 22/2/06).

Doors Hinder Mobility

A single door of 1m had been replaced at Chiswick High Road, W4 by inward folding doors each 0.45m wide. These made it more difficult for customers and employees with limited mobility to enter and leave the shop. A condition requiring them to be kept permanently open would be unreasonable and appeal dismissed (Hounslow LBC, 13/3/06).

Pedestrian Crossing Unnecessary

Permission for 58 sheltered flats at Station Road, Littlehampton had already been given with a contribution towards a pedestrian crossing. However this was required in connection with a nearby school and was not the direct result of the development. Appeal allowed without this (Arun DC, 8/3/06).

For more information please speak to your usual contact at **CgMs** or **Tony Bowhill** (tony.bowhill@cgms.co.uk)

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