

# PLANNING NEWSLETTER

Issue 19 Part 2 Autumn 2007

## INTERESTING CASES AND DECISIONS

CONTENTS	
p.2	<b>PLANNING LAW</b>
p.2	Planning Permission Challenges
p.3	Appeal Challenges
p.4	Compulsory Purchase Orders
p.5	Gypsies
p.6	Footpaths
p.6	Environmental Law
p.6	Miscellaneous
p.7	<b>PLANNING APEALS</b>
p.7	Housing Policy
p.8	Housing Design
p.10	Affordable Housing
p.11	Housing: Employment Loss
p.12	Housing: Flooding
p.13	Countryside Employment
p.13	Shopping: Design
p.14	Shopping: Policy
p.14	Services
p.15	Commencing Development
p.16	Agricultural Occupancy

**LONDON  
OFFICE**

Morley House  
26 Holborn Viaduct  
London  
EC1A 2AT

Tel: 020 7583 6767  
Fax: 020 7583 2231

**CHELTENHAM  
OFFICE**

Burlington House  
Lypiatt Road  
Cheltenham  
GL50 2SY

Tel: 01242 259290  
Fax: 01242 259299

**NEWARK  
OFFICE**

The Manor Barn  
South Street  
Normanton-on-Trent  
Notts NG23 6RQ

Tel: 01636 821727  
Fax: 01636 822080

**KETTERING  
OFFICE**

Ragsdale  
1 Church Lane  
Great Cransley  
Northants NN14 1PX

Tel: 01536 790447  
Fax: 01536 799378

**BIRMINGHAM  
OFFICE**

43 Temple Row  
Birmingham  
B2 5LS

Tel: 0121 237 6097  
Fax: 0121 237 6100

## PLANNING LAW

### PLANNING PERMISSION CHALLENGES

#### Committee Fine on Highway Matters

A sight line was deficient said county highways. However the planning committee agreed to grant permission and they were entitled to use local knowledge. The project involved new development in the ground of a listed building and the committee were entitled to take an overall approach, rather than deal with the new building on its own. Challenge rejected: R(Bayraktaroglu) v S Cambridgeshire DC (27/4/07).

#### Incorrect Committee Advice

Lorry parking was said to impact on mobile phone equipment. The committee report about the application failed to deal with dust and also the officer at committee said a permission was extent when it had expired. These were errors which affected the committee's decision and the permission was quashed: R(Orange) v Birmingham CC (4/4/07).

#### Flawed Decision Reconsidered

A committee report regarding a proposed extension omitted a critical distance between windows which breached guidelines. An adjoining owner objected and the court held that this was a material defect in the report. However, the committee reconsidered the matter and held a site meeting at which they viewed the distances. They then reconfirmed their decision. Using the court's discretion it did not quash the original decision as it would merely have led to another application which would have been approved bearing in mind the careful consideration given to the matter by the committee: R(Jones) v Swansea CC (15/2/07).

#### Going Back on a Decision

A planning committee resolved to grant permission, but this was challenged on the basis that at a subsequent newly constituted committee they were told they could not go back on the previous decision unless there were material changes in circumstances. In fact the advice was there had to be strong circumstances but a reconsideration could take place. The committee had been properly advised and could not be faulted for continuing with the decision. The definition of "affordable housing" had been before them and the new PPS3 made no material difference. Challenge rejected: R(King's Cross Railway Lands Group) v Camden LBC (25/5/07).

#### Flawed Screening Assessment

Prior to the grant of planning permission for housing an authority gave a screening opinion that an environmental impact assessment was not required. This was challenged on the basis that they failed to take into account the cumulative effect of three sites; construction effects; contamination; and architectural heritage. Simply to compare the existing and proposed end uses was inadequate. These factors had not been taken into account. Decision quashed: R(Mortell) v Oldham MBC (30/3/07).

#### Consequences of Removing Trees

It was decided that "deforestation" for forming playing fields did not require an environmental impact assessment. However the decision maker did not take into account the effect of

the development itself. The entire package, including the deforestation and the new land use, had to be considered to see whether, cumulatively, they required an EIA: R(Tree & Wildlife Action Committee) v Forestry Commission (29/6/07).

### **Environmental Information Request**

A challenge to planning permission for installation of liquefied natural gas terminals at a port was dismissed in the High Court and Court of Appeal. The claimant then requested environmental Information which the Information Commissioner partly agreed, but there was an appeal to the Information Tribunal. The claimant then instituted a judicial review of that decision but the court decided she could not pursue this as there were already proceedings on the matter. There was no duty to disclose this information in terms of human rights and it was an abuse of process to continue the matter as it had already been dealt with by the courts: R(Hardy) v Milford Haven Port Authority (4/7/07).

### **Call-in Refusal Debated**

A planning authority identified for housing a large area in its local plan. They discontinued the planning process as a new one was about to start, but also resolved to grant permission for the site due to a housing land shortfall. The Government Office declined to call-in the application and this was challenged by another developer. The GO had fully considered the papers supplied and looked at any possible conflicts with national policy and had a broad discretion in deciding whether to call-in. The decision was not perverse and challenge rejected: R(Persimmon Homes) v Secretary of State (11/7/07).

## **APPEAL CHALLENGES**

### **Nursing Home v Affordable Homes**

Loss of the former would not be compensated by more than twice of the latter on a different site. The inspector held there was a need for both but did not come to an overall conclusion. He took into account an Act which was not discussed at the inquiry and thus there had also been unfairness. He did not address another inspector's decision which favour the claimants on affordable housing on another site and this too was fatal. Challenge upheld: Vicarage Gate v First Secretary (26/4/07).

### **Enhancing the Character or Appearance of Area**

In respect of a porch extension in a conservation area it was argued that this should enhance the local environment based on structure and local plan policies. It was doubtful if these did have this effect, but in any event such policies did not override the statutory duty which required development to enhance or preserve the character or appearance of the area as decided by the House of Lords. Application rejected: Chandler v Secretary of State (4/5/07).

### **Cumulative Impact Assessment**

Open cast coal mining caused concern because of its likely cumulative impact with other sites in the area. The planning authority refused on this basis and their short assessment was rejected by the inspector in favour of that of the appellants. The argument that she should have followed the authority's assessment was wrong as she had to balance the evidence: Leicestershire CC v Secretary of State (11/6/07).

## **Inadequate Reasons for Permission**

Permission for a supermarket and replacement rugby pitches listed applicable policies (although one omitted because of computer glitch!) and merely said the proposals complied with these. There was no summary of the reasons for the grant or summary of the policies as required by the GDPO. Accordingly the decision was quashed; also on the basis that Sport England's objection was not reported, although they were willing to withdraw this on certain terms subject to an S106 agreement, which was in any event inadequate: *R(Midcounties Co-op) v Forest of Dean DC* (20/7/07).

## **Unfair Decision Stops Report**

A site for housing was in contention at a local plan inquiry. The owner thought he had satisfied the council on drainage issues, but they continued to object. He obtained a report and asked for this to be considered, but the inspector refused. The issue then took several days to debate and the council's hostility to housing was upheld. However, the decision was quashed because of the inspector's failure to consider the new report which might have an important bearing on this crucial issue: *Cummings v Weymouth & Portland BC* (3/7/07).

## **Faded Advertisement not Renewed**

A faded advertisement of a product which had ceased in 1921 and had recently been replaced by a revolving illuminated advertisement was not the continuation of a long-standing display which had been in existence since 1974. The cessation of the product and the materially different nature of the advertisement meant that it was unlawful: *Wandsworth LBC v SW Magistrates' Court* (2/5/07).

## **COMPULSORY PURCHASE ORDERS**

### **No Agreement on Site Purchase**

A landowner challenged a CPO saying the council should have consulted beforehand. The public inquiry gave an opportunity to vent their concerns and thus the challenge was premature. There was no breach of human rights: *Blue Ridge Marketing v Portsmouth CC* (20/2/07).

### **Differing Decision not Unlawful**

A CPO was promoted to relocate a bus station. However the land in question did not have planning permission and the inspector recommended that the CPO be deferred until this was sorted out. It was not necessary for a fixed date to be given for this and the relevant circular did not support such an approach. Further, there was no breach in not informing the claimants of this approach. Challenge rejected: *R(Neptune Wharf) v Secretary of State* (3/5/07).

### **Public Highway Noise Compensatable**

A road was constructed under an S106 agreement and opened to normal traffic. Houses nearby were affected by noise and claimed depreciation in value. The county said that this was not a public highway as it had been constructed on their behalf by a consortium. This was not accepted and they were liable for compensation: *O'Connor v Wiltshire CC* (9/5/07, CA).

## **Discontinuance Order Challenged**

A permission inadvertently allowed tents on a permanent rather than a temporary basis. The council served a discontinuance notice which was challenged on the basis that the inspector had not considered it “expedient” to the planning or the area, but this was referred to earlier in his report although not in the planning section; the committee report was said to be defective, but it was wrong to try and sever the two uses i.e. caravans and tents; the handling of the order was considered to be ultra vires, but this had not been raised at the inquiry and should have been before the inspector. Challenge rejected: Jeffery v First Secretary (20/6/07, CA).

## **GYPSIES**

### **Gypsy’s Challenge Olympic Site**

A CPO was made for gypsy sites within the Olympic area. This was confirmed although there were no alternative sites, but the gypsies’ rights had not been breached due to the urgent nature of the CPO. Although their traditional way of life had not been referred to by the inspector, he clearly have this in mind. Challenge rejected: Smith v Secretary of State (3/5/07).

### **No Two Step Dance for Gypsy**

Gypsy’s continued to challenge a planning refusal and upholding of an enforcement notice on a site. They contended the judge should have first looked at less interfering means of dealing with the situation and second if not did the proposed measure have an excessive and disproportionate effect on their human rights (Samaroo). However in Lough the two step test was not applied but a more practical one and this was the correct approach. The question of precedent was rightly raised and correctly dealt with. Challenge rejected: McCarthy v First Secretary (9/5/07).

### **Injunction Suspended until Appeal**

Travelling showmen submitted a planning application in the green belt which was refused on appeal. They then moved on to the site and enforcement notices served which were upheld. They then applied for a temporary three-year permission arguing there was a need and a change in circumstances. The council applied for an injunction for their removal and this was granted, suspended until the outcome of the latest application was known because recent decisions and circulars acknowledged the need for more sites and possible changes to green belt boundaries: Chiltern DC v Webb (12/7/07).

### **Single Word Challenge to Refusal**

Refusing gypsies either permanent or temporary permission in the green belt the Secretary of State took fully into account their special circumstances. These did not outweigh the harm they caused. Her reasoning applied to both full and temporary permission and the use of the word “therefore” should not be taken out of context as such an approach to the interpretation of the decision letter defied common sense said the judge: Larkin v Secretary of State (4/5/07).

## **FOOTPATHS**

### **Footpath Decision Irrational**

There was a dispute about whether a footpath encroached on certain land or took an alternative route. An inquiry to hear evidence was held and the inspector made a recommendation. The county solicitor differed taking into account post-inquiry evidence. The committee agreed, but their decision was quashed as the evidence should have been referred back to the inspector rather than just the landowner: R(Chaston) v Devon CC (22/2/07).

### **Existing Footpath not Replacement**

It was proposed to stop a footpath across a army base. The replacement was to be on public highways. However the statute referred to another footpath “provided and made” which meant that there had to be, at least in part, a new footpath. As there was none the decision was quashed: R(Ramblers Association) v Secretary of State (21/5/07).

## **ENVIRONMENTAL LAW**

### **Mayor’s Waste Direction Challenged**

Enfield decided to sell one of their waste disposal sites because the other could take the additional material. The Mayor issued a direction to stop this, but the site was sold for housing. On appeal the Secretary of State allowed this and commented that the alternative site was suitable and that its loss was not fatal. The Mayor refused to withdraw the direction, but the court has now ordered this to be done as it had been overtaken by events and was longer tenable: R(Enfield LBC) v Mayor of London (11/7/07).

### **Liability for Contamination**

A successor in title to the one who caused pollution is not responsible for the clean-up of a site. A successor had not caused or knowingly permitted any substances to be in, on or under the land in question. Furthermore, the transfer of liabilities under the 1986 Act (concerning the gas industry) expressly limited liabilities to those existing “immediately before” the transfer and could not encompass liabilities that had not existed at that date but had come into existence some years later: R(National Grid) v Environment Agency (27/6/07, HL).

## **MISCELLANEOUS**

### **Temple will Cause Nuisance**

A restrictive covenant prevented use of a bungalow except for residential and a medical practice. Planning permission was granted for use as a temple but local residents objected and the covenant was upheld as it still conferred a practical benefit on them. The proposed use would be far more intrusive than any previous use because of the number of visitors, traffic and parking difficulties: (Mahavir Foundation, 8/1/07).

### **Changing Green Belt Boundaries**

Despite large growth predicted in East Anglia, land at Cambridge was retained in the green belt following the local plan review. The inspector concluded that it was necessary to keep the land open; it was inherently unsustainable; there was significant flooding; and

there was no need for housing. The owner challenged this on the basis that the authority had misunderstood planning guidance and applied an incorrect test whether there were “exceptional grounds” for removing the site from the green belt. There had been no misinterpretation by the council and challenge rejected: *Ashwell Property v Cambridge CC* (20/7/07).

## **PLANNING APPEALS**

### **HOUSING POLICY**

#### **Housing Oversupply Land Release**

Two sites totalling 670 units (235 affordable) at Salisbury Road, Shaftesbury would be phased up to 2011 with reminder to 2016. Although there was currently an oversupply of housing land, this release would be in accordance with structure and local plan requirements although on a greenfield site. There had been little development in the area for some time and this would meet a need. Appeal allowed (N Dorset DC, 3/5/07).

#### **Sitting Out or Clothes Drying?**

Although six flats at The Avenue, Amersham had adequate open space this was considered only suitable for clothes drying not for sitting out or play space. Playing fields some distance away and although site sustainable being near station appeal dismissed (Chiltern DC, 16/4/07).

#### **Housing Allocation Deferred**

Zoned in the adopted plan for housing 25ha grade 2 agricultural land at Park Mill Farm, Princes Risborough was on the wrong side of the railway line with poor links across. Premature to emerging local development document debate. Inadequate contribution to community/sports facilities/affordable housing with increased car travel and loss of agricultural land. Appeal dismissed (Wycombe DC, 14/6/07).

#### **Need v Demand for Sheltered Housing**

44 units at New Road, Windermere would meet a market demand, but not be in accord with policies requiring local needs to be met. Even if the prices were discounted with lifetime purchases there was no guarantee need would be met and the undertaking was not specific. Also the mass of the building would harm the character and appearance of the area with loss of residential amenity due to overlooking. Appeal dismissed (Lake District NPA, 23/5/07).

#### **Details Reflect Area's Character**

An outline housing permission stated the dwellings should reflect those adjacent. These were only two storey and a three-storey element met resistance. Reflect, said the inspector, did not mean imitate and the higher element added interest and was in keeping. Appeal allowed at Burry Port, Llanelli (Carmarthenshire CC, 5/6/07).

#### **Green Field Moratorium Questioned**

At Doncaster Road, Hatfield the council had issued a LDC confirming the property's residential curtilage. This meant it was a brownfield site and not affected by the ban on

new greenfield sites. Appeal for housing allowed (Doncaster MBC, 31/5/07).

### **Green Belt Succumbs to Housing**

700 dwellings at Fulford would be in the green belt despite there being no defined boundary. With only limited loss of openness there would be no harm to the belt's function and neither to the setting or special character of the City. There was a shortfall in housing provision and no sequentially preferable sites. This one would have a good mix of dwellings. Application approved (York CC, 9/5/07).

### **Major Regeneration Scheme**

Up to 1200 dwellings plus sports pitches etc redeveloping industrial buildings at Moss Nook, Watery Lane would accord with the development plan and remove contamination. The density of around 40dph would make efficient use with only 10% affordable due to high cost of decontamination. Application approved (St Helens MBC, 18/7/07).

### **Planning Gain Offsets Housing Increase**

Although only up to eight houses would be permitted at High Street, Over due to policy, the provision of a new school playing field, traffic calming and new drainage to ameliorate flooding meant 28 units were acceptable and appeal allowed (S Cambridgeshire BC, 4/4/07).

### **Transport Interchange Inhibits Scheme**

Offices, retail and housing at Station Approach, Fareham would be on part of a site which had for many years been designated as an inter change although there were current difficulties in achieving this. New residents might be affected by noise on an adjoining site and this important facility should not be prejudiced. Appeal dismissed (Fareham BC, 12/4/07).

### **No Healthcare Contribution**

Conversion of the former police station and Magistrates' Court East Arbour Street, EI into flats was acceptable. It was not necessary to provide a health care contribution as the council's calculations did not take into account whether the residents would be newcomers to the borough and any alleged deficiencies in existing healthcare provision were not proved. Appeal allowed (Tower Hamlets LBC, 29/3/07).

### **Enabling Development Supports Listed Building**

Refurbishment and reuse for housing of listed St Joseph's College, Stoney Brow was supported by 205 units in three 5-storey blocks. This was the first purpose-built Roman Catholic seminary since the Reformation and its retention was important. Although in the green belt and in a relatively unsustainable location the development was allowed (W Lancashire DC, 25/6/07).

## **HOUSING DESIGN**

### **No Private Amenity Space**

Eight flats from upper floor offices at Archway Parade, Marsh Road would be a conversion rather than a new building and as similar flats nearby did not have private amenity space

this was acceptable in this case. Standards applied flexibly. Appeal allowed (Luton BC, 30/4/07).

### **Obscure Glazing Foils Appeal**

10 flats at the rear of Streatham High Road, SW16 would be on the site of an office which have been vacant for seven years but with no marketing success. To prevent overlooking obscure glazing used. Lack of outdoor space and close proximity to vehicle workshop and other similar uses meant dismissing the appeal (Lambeth LBC, 16/4/07).

### **Poor Design Flaws Housing**

At Filton Airfield, Bristol a proposal comprised 2,200 dwellings, 66,000m<sup>2</sup> employment, roads and retail etc in accordance with the development plan. However, the design and access statement failed to demonstrate the detailed design thereby ensuring a high quality development, especially with regard to layout, scale and appearance. The illustrative designs lacked clarity and coherence necessary for a high quality development; the layout was over complex with poor legibility in parts; the master plan gave insufficient detail about the approximate location and scale of buildings; and the sketches of architectural style were indistinct and not always consistent with the design code.

Additionally while the affordable housing mix was acceptable the mechanism of achieving this meant that there was no certainty that the majority of dwellings would go to the public rented sector. Appeal dismissed (S Gloucestershire DC, 19/6/07).

### **Improved Design Enhances Scheme**

A mixed-use scheme incorporating 197 residential units at the former cattle market, Alcester Road adjoining the railway station and would integrate this into the town. Detailed criticisms of the contemporary design not justified as it would add to the variety in the area strengthening links to the town centre. Appeal allowed (Stratford-upon-Avon DC, 22/5/07).

### **Poor Design Scuppers Scheme**

Although abnormal site costs led to 37% affordable homes as against 50% required, 3 and 4 storey blocks would harm the character and appearance of the area at Avery Hill Road, SE9. There was already a 15-year land supply but this was no bar to a well-conceived scheme. Replacement open space acceptable but loss of overall site had not been tested. Appeal dismissed (Greenwich LBC, 11/6/07).

### **Noise Harms Residents**

Erection of housing at School Lane, Wouldham would be next to an electricity sub-station with noise above WHO guidelines. Mechanical ventilation and fixed windows at night would ameliorate this, but the draft PPS on climate control was against such measures, particularly in an area such as this with low ambient noise levels. Appeal dismissed (Tonbridge & Malling BC, 14/6/07).

### **Market Harms Resident's Amenities**

A replacement ice rink and ground floor commercial units plus eight storeys of residential above at Pershore Street, Birmingham would be opposite wholesale markets and the noise and traffic emanating from these would harm the majority of flats. Regeneration benefits

did not outweigh this. Appeal dismissed. (Birmingham CC, 2/6/07).

### **Density and Height in Issue**

An eight storey residential block in Queens Road, Reading replacing offices at twice the density of nearby flats would be acceptable in the light of increasing densities. Although church spires would compete with the height of the new building, listed buildings nearby would not be affected and overall the scheme was acceptable. Appeal allowed (Reading BC, 20/6/07).

### **Poor Air Quality Evaporates**

72 sheltered flats at Milton Road, Portsmouth would be adjacent to an area of poor air quality. Mechanical ventilation would not be effective. However predicted air quality improvements would mean guidelines being met within the next year and thus there was no need for sealed windows or a ventilation system. Appeal allowed (Portsmouth CC, 29/6/07).

### **Poor Design Halts Housing**

145 houses and flats at Great Bridge Road, Bilston would have a low quality of design and not “raise the bar” as advocated by CABE. An adjoining estate had done just this, but the appeal site produced a completely different layout without providing an integrated and cohesive development, in an area where there was no overall character but quality needed to be improved. Appeal dismissed (Wolverhampton MBC, 27/6/07).

### **Density too High**

Approval of reserved matters at 77dph at The Oakalls, Bromsgrove would be much in excess of the minimum 30dph in PPS3. This would unduly increase vehicle movements where there was only poor public transport. Appeal dismissed (Bromsgrove DC, 3/4/07).

## **AFFORDABLE HOUSING**

### **Fire Station Relocation**

Replacement of this at Dee Road, Tilehurst by 40 homes should make a contribution to local open space at a nearby park as there was no such space on the site. Affordable housing was justified, despite the fact that improvement of emergency services was supported in the development plan. There was no firm relocation plan and the unilateral undertaking had faults. Appeal dismissed (Reading BC, 19/3/07).

### **Affordable Housing Scaled Back**

39 sheltered flats at Whitton Avenue West, Greenford would be instead of a permitted 24-unit scheme which had no sheltered element. Apparently the smaller scheme was more viable but the larger made an off-site contribution to affordable housing. This was acceptable as it was never intended, said the inspector, that every site should have this element particularly if it was sheltered. Appeal allowed (Ealing LBC, 5/4/07).

### **Affordable Housing Missing**

A 60 bedroom care home plus 10 close care apartments did not provide affordable housing at Essex Way, Sonning Common. The apartments were some distance from the

main house and being independent did require a 40% contribution to affordable housing. Appeal dismissed (S Oxfordshire DC, 18/4/07).

### **No Affordable Housing Needed**

Redundant industrial land at Kelburn Street, Barrhead could be used for housing which would not harm nature conservation nor the adjacent green belt. The council's policy that housing should only be affordable post-dated the application and there was no survey material to support this. Appeal allowed (E Renfrewshire DC, 12/6/07).

### **Countryside Replacement Dwellings**

2 four bedroom houses at Upper Green, Inkpen would replace previously demolished timber houses. The sites were owned by a housing association and the funds would be used for affordable housing elsewhere. This was not feasible on the site. There had been no abandonment of the sites and it was necessary for an RSL to protect its assets. Appeal allowed (W Berkshire C, 2/4/07).

### **Affordable Rural House**

A bungalow in the curtilage of a dwelling at Gravelly Bottom Road, Kingswood would have a legal agreement to ensure occupation by a local person on a restricted income. It would be on a site containing a mobile home. Government guidance stressed affordable housing in rural areas and there were no other sites available. Appeal allowed (Maidstone BC, 24/4/07).

## **HOUSING: EMPLOYMENT LOSS**

### **Inadequate Marketing Stops Housing**

Conversion of a mill and construction of 32 flats at South Lane, Elland would be contrary to policy unless there were no industrial occupiers. The property had been marketed but attracted only residential interest due to the nature of the campaign. There was little incentive for an industrialist to come forward and appeal dismissed (Calderdale MBC, 4/4/07).

### **Employment Goes Residential**

212 flats, 2,799m<sup>2</sup> business centre and 420m<sup>2</sup> shop on a 1.6ha trading estate at Commons East, Mitcham would remove unsightly buildings with well designed new ones enhancing the character and appearance of the area and adjacent Metropolitan Open Land. Density of 404hrh acceptable with access other than by the car. Loss of employment outweighed by benefits. Application approved (Merton LBC, 4/6/07).

### **Office Lost to Housing**

27 flats redeveloping an office at Vicarage Road, Waddon would have a long frontage but would not harm the character or appearance of the area. 17 parking spaces in sustainable location with potential for EcoHomes excellent standard to be achieved. Appeal allowed (Croydon LBC, 7/6/07).

### **Employment Succumbs to Housing**

A site at Balcombe Road, Maidenbower was originally reserved for employment. Despite

marketing no occupiers were forthcoming and in the light of a pressing housing need the appeal for housing has been allowed. Loss of the site for employment would not be fatal although there was an undersupply (Crawley BC, 24/5/07).

### **Employment Thwarts Housing**

A site at Perimeter Road, Woodley was too expensive for its allocated housing use due to contamination. There was not a five-year housing land supply, but as a site was not readily available it could not count towards this. Appeal allowed with contribution of £22k for improvement to local bus stops as against a request of £240k for unspecified transport measures (Wokingham DC, 13/6/07).

### **Employment Beats Housing**

A 400,000m<sup>2</sup> distribution centre at a former power station, Crete Hail Road, Northfleet was on part of the site designated for mixed use with employment (100,000m<sup>2</sup>)/residential. The loss of the residential element would not be fatal as there was an adequate supply although more was required in the South East. Prematurity was not an argument per PPS1 as there would be little (if any) prejudice to the emerging master plan for the area. Appeal allowed (Gravesham BC, 13/6/07).

### **Employment Zone Safeguarded**

290 dwellings plus 3,000m<sup>2</sup> of employment space in a defined employment area at Kingsland Road E2 would be contrary to development plan policy with the loss of industrial floorspace suitable for short-term use. While an SPG and the emerging LDF could be given little and the weight, any options on the site should await debate on the latter and the appeal was dismissed despite improvements to the canal basin, ecological works and a green travel plan plus considerable affordable housing (Hackney LBC, 21/6/07).

### **Employment Retention Supported**

A principal employment site at Greenbank Road, Easton was derelict and a scheme to replace this with 108 homes (27 affordable), 1,591m<sup>2</sup> of offices and 32m<sup>2</sup> of food/drink uses would improve the area. The loss of 95% of the existing floorspace would harm the local economy and community not being outweighed by the regeneration benefits. Appeal dismissed (Bristol CC, 26/6/07).

### **Care Home Falls to Employment**

A care home, to be used by those dependent on its facilities, would be akin to a residential development and therefore contrary to the employment zoning. Although 100 jobs would be created at Newcastle Road, Arclid more employment could be generated by the zoned use. This was a relatively unsustainable location needing car use and appeal dismissed (Congleton BC, 20/6/07).

## **HOUSING: FLOODING**

### **Additional Flood Protection**

Housing in a floodplain at Tredgar Park, Newport would improve flood protection in the surrounding area as well as providing for its own requirements. As there was no public finance for additional works this benefit outweighed the loss of floodplain. Appeal allowed (Newport CC, 22/3/07).

## **Flooding Mitigation Support Housing**

The relocation of Llanelli Rugby Club and its replacement with housing at Maeys-y-Coed would be acceptable with mitigation measures as in a high flood zone, C2. Economic, community, social and supporting benefits outweighed the need for affordable housing although this could be required if new stadium not built. Application approved, (Carmarthenshire CC, 27/6/07).

## **COUNTRYSIDE EMPLOYMENT**

### **Green Belt Employment**

A 6.4ha site in the green belt at North Road, Cheltenham would be enclosed by strong field boundaries and be adjacent to a park and ride facility. There were no other sites in the built-up area and the sequential test was satisfied. A contribution to the parking facility meant that the appeal could be allowed (Cheltenham DC, 1/5/07).

### **Business in Strategic Gap**

3,146m<sup>2</sup> of employment space at Abbey Court, Boarley Lane would be in a strategic gap, but there was a need for the development not satisfied by other sites which were sequentially preferable. There would be minimal impact on the area's character and with limited parking and a green travel plan the application was approved (Maidstone BC, 7/6/07).

## **SHOPPING: DESIGN**

### **Poor Quality Landscaping**

An Aldi store at Burnett Close, Winchester would be an attractive building but its car park would take almost the entire remaining area. There were only a few trees and little landscaping which meant dismissing the appeal (Winchester CC, 19/3/07).

### **Turning Back on Waterway**

A Tesco and residential at Trout Road, Yiewsley would turn their backs on the Grand Union Canal with few links through. This was an important area of public realm where improvements to quality in character should be achieved. This did not and appeal dismissed (Hillingdon LBC, 26/3/07).

### **Leisure Lacks Parking**

A mixed-use scheme of retail units and a cinema at Castle Street, Merthyr Tydfil did not have car parking, but would not lead to congestion or overcrowding of local car parks. If there were parking problems these could be addressed by the council. Appeal allowed (Merthyr Tydfil CBC, 10/4/07).

### **Poor Design Foils Superstore**

A Tesco at Larkshall Road, E4 plus housing would be acceptable in principle as being on an allocated mixed-use site with an adequate mix and range of residential units. Although the store was inappropriate in scale to the neighbourhood centre, nonetheless, it could be justified under PPS6 in terms of quantitative and qualitative need including the sequential test. However the relationship to the centre and the overall design including public

spaces was unacceptable leading to the application being refused (Waltham Forest LBC, 14/6/07).

## **SHOPPING: POLICY**

### **Retail Renewal Fails**

Renewal of permission for a 747m<sup>2</sup> non-food retail store adjoining a retail park at Carmarthen Road, Cwmdru would be contrary to subsequent policy which required revitalizing town centres. There had been no sequential test. Appeal dismissed (Swansea CC, 16/4/07).

### **Costly New Store**

A non-food store at Northfleet, Gravesend would meet a need for bulky goods floorspace, while the council's suggested alternatives were either not sequentially preferable or unavailable. Appeal allowed with costs as the council failed to substantiate their refusal including air quality concerns and loss of an employment site (Gravesend BC, 19/4/07).

### **Comparison Goods Floorspace Increased**

A Tesco superstore at Huddersfield Road, Brighouse had a restriction to 15% (449m<sup>2</sup>) comparison goods floorspace. They were using 918m<sup>2</sup> and wished to increase this to 1,029m<sup>2</sup> for existing lines without any new items. The store was now within the town centre boundary with no harm to vitality and viability and capacity for new such floorspace. Appeal allowed (Calderdale MBC, 3/5/07).

### **DIY Store Gets GO Ahead**

A Wickes store at London Road, Wellingborough would meet a retail need in terms of expenditure. There were other larger stores nearby and this was an accessible location with linked trips. No harm to existing centres. Appeal allowed (Wellingborough BC, 8/5/07).

### **Retail Extension Succeeds**

A 1,380m<sup>2</sup> extension for food/non-food at Lon Parcwr, Ruthin would be on employment land but adequate supply and no harm to vitality and viability of town centre. Improved delivery access. Appeal allowed (Denbighshire CC, 16/4/07).

## **SERVICES**

### **Coffee Bar Aids Shopper Flow**

At Sidcup High Street, a shop with post office at the rear was being used as a café and an enforcement notice served. Between 1,500 and 2,000 customers per day were served and if it reverted to a take-away only this would substantially diminish. There was no harm, rather the reverse. Appeal allowed (Bexley LBC, 5/3/07).

### **Restaurant Slows Decline**

A shop had been vacant for six years at Carmel Street, Abertillery and there was a 22% vacancy rate. The centre was in a poor state and this restaurant would help recovery. Appeal allowed (Blaenau Gwent CBC, 18/4/07).

### **Hotel Extension Sequentially Preferable**

An extension to a hotel at Brackley Hatch (A43) would be acceptable visually. Other sites put forward by the council were either not available or had potential for other uses. As this was an existing site with job opportunities the appeal was allowed (S Northamptonshire DC, 30/4/07).

### **Smokers' Shelter Fosters Crime**

At a public house in Kirkway, Middleton an open sided cover with seats at a road junction in a residential area would lead to increased crime and anti-social behaviour for which there was existing evidence. Appeal dismissed (Rochdale MBC, 23/4/07).

### **Hotel for Cars only**

A 95 bed hotel at Brampton Hut, Huntingdon would not be required exclusively for travellers but also for those visiting local businesses. There had been no sequential test and this would be better located in the town centre, although its proposed location would not harm the centre. Appeal dismissed (Huntingdonshire DC, 13/4/07).

### **Sustainable Doctors' Practice**

A change of use to a medical practice at Oaklands Park Avenue, Ilford would have up to 28 patients per day. There would be no on-site car parking but this would be unacceptable as there were meters nearby and public car parks as well. Public transport was good. Appeal allowed (Redbridge LBC, 29/3/07).

### **School Travel Plan Succeeds**

Conversion of a grade 2 listed building into a private school at High Road, South Woodford would have little parking, but there were good transport facilities nearby. There would be a minibus service and two local businesses would allow children to be dropped off at their car parks and then walk to the school under supervision. Appeal allowed (Redbridge LBC, 25/6/07).

## **COMMENCING DEVELOPMENT**

### **Failure to Properly Start Site**

A 1995 outline permission for a golf course at Green Street, Chorley Wood stated that this should be started before 10/00. However at that time the landscaping and ecological management plan had not been agreed. This was fatal as was the fact there was confusion about commencement by placing pegs for the road which were put out for only a short time. However stripping tough wood have been sufficient but for the failure to agree conditions. Appeal dismissed (Three Rivers DC, 12/3/07).

### **Landscaping only Minor Issue**

Conversion of a barn into a dwelling required prior approval of the landscaping. Work was started and an enforcement notice served alleging failure to comply with his condition and additional work to the structure. There should be some flexibility in dealing with this condition as it involved only a small-scale private dwelling and the outline of landscaping

had been shown on the original drawings. Failure to comply was not therefore fatal and changes to the structure relatively minor. Enforcement notice quashed at Easton-in-Gordano (N Somerset C, 19/4/07).

### **Foundations do not Support Dwelling**

Outline permission for a house in 1996 at Willtoft, Goole led to the foundations being started, but no express discharge of materials, landscaping and foul drainage. Thus there was no lawful start and, in any event, the foundations were in a different position to those shown on the drawing. Appeal dismissed (E Riding of Yorkshire BC, 12/6/07).

## **AGRICULTURAL OCCUPANCY**

### **Agricultural Occupancy Condition Changed**

At Newlands Farm, Bilsdale the property had been marketed at an agreed discount of 30/40% for £300k and some offers received subject to conditions. Adequate marketing had taken place and there was no longer a need for the condition and so it was removed, but replaced by one requiring occupation by those who had local links to the national park (N York Moors NP, 24/5/07).

### **Continuous Occupation Denied**

Two dwellings with agricultural occupancy conditions at Warren Road, Burnham-on-Sea. Both were vacant at the time of the LDC application. Prior to this they had accumulated a 10-year exemption, but the vacancy was fatal as they should have been occupied at the time of application and thus the certificate was refused (Sedgemoor DC, 22/6/07).

### **< 15. Summary of Objection Acceptable**

A TPO was made, but the landowner was not told about the committee meeting. The TPO was made, but a further one issued and objections received and considered. The representations did not have to be in full nor they did have to refer to the previous TPO. These were in background papers. Challenge rejected: Brewer v Three Rivers DC (30/4/07).

### **29. Homeless to Live in House**

Change of use of a detached house at Swallow Cliffe Gardens, Yeovil into a homeless hostel would be consistent with the residential area. Comings and goings would not be greater than a residential use provided that there were only five residents and one member of staff. Appeal allowed (S Somerset DC, 26/3/07).

### **39. Town Centre Flats Supported**

Conversion of a building to 25 flats at Scott Street, Perth would not have parking or affordable housing. However conversion and retention of the building bringing population to the central area was preferred. Appeal allowed (Perth & Kinross C, 16/4/07).

### **46. ATM can Remain**

The installation of an ATM at Slade Road, Sutton Coldfield did not require planning permission as it was not a building being relatively small. It was like other paraphernalia on the forecourt of a garage. Appeal allowed (Birmingham CC, 27/4/07).

### **63. Hotel Extension Sequentially Preferable**

An extension to a hotel at Brackley Hatch (A43) would be acceptable visually. Other sites put forward by the council were either not available or had potential for other uses. As this was an existing site with job opportunities the appeal was allowed (S Northamptonshire DC, 30/4/07).

### **65. Mezzanine Floor Stopped**

929m<sup>2</sup> at ASDA Queens Drive, Kilmarnock extra floorspace for comparison goods would fail to sustain vitality. There was a vacant store nearby and no evidence to show that it could not be used for this purpose. Appeal dismissed (E Ayrshire, 24/4/07).

### **88. When is a Dwelling a Dwelling?**

A home is not necessarily a dwelling for the purposes of the planning acts. An earth mound without proper windows, running water and a toilet was held not to be a dwelling to which the 4 year rule applied but rather the 10-year one as to structures. There was nothing wrong with the inspector's decision and despite several appeals the matter could not be further argued: *Grendon v Secretary of State* (15/6/07, CA).

### **90. Poor Design Flaws Housing**

At Filton Airfield, Bristol a proposal comprised 2,200 dwellings, 66,000m<sup>2</sup> employment, roads and retail etc in accordance with the development plan. However, the design and access statement failed to demonstrate the detailed design thereby ensuring a high quality development, especially with regard to layout, scale and appearance. The illustrative designs lacked clarity and coherence necessary for a high quality development; the layout was over complex with poor legibility in parts; the master plan gave insufficient detail about the approximate location and scale of buildings; and the sketches of architectural style were indistinct and not always consistent with the design code.

Additionally while the affordable housing mix was acceptable the mechanism of achieving this meant that there was no certainty that the majority of dwellings would go to the public rented sector. Appeal dismissed (S Gloucestershire DC, 19/6/07).

### **98. Measuring Impact of Amusement Centre**

The proposal at Courtenay Street, Newton Abbot when measuring frontage lengths would bring the non-retail proportion to 24% leaving 76% in retail use, above the council's 70% level. Counting postal addresses was not suitable as each one was given equal status and frontage measurements preferred. Appeal allowed (Teignbridge DC, 25/5/07).>

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

*The views expressed in this news letter although given in good faith must not be treated as a definitive statement of the law or practice. CgMs cannot hold themselves liable for any action taken on such general advice and recommend that specific advice is taken on any particular problem.*