

PLANNING NEWSLETTER

Issue 12 January 2006

LATEST NEWS

BARKER REVIEW OF LAND USE PLANNING

Hot off the press is the announcement that Kate Barker has been tasked jointly by ODPM and The Bank of England's Monetary Policy Committee, to undertake an independent review of the planning system in England.

The terms of reference are:

- To speed up the planning process
- To make the system more flexible and transparent
- To respond to the economic drivers as well as the sustainability goals

Anyone can submit evidence.

Deadline 28th March 2006.

CgMs can submit evidence on your behalf and can answer the questions asked by the Barker Review Team on your behalf.

For further information please contact Erica Mortimer at erica.mortimer@cgms.co.uk or John Stockdale at john.stockdale@cgms.co.uk

STILL TIME TO COMMENT ON NEW ODPM POLICIES

Housing

Draft PPS3 comments due by 27th February 2006.

 [Draft PPS 3 on Housing \(78k\) >>](#)

Planning Gain Supplement

Comments due on draft policy by 27th February 2006. The Government has also just announced that a Commons Committee is also to consider PGS and the deadline for evidence is the end of February. CgMs can advise further, please see attached News Bulletin or contact Mike Straw at mike.straw@cgms.co.uk or Erica Mortimer at erica.mortimer@cgms.co.uk

 [Draft Consultation on a Planning Gain Supplement \(58k\) >>](#)

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

KETTERING OFFICE

Ragsdale
1 Church Lane
Great Cransley
Kettering NN14 1PX

Tel: 01536 790447
Fax: 01536 799378

Flooding

Draft PPS25 comments due by 28th February 2006.

 [Draft PPS 25 on Flooding \(46k\) >>](#)

More Powers for the GLA

Comments due by 22nd February 2006.

 [View the News Bulletin setting out the main proposed changes \(72k\) >>](#)

Sustainability Appraisals

What are they? Why are they relevant to development proposals? See our News Bulletin for further information.

 [Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents \(74k\) >>](#)

Satellite Aerials and Antennas

A new Circular came out at the end of last year setting out more clearly what the permitted development rights are for satellite aerials and antennas and when planning permission is required.

CgMs has prepared a handy guide and this is attached.

 [Circular 10/2005 Permitted Development Rights For Antennas \(68k\) >>](#)

CONTENTS OF THE REST OF THE NEWSLETTER	
p.3	PLANNING LAW
p.3	Planning Powers
p.4	Challenging Decisions
p.4	Gypsies
p.5	Administrative Law
p.5	General Law
p.6	APPEALS UPDATE
p.6	Housing Strategy
p.6	Countryside Housing
p.7	Housing on Employment Sites
p.8	Shopping and Services
p.9	Planning Notices
p.9	Miscellaneous
p.10	CGMS NEWS

PLANNING LAW

PLANNING POWERS

Condition Precedent

A planning condition required that a quarry be progressively backfilled to levels shown on a plan or to those agreed by the planning authority in accordance with a restoration scheme. Such a scheme was never submitted and it was claimed that after 34 years the permission was invalid as the condition had not been complied with (ie a condition precedent). Held – the condition required either backfilling to the level shown on the plan or to one agreed by the planning authority. Thus the start was valid. It would be wrong to negate a permission after such a long period and the Whiteley principle did not apply: *R (Hart Aggregates) v Hartlepool BC* (26/4/05).

Break In Occupation

An inspector found that a barn had been in residential use for more than four years. However there were significant periods of non-use and it was wrong to conclude that the barn had been available for residential purposes during that time. Inspector's decision quashed: *Swale BC v First Secretary* (17/11/05, CA).

Quick Planning Decision

An environmental statement was submitted and further information subsequently given. Consultation on this expired on 3/3/05 and permission was given the same evening. Claimed that there was an excess of jurisdiction and that the specified consultation period had not expired. This was not necessarily fatal as an opportunity for representations had been given. The decision was made after working hours but in the absence of any prejudice the court would not exercise its discretion to quash: *R (Wembley Field) v Brent LBC* (29/11/05).

Road Protest Unlawful

A banner indicating hostility to a road scheme and giving details of the objectors was displayed and a successful prosecution resulted. Claimed this was not an "advertisement" and the prosecution was in breach of human rights. An advertisement was widely defined in the regulations and should be given a broad meaning. There was no breach of human rights as he had neither applied for, nor been denied, consent to display the banner: *Butler v Derby CC* (22/11/05, DC).

S106 Highway Obligations

An S106 agreement obligation provided that a third party's land should be used for a bypass. One party to the obligation obtained the land and the other sought to enforce the obligation. There was a concurrent contractual obligation to construct the bypass and the claimant had a right to enforce this. Also he had an easement capable of protection by a caution on the register: *Stroude v Beazer Homes* (25/11/05).

Is it a Certificate?

The council wrote stating that a previous Class X use was now storage in Class B8. An application was then made for a vehicle repair shop but refused and an enforcement notice issued. This was upheld, but the status of the earlier document was then questioned. It was held that this was tantamount to a S192 lawful development certificate and should have been treated as such by the inspector. His decision was therefore quashed: *James Hay Pension Trustees v First Secretary* (30/11/05).

CHALLENGING DECISIONS

Judge's Sympathy for Health

Conversion of a factory to a health and fitness centre was refused because of the land's employment status and the fact that other sites might be available. This was a legitimate planning decision and the judge was wrong to overturn this by saying there was a growing trend for such facilities: *Hammersmatch Properties v First Secretary* (16/11/05, CA).

General Conformity of Local Plan

Land was designated in the structure plan for considerable housing expansion but later withdrawn on a change of administration. The local plan was altered to reflect this, merely safeguarding the land pending reconsideration of its strategic justification. This was held to be in general conformity with the structure plan and the attempt to overturn this dismissed: *Persimmon Homes v Stevenage BC* (22/11/05, CA).

Adequate Reasons Given

Enforcement notices were served and upheld requiring residential use of a stable to cease. The inspector had given adequate reasons for his approach and challenge rejected: *Liddiard v First Secretary* (23/11/05).

Agricultural Insemination Centre

Permission refused for 40 dwellings on a site in an AONB previously used as an artificial insemination centre. A herd of bulls had been kept on the site and thus it was agricultural and not brownfield land within PPG3. The previous use and other material considerations were not sufficient to justify housing: *Fenchurch Residential v First Secretary* (24/11/05).

Green Belt Openness

An appeal for four houses on a scrap yard in the green belt was dismissed. The inspector recommended approval but the Secretary of State said the houses would be more harmful to openness. He was entitled to take this view without a site visit as the inspector did not have a significant advantage on the question of openness. Accordingly there was a sufficient basis for differing from the inspector although it was finely balanced. The court would not interfere on a planning judgment and it was a matter of balance for the decision maker on the question of openness, housing policy and sustainability: *De Mulder v First Secretary* (28/11/05).

GYPSIES

Toxic Effect on Gypsies

A council sought to evict gypsies from land it owned adjacent to a scrap yard and an unfenced canal. Gases were rising from the ground and there was potential harm also from asbestos. The eviction order was correct although it might mean the gypsies camping on the roadside which would also be dangerous: *R(McDonagh) v Essex CC* (31/10/05).

Gypsies' Educational Needs

Caravans in green belt but the harm was outweighed by the lack of sites in the short term and the disruption to the children's education. The inspector recommended a three-year permission but the Secretary of State disagreed. However his decision has been quashed as it was not right to merely say that the education authority would provide schooling when in this case the children benefited from a settled lifestyle. Previously they had suffered from having no permanent base and this was likely to happen again if permission were refused. Decision quashed: *Hughes v First Secretary* (14/11/05).

ADMINISTRATIVE LAW

Good Administration

The requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public, is a legal standard. Accordingly a public body's promise or practice as to future conduct could be denied and thus the standard departed from only where to do so was the public body's legal duty, or was otherwise a proportionate response, having regard to a legitimate aim pursued by the public body in the public interest: R (Nadarajah) v Secretary of State (22/11/05, CA).

No Judicial Review

A refusal by the Lands Tribunal to grant permission to appeal from a leasehold valuation tribunal could only be judicially reviewed in exceptional circumstances, where there was jurisdictional error or procedural irregularity such as to deny the right to a fair hearing.

The principle could apply even though in cases before the tribunal no judge, in the narrow sense of the term, would have considered the point of law involved: R (Sinclair Investments) v Lands Tribunal (8/11/05, CA).

Accessing Expert Evidence

Where expert evidence is relevant the judge has to consider it when reaching his conclusions. The credibility of provisional facts should not be found first and then the expert evidence considered. All aspects should be considered together: Hall v Jaktó Transport (9/11/05, CA).

Neighbour's Noise

Noise from a first floor occupier annoyed the ground floor tenant who requested sound insulation. He claimed a statutory nuisance but the council disagreed and their judgement has now been upheld. The claimant's health was not threatened and to widen the scope of a statutory nuisance could give rise to many more claims not justified by the legislation: R (Vella) v Lambeth LBC (14/11/05).

GENERAL LAW

Unfair Poaching of Land

A squatter successfully claimed title to a large area scheduled for development. The housebuilder claimed that his human rights had been abused. The land registration procedures deprived the applicant of title to his land imposing an excessive burden and upsetting the fair balance between the public interest on the one hand and the applicant's right to peaceful enjoyment of his possession. Claim upheld by the European Court of Human rights: Pye v UK (15/11/05).

Challenging Congestion Charge

An adjudicator of the Parking and Traffic Appeals Service has no power to direct Transport for London to cancel a penalty charge notice where the recipient of such a notice failed to establish one of the specified grounds for resisting the penalty: R (Walmsley) v Lane (17/11/05, CA).

Demolishing Buildings for Possession

A landlord wished to redevelop his site and wanted to demolish certain buildings. However these were the property of the tenant and had to be removed upon determination of the tenancy. Thus it was not possible to make out a case of demolition to secure possession:

Wessex Reserve Forces v White (1/12/05, CA).

Planning Application Date Exceeded

An option was to be exercised before a stated date but could be extended if a planning application was outstanding. The claimant was awaiting approval of reserved matters and the landowner claimed the option was spent. A distinction was drawn between a planning application and subsequent reserved matters which were not covered by the contract which was expertly drafted and could have included these matters but did not: Castlebay v Asquith Properties (7/12/05, CA).

PLANNING APPEALS

HOUSING STRATEGY

No Housing Moratorium

21 flats at Acrefield Road, Woolton would be outside a housing growth zone. However there was a housing land shortage and sites in such zones might have been subject to a CPO etc with consequent delays. These flats would not harm the overall strategy. Appeal allowed (Liverpool CC, 10/10/05).

Tower Supports Regeneration

A 22 storey residential tower with a supermarket of 4,970m² at Church Street, Paddington Green would fit in with other tall buildings in the area but a 26-storey scheme would not. Appeal allowed (Westminster CC, 10/10/05).

Special Employment Retained

Housing at Ty Draw Farm, Pyle would be on a site reserved for special employment including new technology. This had been allocated contrary to a UDP's inspector's recommendation but the appeal was dismissed to protect such land for in-coming firms (Bridgend CBC, 13/10/05).

Locally Listed Buildings

Despite having been rejected twice for listing the property at Melton Road, Edwalton was on the local list of buildings. Its demolition and replacement by flats would remove an attractive building. Although it could be demolished this did not remove the need to access its quality for retention and the appeal was dismissed (Rushcliffe BC, 4/11/05).

COUNTRYSIDE HOUSING

High Quality House

A new house set into the top of a dry valley slope following the natural contours of the ground with a central portion projecting to form a promontory containing living and reception spaces would be of outstanding quality. However its impact on the surrounding AONB at Reading Road, Goring was such that it would have an unacceptable impact. Appeal dismissed (S Oxfordshire DC, 3/10/05).

Rural Ridge Harm

Redevelopment of a former Guide Dogs for the Blind Association residential training centre for housing at Exwick Lane, Exeter would allow housing close to the ridge which overlooked the city. Although there was housing nearby this did not mean the site should be developed. While there would be reduction in the footprint of built development the houses would be higher. Appeal dismissed (Exeter CC, 28/10/05).

Unsustainable Green Belt Housing

191 dwellings at Cliveden Road, Taplow would be in an unsustainable location generating over twice the traffic movements of the permitted 135 sheltered units. There would be affordable housing but this would not outweigh the sustainability issue. Appeal dismissed (S Buckinghamshire DC, 7/11/05).

Epilepsy Centre Rejected

218 houses and a replacement centre at Chesham Lane, Chalfont St Peter would be in the green belt and although replacement facilities were urgently required this was not sufficient to constitute very special circumstances. The site was not sustainable and would intrude on the character and appearance of the area. Appeal dismissed (Chiltern DC, 22/11/05).

Replacement of Green Belt Housing

20 units at Cranbourne Hall, Winkfield would replace existing housing but in a relatively remote location without evening or Sunday public transport. The application was unacceptable (Bracknell Forest BC, 28/11/05).

Housing and Racing

Replacement racehorse training facilities and 8 houses at Burgh Heath Road, Epsom would be in the green belt in an unsustainable location. The enabling development was not justified and appeal dismissed (Epsom & Ewell BC, 30/11/05).

Unsustainable Housing

60 dwellings redeveloping a derelict intensive pig unit at Dewlands Hill, Rotherfield in an AONB would be in an unsustainable location and whilst it would remediate contaminated land there was harm to the character and appearance of the area. Appeal dismissed (Wealden DC, 8/11/05).

Land Stability Questioned

25 dwellings at Mount Pleasant, Porth would be on a valley site allocated for residential development. Land stability could be assured by a condition. There was no flooding risk and no obstruction of footpath. Appeal allowed (Rhondda Cynon Taff CBC, 8/11/05).

Birds and Traffic Harm

10 dwellings at Vicarage Road, Hawley at a density of 44dph would be acceptable but adjoined an SSSI and European SPA. No harm to residents' views or bird ecology but with a narrow lane there would be traffic hazards. Appeal dismissed (Hart BC, 11/11/05).

HOUSING ON EMPLOYMENT SITES

Poor Commercial Site

Flats in a mill at Dudbridge Road, Stroud would be on an industrial estate. The local plan resisted any such loss of employment sites but recent revisions to PPG3 indicated that housing could be supported on redundant employment land. The council's approach was too simplistic and the appeal was allowed (Stroud DC, 14/10/05).

Industry and Housing

49 dwellings at Dibdale Road, Dudley would be at 69dph in a sustainable location with no harm to the character or appearance of the area. Appeal allowed (Dudley MBC, 11/11/05).

Offices in to Flats

13 flats and one shop redeveloping an office building at West Mills, Newbury would be on a riverside setting in the conservation area enhancing the character and appearance of this. Obligations regarding parking, a bus service and education plus open space reasonable but not towards infrastructure and CCTV. Appeal allowed (W Berkshire DC, 8/11/05).

SHOPPING AND SERVICES

Maximising Shopping Potential

A new shopping mall at the Whitgift Centre, Croydon would conflict in layout terms with a larger proposal given permission in 2004. It was preferable that this scheme should go ahead as it would have wider town centre benefits. Appeal dismissed (Croydon LBC, 5/10/05).

DIY Out-of-Centre

A B&Q at Barnfield Road Depot, Swindon would be on a 5.1 ha site extending to 15,300m². Town centre sites down to 0.6ha had been examined and there was a degree of flexibility in format. Need was demonstrated by overtrading at the existing store and thus the application was approved (Swindon BC, 26/10/05).

Hotel Falls To Bedsits

A boutique hotel at Hare Lane, Claygate would take the place of 14 short-let bedsits which had been created when the bank ceased in 1997. These were protected by policy and although there might be a shortage of hotels in the area this was not sufficient to overcome the objection. Appeal dismissed (Elmbridge BC, 8/9/05).

Bingo & Shopping

These uses at New Hall Lane, Preston would also have 92 flats on a 1.5ha site. There was sufficient expenditure for the supermarket but for the bingo there was no qualitative need put forward. However this did not justify rejecting the scheme and appeal allowed (Preston CC, 18/10/05).

Care Home Kept

Loss of this at Vicarage Gate, W8 would contravene a policy protecting “social and community” facilities. There was argument about this but the inspector accepted there was a continuing need for such facilities and thus the appeal for 21 flats was dismissed (Kensington & Chelsea RBC, 4/11/05).

Brighton FC Score

A new stadium with offices/educational/conference facilities at Village Way, Falmer adjoining an AONB on the edge of the town would be in the national interest with need established. Four alternative sites not feasible. Sustainable location with regeneration to the economy. Application approved (Brighton & Hove BC, 27/10/05).

High Value Offices

Offices would attract high value jobs at Warrington Road, Wigan and thus be acceptable on a former colliery now grassland. Comprising 8 blocks of 9,371 m² there were no more sequentially preferable sites and the offices would help to reduce out commuting and be sustainable. Application approved (Wigan MBC, 5/10/05).

PLANNING NOTICES

Separate Hoarding

A discontinuance notice has been quashed at Kings Road, Birmingham as the owner did not have the notice served on him. The council thought that the hoarding was part of an electricity sub-station but it was in fact free standing (Birmingham CC, 11/10/05).

Failure to Serve Notice

The owner of a site at Par Road, Par was not served with an enforcement notice although he knew about it. However, he may have wished to have lodged his own objection and criminal sanctions might follow. Notice quashed (Restormel BC, 27/10/05).

Fire Damage Buildings

A fire partly destroyed a garage and private collection of vintage cars. However the use was carried on in other buildings and thus it was possible to grant a lawful development certificate at Croydon Lane, Banstead although there was no corroboration of the appellant's evidence (Reigate & Banstead BC, 5/10/05).

MISCELLANEOUS

Repair Of Barns

Light industrial use of barns at Dockenfield, Farnham would attract car users because of their isolation. An earlier appeal for dwellings had been dismissed and it was important in accordance with policy to secure their long time retention, thereby preventing dereliction and disrepair. Appeal allowed (Waverley BC, 10/10/05).

Extending Approvals Date

It would be reasonable to extend the time for submitting details from 3 to 8 years at Imperial Wharf, Townmead Road, W6. Problems arose over shared ownership and it was argued these should not count towards affordable units. However 57% of them were purchased with incomes under £40k and thus they fell within this type of category. There was a question about RSLs and the mechanisms for delivery but this should not detract from allowing the appeal (Hammersmith & Fulham 20/10/05).

No Financial Contribution

In renewing permission for a farmhouse at Turnpike Road, Axbridge a financial contribution to children's outdoor playing space was not required. Previously the council had sought this but the inspector's report on the local plan did not support their approach. Thus appeal allow without contribution (Sedgemoor DC, 20/10/05).

For more information please speak to your usual contact at **CgMs** or **Tony Bowhill** on 01702 551148 or 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.

PLANNING

Chesterford Research Park, Saffron Walden, Cambs

Planning permission has been obtained for another building at Chesterford Research Park, near Saffron Walden. The latest building, to enable expansion of one of the existing occupiers on the Park, is 1,530 sq.m. CgMs advises Norwich Union Life and Pensions Ltd on planning and archaeology matters at Chesterford Research Park.

For further information please contact Malcolm Honour at malcolm.honour@cgms.co.uk

Woodside Avenue, Muswell Hill, London

Haringey has resolved to approve a revised scheme for a school for autistic children for the TreeHouse charity. The school is to be built on former playing fields at Muswell Hill. CgMs has also acted for TreeHouse in obtaining permission for a temporary school on the site. The application was referred to the Mayor of London as a departure from the development plan and, following negotiations, has received his support.

For further information please contact Malcolm Honour at malcolm.honour@cgms.co.uk

AONB in the Cotswolds

CgMs Limited's rural planning team has secured planning permission for the redevelopment of a former Thames Water Waterworks to residential uses, to provide 7 dwellings. The waterworks, located in the tiny West Oxfordshire hamlet of Worsham, in the Cotswolds AONB, dates back to the 1930's and in addition to the waterworks buildings themselves, there is a considerable volume of filtration tanks built into the side of a hill as well as other ancillary surface features. The proposal sought to rationalise the built development on site so that there was a material improvement in the character of the AONB. This included utilised parts of the tanks to provide new accommodation as well providing an underground car parking in a reservoir. Furthermore, a nature conservation area was created on an area previously used as sludge lagoons.

The development is a classic examples of the current dilemma facing the planning community; what to do with substantial and structurally sound buildings in rural locations that are worthy of being retained. As a result of the waterworks intrinsic architectural value, Officers at West Oxford shire were supportive of the redevelopment proposals on the basis that it could be demonstrated that alternative uses were neither practical or viable in the building.

In conjunction with other consultants under CgMs supervision, CgMs was able to put the case to the Council that this site was an appropriate candidate for residential conversion.

For further information please contact Nathan McLoughlin at nathan.mcloughlin@cgms.co.uk

Welwyn Garden City

On behalf of Land Securities, in the name of LS Howard Centre Welwyn Ltd., we submitted an application for the partial extension of the Howard Centre in Welwyn Garden City. The application specifically seeks permission for full planning permission for the extension of the retail floor area into the existing 1st Floor car park and the building of an additional half deck on top of the existing building to replace the lost parking spaces. The application also includes works to replace the existing car park access with a spiral ramp to gain access at

second floor level. The proposal includes a net increase of total floorspace of 1640 sq m with an increase of retail floorspace of 2940 sq m.

The application was submitted further to discussions with the Council and the broad scope of the submission was agreed with them. An EIA screening opinion was also submitted. To support the application CgMs submitted a planning statement, Betteridge Turner and Partners prepared a transport assessment, Haskoll Architects produced a design statement. An arboricultural report is being prepared by ACS Consulting.

For further details please contact either Steve Wilson at steve.wilson@cgms.co.uk or Natalie Morris at natalie.morris@cgms.co.uk

GENERAL

Royal Mail Group Award

In association with Nelson Bakewell, CgMs have been providing planning advice to Royal Mail Group on all their properties within the M25 since 2004. In recognition of the service during 2005, RMG have awarded the team a Silver Service Provider Award. CgMs have advised on disposals, acquisitions, 3rd party proposals and development plan proposals and policies. We are currently involved with the development of a 65,000sqft mail distribution centre and 400 vehicle park in East London.

For further information please contact Chris Hicks at chris.hicks@cgms.co.uk

Future Seminar

Nick Doggett is chairing a series of four seminars called 'Conservation Matters – the Structure and Fabric of Buildings' on behalf of Contact Property Training (www.cptevents.co.uk). These seminars, which are aimed at architects, surveyors and other property professionals, are to be held in London, Wakefield, Solihull and Bristol on 23rd February, 2nd March, 9th March and 9th April respectively. Nick is also giving a presentation at the seminar entitled 'Legal Obligations for Occupiers and Owners'.

For further information please contact Nick Doggett at nicholas.doggett@cgms.co.uk