

PLANNING NEWSLETTER

Issue 15 Part 2 June/ July 2006

INTERESTING CASES AND DECISIONS

CONTENTS	
p.2	PLANNING LAW
p.2	Permissions Challenged
p.3	Appeals Challenged
p.5	Gypsies
p.5	Local Plan Challenge
p.6	Land Development
p.6	ENVIRONMENTAL LAW
p.7	GENERAL LAW
p.8	PLANNING APEALS
p.8	Housing: Design
p.9	Affordable Housing
p.10	Housing Policy
p.10	Housing: Financial Contributions
p.10	Housing: Loss of Industry
p.11	Housing: Local Plan Issues
p.12	Housing: Effect on Playing Fields & Open Space
p.12	Housing: Parking Issues
p.13	Housing and Employment

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

CONTENTS	
p.13	Mixed Use Schemes
p.13	Countryside and Village Housing
p.15	Retail & Services
p.17	Industry & Offices
p.18	Gypsies
p.19	Enforcement
p.19	Legal Issues

PLANNING LAW

PERMISSIONS CHALLENGED

Planning History Relevance

A new development was said to be overbearing on an existing property. Previously it had been refused but amendments had led to permission being granted on a subsequent application. The committee report did not set out the changes from the previous refusal. The concern had then been height, length and the overbearing nature of the building and this was still the committee's concern. However they granted permission in the light of the officer's recommendation. Decision quashed because of the inconsistency with the previous refusal: R(Havard) v S Kesteven DC (6/4/06).

Big Wheel Challenge

Permission granted to challenge this consent but at the substantive hearing the conditions were found to be adequate and likewise the reasons for granting the permission which although short set out sufficient details. Challenge rejected: R(Ling) v E Riding of Yorkshire C (1/6/06).

Lack of EIA?

Permission granted for further temporary use of football stadium. Screening opinion said no EIA required and council adopted this. Permission granted and challenged but the opinion had covered the entire stadium rather than the new additions. There was no basis on which the permission could be challenged and furthermore it was the earlier screening opinion which should have been challenged and thus the application was out of time: R(Catt) v Brighton & Hove CC (15/6/06).

Renewed Application Resuscitated

A gypsy site was subject to a dismissed appeal and an extant enforcement notice. It was sold to another gypsy and a further application was put in but the council refused to consider this as a repeat application. However there might be different circumstances from one family to another and the new application was not inextricably linked to the earlier ones. Council's decision quashed: R(Jeeves) v Gravesham BC (10/5/06).

Dwellings and TPO

Outline permission had been given for housing and renewed several times without imposition of a TPO. Several years later when reserved matters were being considered a TPO was confirmed and a challenge to this has been rejected. Circumstances had changed – the trees had grown; advice about trees near dwellings had been tightened up; and the perception of residents' fears about overshadowing had been evidenced in the area: *Hobbs v Horsham DC* (12/6/06).

Canopy Contention Crushed

On an industrial site it was contended that a canopy over a canal to protect boats unloading should be retained because it was one of only three existing in London and had historical significance. Listing had been refused and it was perfectly proper for demolition to proceed although an interim injunction had been granted. This was discharged and the council's decision upheld as failure to mention one policy whilst dealing with the substance of the issue was not fatal. Developers awarded 50% of costs at the injunction stage: *R(England) v Tower Hamlets LBC* (30/6/06).

Gas Terminal Goes Ahead

A second attempt to persuade the Court of Appeal to hear a challenge has been rejected despite allegations that the safety authorities did not properly consider all aspects. This was an on-going matter and the decision had been correctly taken: *R(Hardy) v Pembrokeshire CC* (19/7/06, CA).

Alternative Footpath Disputed

Housing permission obstructed a footpath which might become public in due course. An alternative was planned and a case for judicial review of the council's decision rejected as it had no reasonable prospects of success: *R(Kazan) v Penwith DC* (19/6/06).

APPEALS CHALLENGED

Rebuilt Barn Demolished

In granting permission for converting a barn to a dwelling the council imposed a condition that this should be restoration/refurbishment. Two walls were demolished and rebuilt and a fresh application was refused and on appeal. The inspector said the condition was breached. The challenge to this was rejected on the basis that the views of a planning officer after demolition were irrelevant; the inspector had noted an engineer's report; the inspector's description of the gable was not material; and the fact that the walls were not demolished intentionally but following underpinning works was not relevant: *Nordec v First Secretary* (4/4/06).

Existing Recreational Facility

A policy sought to protect such facilities from alternative uses. A fitness centre was demolished and an application/appeal resisted on the basis of its loss. The policy referred to "existing" facilities and as such was not applicable in this case. Challenge upheld: *Black v First Secretary* (12/4/06).

Employment Policy Challenged

A D2 use was refused in a B1 building and the appellant said that the traffic would be no different and would not add to congestion. The inspector had adequately dealt with this. The question of marketing was crucial as little, if any, had been carried out and the inspector had placed weight on this. No internal inspection has been carried out but the claimant had not asked for this and the inspector could not be criticised on this account. Precedent had been raised but there were no details about the other properties and it was open to the inspector to find the loss of this building would be harmful to the estate. Challenge rejected: *Gerson v First Secretary* (16/5/06).

Costs Sting Appellant

A challenge to dismissal of a large housing scheme occupied the court for 5.5 days and should have taken half that time. The witness statements were considerable introducing new evidence. The claimants were entirely unsuccessful on challenging the council's guidelines; the inspector's judgement on views out of the conservation area; planning policy on views; judgement on privacy and a sense of enclosure; breach of human rights; bias (unspecified); and lack of a fair trial. Costs awarded on an indemnity basis and a second set to the council: *Sager House (Chelsea) v First Secretary* (26/4/06).

Mixed Use Scheme Challenged

Local residents objected to demolition of a warehouse and a mixed use building replacement. They argued that a historic wall was to be demolished but a report had not been before the inspector. While there was much local objection this was adequately dealt with by the inspector. Transport was a minor issue and he had dealt fairly with the residents' views. Challenge rejected with much argument on costs and the judge making a summary award of £3k concluding "Just think yourself lucky that I do not have any time to reconsider [this]": *Crossley v First Secretary* (9/5/06).

Legality of Uncompleted Building

A garage was partially erected but became an eyesore. A completion notice was served and upheld. An enforcement notice was then served requiring removal of the structure but the quashing of this has been upheld as failure to comply with the completion notice meant that the permission was removed but the partially completed building was not illegal: *Cardiff CC v National Assembly* (22/6/06).

Farmhouse can be Demolished

Permission for housing was secured with retention of a farmhouse. An alternative scheme was appealed for houses on the site of the farmhouse. The inspector felt this should be retained as it would be insensitive to demolish this against the wishes of local residents. There was no power to retain the farmhouse and the decision was quashed as being irrational: *Millgate Homes v First Secretary* (26/5/06).

Extra Dwellings Questioned

Permission granted at a mushroom farm and waste site for a large house. An appeal for three homes then turned down as the inspector concluded the permitted dwellings did not set a precedent and there would be harm to the area's character and appearance. The previous permission should have been taken into account plus reclaiming and landscaping the site. Failure to do so lead to quashing of the decision: *Breton v First Secretary* (26/5/06).

Additional Accommodation Halted

Conversion of a hotel to 14 self-contained apartments has been quashed as the inspector had misinterpreted a draft structure plan policy on self-catering accommodation by failing to realise that it was intended to prevent additional residential accommodation in the area. This undermined his conclusions on the merits of the conversion: *Lake District NPA v First Secretary* (19/6/06).

Extension Permission Ignored

A large extension to a house was refused and appealed. In the meantime a smaller extension was granted permission but in allowing the larger one the inspector did not take into account the smaller and as a result his decision was quashed: *W Lancashire DC v First Secretary* (27/6/06).

Home is not a Dwelling

A simple stone shelter subsequently enlarged did not have running water, a bathroom or a toilet and thus did not constitute a dwelling house. Challenge rejected: *Grendon v First Secretary* (14/7/06).

Cumulative Impact Ignored?

It was contended that a wind farm would be unacceptably intrusive, dominant and over bearing manmade feature in an open and exposed area of rural landscape. Furthermore, the cumulative impact of this and other wind farms in the area had not been taken into account. However, the reporter had looked at a wide range of issues and concluded that, taken together, they did not justify refusal of planning permission. Challenge rejected: *Mory C v Scottish Executive* (20/7/06).

GYPSIES

Prospects of Appeal

Gypsies entered on a site already subject to extant enforcement notices. The council sought to remove them by legal action and they submitted further applications and then appeals. The council resolved to take direct action and this was challenged on the basis that their prospects at appeal had not been assessed in the committee report. The court upheld this approach: *R(O'Brien) v Basildon DC* (12/4/06).

Children's Education Crucial

A planning appeal had been quashed as the Secretary of State had differed from his inspector on the requirement for gypsy children to have local education. He said this was an obligation of the education authority wherever they resided. The decision to remove them from the site was restored as it was for the Secretary of State to draw the balance between the wider community and the needs of the gypsy children for fixed education: *Hughes v First Secretary* (23/6/06, CA).

LOCAL PLAN CHALLENGE

A resident challenged a local plan which contained reference to future supplementary planning guidance, stating that this should have been covered by a policy. However, the

council had followed government guidance and the regional office had not intervened. Challenge rejected: *Furness v Brighton & Hove BC* (16/6/06).

LAND DEVELOPMENT

Town Green Registration

An application to register land as a town or village green on the ground that the local inhabitants had indulged in lawful sports and pastimes as a right for not fewer than 20 years required such use to continue up to the date of the application.

Registration gave rise to rights for the relevant inhabitants to indulge in lawful sports and pastimes generally and not merely that use which had been the basis for registration: *Oxfordshire CC v Oxford CC* (24/5/06, HL).

Compensation for Development

A restrictive covenant prevented building on a site but this was started in breach. The adjoining owner wanted an injunction but the court held that damages were a sufficient remedy given the breach had not been deliberate, works had started and, more importantly the granting of an injunction would be oppressive and have serious consequences for the developer.

35% of the £450,000 profit should be apportioned between all 48 benefiting properties leaving the claimant with only £3,270: *Small v Oliver & Saunders* (25/5/06).

Loss of Option

An option was exercised and notice of completion given but on that day the purchaser could not proceed and requested an extension. The vendor's solicitor did not reply and a claim for specific performance has been rejected on the basis that silence did not assent to the extension and the vendor could not proceed on the due date in any event: *Northstar Land v Brooks* (14/6/06, CA).

ENVIRONMENTAL LAW

Delegated Power Wrongly Used

A pollution permit was issued by the chief executive but he did not have authority to do so. Furthermore the plant did not meet minimum environmental quality standards and alternative furnace types should have been considered. Decision quashed: *R(Rockware Glass) v Chester CC* (15/6/06, CA).

Tyre Burning not Waste

The burning of tyres as fuel for cement production did not come within the EIA Directive as it was used as a fuel and not for waste disposal. Failure to disclose internal reports about the project was not fatal although it would have been desirable to do so. Challenge rejected: *R(Edwards) v Environment Agency* (27/6/06, CA).

Gas Works Pollution

National Grid Gas Plc as successors to various gas companies has been found liable

for contamination of a housing site and ordered to fund the clear-up. This follows the “polluter pays” principle and intermediate owners were not responsible: R(National Grid) v Environment Agency (17/5/06).

GENERAL LAW

Mixed Use Tenure

Tenants who hold leases of mixed residential and business premises also fall within the scope of legislation that prevents landlords from enforcing forfeiture rights except through court proceedings.

The court said that the words “let as a dwelling” in S2 of the Protection from Eviction Act 1977 meant “let wholly or partly as a dwelling”. They quashed a County Court ruling that the landlord was entitled to forfeit the lease: Pirabakaran v Patel (26/5/06, CA).

Negligent Tree Survey

A tree branch fell and injured a passer by. A cursory inspection had been carried out by a level-one surveyor but it was agreed this was a job for a level-two surveyor. The fact that the tree had been inadequately surveyed meant the landowner was liable for the damage: Poll v Asquith (11/5/06).

Gravity of Large Fines

Positive steps should be taken by all concerned in the operation of a company’s business to ensure its activities involve the minimum risk to employees and third parties.

Knowledge that breach of this duty could result in a fine of sufficient size and impact on shareholders provides a powerful incentive for management to comply with their duty: R v Balfour Beatty (5/7/06, CA).

Right of Way Confirmed

It was contended that a right of way had been improperly added to the definitive map. The inspector hearing evidence about this rejected the proposition that it should not have been added to the map. He was entitled to reach this conclusion on the evidence. Challenge rejected: R(Thould) v Secretary of State (7/7/06).

“Let By” Boards Linger Too Long

Boards should have been removed after 14 days from the letting. The change from “to let” to “let by” with the sign remaining long after 14 days meant that the conviction was appropriate as no reasonable steps had been taken to remove this: Cardiff CC v Barbara Rees (3/7/06, CA).

PLANNING APPEALS

HOUSING: DESIGN

Design Controversy

59 flats and a commercial unit at Kemble Drive, Swindon would be in a plain, austere and monolithic building inappropriate to the locality. The site was adjacent to a former railway works which made a positive and very attractive environment. The proposal failed to achieve the quality of the existing architecture and appeal dismissed. No costs awarded as members were entitled to disagree with officers on this issue (Swindon BC, 4/5/06).

Design Scuppers Uses

Mixed-use scheme of 145 dwellings plus commercial and retail uses on an employment site at Bridge Road, Hunton Bridge. Although the council wished to see more commercial uses the balance was acceptable but part lay within a conservation area and bringing forward the frontage without sufficient details might compromise this. Appeal dismissed (Three Rivers DC, 15/5/06).

Poor Design Quality

A large housing scheme at Grove Lane, Camberwell SE5 would retain the original school in a converted form but demolished all other buildings. The council wish to see a 1926 three-storey building retained as it was by a leading architect. The inspector agreed that this contributed to the conservation area. The use of a regency style for the new buildings would be anachronistic and inappropriate as there were no examples nearby and no justification for this in the 21st century. Appeal dismissed (Southwark LBC, 14/6/06).

Height and Traffic Scupper Flats

70 units at St Albans Road, Watford would be between five and seven storeys against predominantly two storeys in the locality. The building would appear dominant and discordant overlooking those at the rear. Public transport was poor and low parking would exacerbate heavy on-street parking nearby. 50% of affordable housing plus community use would not meet the council's policy. Lack of a traffic assessment added to the reasons for refusal (Watford BC, 18/5/06)

Retaining Conservation Character

72 Flats at Fordham Road, Newmarket would require demolition of 6 buildings in a conservation area. Two did not make a contribution to the area but the remainder did and should be retained if they could be viably re-used. Only limited marketing had taken place and their conversion had not been adequately assessed. The flats would be unsympathetic and appeal dismissed (Forest Heath DC, 23/5/06).

Gateway Site

A mixed use development adjacent to East Croydon Station approved as the 560 residential units would contribute to the 800 on the wider Gateway site with significant community advantages. The building form was acceptable (Croydon LBC, 1/6/06).

High Density Housing

574 dwellings representing 127dph at Porters Way, West Drayton would be on a site large enough to have its own focus and therefore not conflict with nearby suburban housing. The housing mix was acceptable despite the council's request for larger units. Application approved (Hillingdon LBC, 30/5/06).

Residential Amenity Harmed

20 flats at Phillips Lane, Swindon would be on a former kitchen manufacturing workshop and adjacent to a paint spraying operation and car repair, exhaust and tuning business. The paint spraying had a filter system but there could be some odours from this and other businesses generated noise. An office building would restrict daylight. Appeal dismissed (Swindon BC, 3/7/06).

Infill Housing

Demolition of two dwellings to provide 10 houses with four at the front and 6 in a cul-de-sac at Springfield Road, Chelmsford was acceptable as this had been allowed nearby. Some of the amenity areas were below standard and the garages intrusive. Appeal allowed with conditions requesting these details to be approved by the council (Chelmsford BC, 5/6/06).

Paddock Housing in Linear Park

Use of part of a paddock for five houses at Bradwell Road, Loughton would allow the remainder to become part of a linear park not detracting from its character. There would be no harm to a nearby listed building or to the wider conservation area. Appeal allowed (Milton Keynes C, 18/5/06).

Risk from Pipeline

Sheltered flats at Crown Street, Stone while of modern design would enhance the character and appearance of the conservation area and not detract from the setting of three listed buildings. Proximity of a high pressure natural gas pipeline across the canal was not such as to cause a risk greater than arising from other human activities found in everyday life. Appeal allowed (Stafford BC, 9/7/06).

AFFORDABLE HOUSING

Affordable Housing Shortage

Development of a pfs at Bristol Road, Allington would be outside a village but within easy reach of a large town. This was a countryside location and although not particularly sustainable the need for affordable housing outweighed conflict with development plan policies. Appeal allowed (N Wiltshire DC, 7/5/06).

Finance for Affordable Homes

45 sheltered units at Bellingdon Road, Chesham should not provide on-site affordable homes because the 30% requirement would mean a larger unit unsympathetic to the area or a smaller one which would be uneconomic. Therefore a contribution was appropriate which was £470k as against the council's £770k as the former accorded with a housing association's views. Appeal allowed (Chiltern DC, 25/5/06).

HOUSING POLICY

Cheap Accommodation Retained

Change from an HMO to a dwelling at Cranley Place, SW7 would remove unsightly partitions with a new rear extension. However the old extension was in sympathy with the terrace and this part of the scheme was unacceptable. Also loss of an HMO would be contrary to policy in an area where there was a demand for relatively cheap accommodation. Appeal dismissed (Kensington & Chelsea RBC, 26/6/06).

Housing Moratorium Continues

13 flats redeveloping two dwellings at Eastbury Avenue, Northwood would not harm the character or appearance of the area but appeal dismissed as bar on sites of 10 or more dwellings unless affordable due to over-supply of housing against development plan requirements (Three Rivers DC, 3/7/06).

Affordable Housing Shortfall

33 flats (43% affordable) and ground floor commercial uses at Turnham Green Terrace, Chiswick would be below the 50% required with harm to neighbours' residential amenity due to overlooking of gardens. Appeal dismissed (Hounslow LBC, 22/6/06).

HOUSING: FINANCIAL CONTRIBUTIONS

Payment for Health Facilities

In allowing an appeal for ten flats at Corringham Road, Stanford-le-Hope a condition was imposed for agreement to be reached on a payment towards health care and educational facilities. The owner had agreed to this but not submitted a legal obligation. As the calculation was simple a condition would suffice (Thurrock BC, 19/5/06).

Education Contribution

It was agreed that such a contribution was necessary for 198 flats, offices and a crèche etc at Sandy Lane, Teddington. The council requested £1.3m but the appellants proposed £700k as the council's analysis was based on flawed data. The latter's figure was preferred and appeal allowed on this basis (Richmond upon Thames, 30/5/06).

Education Contribution Denied

83 dwellings at Crown Dale, SE19 although in an uncompromisingly modern design would respect local building traditions. The design was thoughtful and well considered with large balconies giving views over adjoining parkland. There were no details of the financial contributions required for local schools and no assessment as to how the scheme would impact on these. Appeal allowed without contributions (Lambeth LBC, 5/6/06).

HOUSING: LOSS OF INDUSTRY

Mill Conversion to Homes

The premises at Shrewsbury Road, Shifnal had been vacant for some 14 years with a marketing campaign proving unsuccessful to find an occupier. This was due to poor access

arrangements, poor condition of the buildings and the closeness of homes. This would restrict industrial use which was clearly now impossible. Appeal for conversion to housing allowed (Bridgenorth DC, 6/6/06).

Impact of Business Use

Business units at Mill Road, Hinckley impacted on nearby homes. Residential use was preferred particularly as the premises were poorly laid out and had limited service areas. Appeal allowed (Hinckley & Bosworth BC, 30/5/06).

HOUSING: LOCAL PLAN ISSUES

Harm to Wider Area

A planning brief for commercial/housing had been issued for an area, and 24 flats on a pfs at Leeman Road, York would conflict with this. A comprehensive approach was required in order to secure finance for the expensive infrastructure and remediation works. Noise from a railway depot was also an issue as it was within category C of PPG24. Appeal dismissed (York CC, 8/5/06).

Sustainable Greenfield Housing

650 dwellings plus community facilities and a northern relief road at Felpham, Bognor Regis would be in accordance with planning policy and help to sustain the long-term economic well-being of the area rather than increasing commuting. 30% affordable housing and densities of 30dph were acceptable and the road would bring strategic benefits to this part of the town which could not be achieved without the housing. Application approved (Arun DC, 10/5/06).

Housing Harms Development Plan

Housing on Cranfield Airfield would be on previously developed land in close proximity to a large employment site. However it was contrary to a recently adopted development plan and was in open countryside. It would have a harmful impact on the local village where new housing was proposed. A large influx of new residents would be too great and harm community life. Appeal dismissed (Mid-Bedfordshire C, 11/5/06).

Greenfield v Brownfield

Renewal of a housing permission on a paddock at St Oswalds Drive, Finningley would accord with the adopted UDP but sufficient land was coming forward to provide a five year supply of housing. In accordance with the plan, monitor and manage approach brownfield sites should be developed first and use of this site would be contrary to policy. Appeal dismissed (Doncaster MBC, 16/5/06).

Poor Balance of Uses

A local plan proposal said that uses should take into account the presence of a canal, respect the open rural location, make residential uses physically and functionally interdependent with businesses and protect the ecological value of the area. A mainly residential scheme therefore at Napton on the Hill would not accord with the general thrust of this emerging policy. Appeal dismissed (Stratford on Avon DC, 24/5/06).

HOUSING: EFFECT ON PLAYING FIELDS AND OPEN SPACE

Small Loss of Playing Field

15% of the area would be lost at High Street, West Molesey but this accorded with policy where a “small part of the site” could be used for other purposes. Surveys about open space provision in the area were inconclusive but the limited reduction meant that flats and houses could be allowed (Elmbridge BC, 9/5/06).

Open Space Compromised

A community health unit and drug rehabilitation centre at Treseder Way, Caerau would adjoin an open space. Local people’s fears about needles being left in this were not justified but there was concern of increased risk to children playing there unsupervised. If parents restricted such activity this would be harmful to their social development and physical fitness. Appeal dismissed (Cardiff CC, 11/5/06).

Open Space Retained

85 dwellings at 73dph at Skimming Dish Lane, Bicester in three storey blocks would be incompatible with two storey housing nearby. Moreover the site had been identified as part of a proposed linear park and no studies had been undertaken by the appellants to ascertain local views on this, contrary to PPG17. Appeal dismissed (Cherwell DC, 30/5/06).

Dogs Harm Bird Area

20 dwellings at Crawley Bridge, Camberley would be close to a special protection area with significant bird populations. It would be impossible to stop residents walking their dogs in the area despite a condition banning the use of pets in the properties although this was unlikely to be enforceable. Appeal dismissed because of harm to the birds (Surrey Heath BC, 1/6/06).

Housing Hit

34 dwellings at Amcott Way, Retford would be adjacent to a cricket ground and balls had often been hit onto the site. To stop this a 10m high barrier would be required and none was provided. The risk was appreciable and appeal dismissed (Bassetlaw DC, 1/6/06).

HOUSING: PARKING ISSUES

Excessive Parking Permitted

While an adjoining site had 2 spaces per dwelling this one at Folly Road, Devizes would have only 1.6 which the inspector still thought excessive having regard to PPG3. Bus routes were within walking distance and there was a dedicated cycle route. There would not be on-street parking as feared by the council and appeal allowed (Kennet DC, 8/6/06).

Restricted Parking and Open Space

11 flats at Church Street, Rudgwick would have 11 parking spaces which should be sufficient and deter significant car ownership. Some units would have balconies and there would be an open courtyard at first floor level which was sufficient to overcome the amenity space objection. Appeal allowed (Horsham DC, 13/6/06).

HOUSING AND EMPLOYMENT

Housing Beats Employment

100 dwellings at The Common, Ecclesfield would not adversely affect the supply of industrial land in the area. The buildings were old and the marketing exercise indicated no serious interest. This was a fringe site and while the UDP preferred employment use it did not rule out housing provided this did not adversely affect residents. Appeal allowed (Sheffield CC, 3/7/06).

Employment Site Meets Housing Need

Allocated in a 1996 development plan for employment at Gavray Drive, Bicester nothing had happened for 20 years since its initial identification. In principle it was suitable for housing and there was a shortfall in the area with reliance on only one large site. No business proposals had been forthcoming and while there might be some harm to wildlife the appeal was allowed (Cherwell DC, 12/7/06).

MIXED USE SCHEMES

Mixed Use Scheme Succeeds

A 218 bedroom hotel, health club, offices and 233 flats at Chelsea Bridge Wharf, Queenstown Road, SW8 although it did not meet the UDP policy for a balance of residential and commercial was nevertheless acceptable because of the high level of affordable housing. More employment space might be left vacant and jeopardise the scheme. Application approved (Wandsworth LBC, 19/6/06).

Major Docks Redevelopment

With approximately 1,000 residential units, a food store, a factory outlet centre, educational facilities, employment floorspace, a hotel and leisure uses and support from the city council the scheme at Gloucester Docks would meet a quantitative and qualitative need for retail and leisure uses and deliver many regenerative benefits to the docks and city centre. Application approved (Gloucester CC, 22/6/06).

Green Belt Mixed Use

Use of a 11.5ha former Ryarsh Park Brickworks for 768m² BI units and 91 dwellings on 3ha with the balance as open space would be appropriate on an area identified in the local plan as a major development site in the green belt. It would not compromise the green belt's objectives. Application approved (Tonbridge & Malling BC, 19/6/06).

COUNTRYSIDE AND VILLAGE HOUSING

Unsustainable Housing Location

At Sandhill Park, Bishops Lydeard permission had been granted for conversion of a listed building to a national fire museum with 50 houses in the grounds. An alternative scheme for 19 flats in the building and 44 units outside has been rejected because of the relatively unsustainable location in the countryside. The conversion was acceptable but the remainder was not. Application refused (Taunton Deane BC, 8/5/06).

Village Expansion Halted

A parish council wished to extend local facilities including craftwork shops, retailing, a primary school and affordable/open market housing at High Bickington, Umberleigh. There was wide support for this including the planning authority but the Secretary of State felt this would be an expansion in the countryside in an unsustainable location with extensive private car use. Despite the benefits the application was refused (Torrige DC, 9/5/06).

Houses Replace Pub

A demolished pub at Main Street, Willoughby on the Wolds had been demolished and therefore an emerging policy requiring retention of community facilities was not applicable. It would be uneconomic to erect another pub and housing was preferred. Appeal allowed (Rushcliffe BC, 10/5/06).

Housing in Green Belt

Redevelopment of an unsightly industrial estate at Darenth Mill would allow removal of the tall and bulky buildings with more sympathetic housing while at the same time restoring the banks of the adjoining river and opening part of the site to the public. Also the setting of a Grade II listed building would be improved. Appeal allowed (Dartford BC, 23/5/06).

Gap Erosion Halted

Affordable housing at Wyche Lane, Bunbury would involve removal of a hedgerow and two sycamore trees to form an access. This would erode an important gap, which separated development in two parts of the village. While there was a strong need to provide affordable housing loss of the gap would harm the character and appearance of the settlement. Appeal dismissed (Crewe & Nantwich BC, 6/6/06).

Beauty in the Countryside

Retention of two buildings as a craft shop and beauticians at a motorcycle museum at Bashley Cross Road, New Milton contributed to the economics of the museum but functionally unrelated to this. This was not a suitable site for such enterprises as it was unsustainable for retail uses. Appeal dismissed (New Forest DC, 23/5/06).

Agricultural Dwelling Retained

Permission was given in 1995 for an agricultural dwelling at Swallow Street, Iver with conditions as to materials and landscaping etc. The property was built without these approvals but the owner said he had tried to discuss them with the council. The authority had then served an enforcement notice but as this was a "bolt from the blue". The lawfulness of the house had been acknowledged by the discussions and the notice was quashed so the dwelling could serve the wider needs of the agricultural community (S Buckinghamshire DC, 9/5/06).

Golf Balls Hit Housing

27 houses at Water Street, Margam would be on a golf driving range where balls had hit nearby housing. The new housing would extend a residential enclave. This would only add to their incongruity which meant dismissing the appeal (Neath Port Talbot CBC, 15/6/06).

Impact on Telecommunications

Log cabins at Heath Road, Brightwell would interfere with BT's directional microwave radio antenna research as it was within a safeguarding area around the facility. This work was in the national interest and the policy was fully justified. The cabins would harm the character of the area and the amenity of nearby residents. Appeal dismissed (Suffolk Coastal DC, 15/6/06).

Housing Impacts On Wildlife

Housing, a new primary school and bowling green at Craigie Avenue, Boat of Garten would be next to a forest, home to the Capercaillie bird where the habitat was 1% of the bird's presence in Scotland. Scottish Natural Heritage objected and the inspector found concern about the potential impact on the birds which led to dismissal of the appeal (Highland C, 21/6/06).

Assisting Village Sustainability

60 houses and employment on a haulage depot at Wellesbourne Road, Barford would help sustain the village. There was a need for affordable units but none for market housing. However the overall balance of the scheme was acceptable in providing employment facilities and affordable units. Appeal allowed (Warwick DC, 26/6/06).

Housing and Equine Centre

Grade II* listed Hyde Hall Farm, Denton would be restored and sub-divided into two dwellings with a further 25 terraced houses to support the cost of restoration. A new equine centre would be built. All of this would be in the green belt and inappropriate development. However the new dwellings required to support the restoration and were appropriate but the new equine centre tipped the balance against development. Appeal dismissed (Tameside MBC, 29/6/06).

Café to be Retained

A café plus a two-storey rear extension at Cresswell, Morpeth was in residential use. It was argued that the extension was for residential and covered the entire building. The inspector disagreed and said there had been a change of use in the countryside. The property should have been offered for sale first and as this had not been done the appeal was dismissed (Castle Morpeth BC, 15/6/06).

Stadium Harms Park

A new football stadium at Parkway, Guildford would be harmful to the area and dominate its surroundings. There was concern about the potential hydrology impact and on wildlife. Off-site parking could be a problem. There was no reason why the club could not continue at its existing site which was amenable to improvement. Appeal dismissed (Guildford BC, 19/6/06).

RETAIL AND SERVICES

DIY Gets Green Light

Two stores of 13,419m² and 3,411m² for B&Q and Wickes at Winchester Road, Basingstoke

would meet a quantitative need extending and enhancing the retail offer in the area. Car parking below PPG13 standards and flexible approach adopted in looking at sequentially preferable sites. Applications approved (Basingstoke & Deane BC, 15/5/06).

Tesco Triumph

A new superstore on an industrial estate at Dalgety Bay would not adversely affect the vitality and viability of existing shopping centres. While the impact on existing town centres had been under-estimated the overall impact was acceptable and no sequentially preferable sites existed. Also the store would provide a significant number of new jobs which justified the loss of existing floorspace. Application approved (Fife C, 1/6/06).

Pets for Sale

Pets at Home occupied a retail unit at Victoria Road, Ruislip and now wished to sell pet food, toys and clothes. A condition was varied to allow this as it was unrealistic to expect the company to disaggregate its operations into more than one unit in a nearby town centre. They had a well-established business plan and there was no evidence of harm to other retailers. Appeal allowed (Hillingdon LBC, 2/5/06).

New Mezzanine Floorspace

This would almost double the floorspace at the Argos Store, Newmarket Road but would be used for storage purposes. There would only be a 0.1% impact on the city centre, which was trading well. This would not be retail floorspace and appeal allowed (Cambridge CC, 5/6/06).

Discount Retail Advantage

A discount food store and 12 flats at Rowan Road, SW16 would widen the food offer in the area with sufficient expenditure in 2008. There were no suitable alternative sites and impact on existing centres would be minor. Although allocated for B1 use it was not within one of the principal employment areas and there was clearly limited demand for this use. Appeal allowed (Merton LBC, 10/5/06).

Discount Helps Disadvantage

A discount food store at Watlington Road, Cowley would meet a quantitative need as well as a qualitative one as there is no such store in the locality and consumer choice would therefore be widened. Insufficient evidence on sequentially preferable sites. Inevitable that most people would use cars because of bulk purchases but there was a realistic choice of access. A nearby disadvantaged estate would benefit and offices above would replace some employment formerly on the site. Appeal allowed (Oxford CC, 16/5/06).

Pub/Restaurant Favoured

This proposal would not conflict with adjoining sheltered accommodation as insulation could be provided. The use would not encourage high levels of alcohol consumption and this was an appropriate location albeit close to other pubs. Appeal at The Front, Seaton Carew allowed (Hartlepool BC, 5/6/06).

Cinema Preferred in Town Centre

A major out-of-centre leisure scheme included a hotel, training centre and various sports

facilities plus a cinema at Abbey Stadium, Birmingham Road. This was necessary for its financial viability. However the inspector noted a town centre site suitable for a cinema and because of its link to the bus station and effect on the nighttime economy he preferred this as it would promote social inclusion and sustain the viability of the centre. Application refused (Redditch BC, 11/5/06).

No New Space at Nursery

A nursery at Dunn Street Road, Bredhurst was restricted in the range of goods it could sell. It now had a bathroom outlet and a pet shop operator was hoping to start up. This would constitute an undesirable precedent which failed to comply with planning policies about town centre uses. The site was not accessible by public transport. Appeal dismissed (Maidstone BC, 23/5/06).

Garden Centre Questioned

Use of a pfs at South Coast Road, Peacehaven as a garden centre would not increase traffic movements but lead to more parking on the restricted site. Erection of security fencing and stacking of bags of peat and compost led to amenity problems. Appeal dismissed (Lewes DC, 15/6/06).

Garden Centre Appropriate

Although required for a road a site at Dale Lane, North Elmsall could have been used as a nursery for the growing and sailing of plants. There was adequate visibility for highway safety and a certificate of appropriate alternative development was issued (Wakefield MC, 22/6/06).

Both Supermarkets Fail

Two superstores, both of 3,354m² one at the former Brown Lenox site (A470) at Pontypridd and the other on a rugby football ground would meet a need for one store with the council favouring the former. However, retail studies had shown the catchments too widely drawn and had not fully taken into account a proposed Sainsbury's in the town centre. This would be heavily impacted by either scheme and could be unviable which would fail to sustain and enhance the vitality of the town centre. Use of employment and recreational land unacceptable. Appeal dismissed (Rhondda Cynon Taff CBC, 8/7/06).

Customers Encouraged by Betting Shop

This use at Langley Parade, Abbots Langley would be in a secondary frontage resulting in 72% non-retail uses there. This said the council would adversely affect the vitality and viability of the centre. However there was evidence that betting shops generated high customer footfall drawing people along the frontage. It would increase the diversity of uses and enhance the centre. Appeal allowed (Three Rivers DC, 29/6/06).

INDUSTRY AND OFFICES

Waste Woodchips

An enforcement notice alleged that woodchip waste was being manufactured at Barleycroft Works, Furneaux Pelham on a site used for the repair, reconditioning and manufacture of timber palates with a permission for B1/B2/B8 use. There was no change of use as the

wood had been discarded and its manufacturing did not fall outside Class B2. Appeal allowed (Hertfordshire CC, 16/5/06).

Business Buildings Rural Intrusion

Agricultural buildings had been used for business purposes at Laderton, Towcester and some replaced over the years with larger structures. The intention was to remove two and replace them on the edge of the complex but the inspector considered that this would extend the estate into the countryside outside its current curtilage. It would offend local policies and harm the rural character. Appeal dismissed (S Northants DC, 17/5/06).

Scrap Yard Scrapped

An appeal for a new building at Bishops Lane, Shirrell Heath has been dismissed as the inspector considered that despite in 1993 LDC confirming its use, it had not been so used thereafter and no waste licence had been obtained. Furthermore, there was an attempt to secure a dwelling on the site and this indicated its abandonment. A new building would be inappropriate. Appeal dismissed (Hampshire CC, 23/5/06).

Offices Lead to Traffic

A condition requiring buildings to be used only for high technology electronic manufacture and research at Whale Wharf, Littleton upon Severn limited traffic movements as against the unrestricted BI office proposal. Majority of trips would be by car because of poor accessibility and the increase in traffic movements would undermine residents' amenity in a nearby village. Appeal dismissed (S Gloucestershire C, 14/6/06).

Green Belt Factory Extension

In order to consolidate all operations on one site at Water Orton Lane, Minworth former sidings in the green belt would be used to site an extrusions factory. The land was well contained and would enable the company's long-term retention as a major manufacturer in the area supporting local employment particularly for those with a deprived background. It was strongly committed to training and community initiatives and these counted heavily in favour of permission (Birmingham CC, 5/7/06).

Traffic Impact Lacking

While an office scheme at Norwood Road, Birmingham was acceptable in principle the council requested information about traffic and the building's impact on others nearby. This was not forthcoming and without this the appeal was dismissed with an award of cost as it was unreasonable not to submit the information (Birmingham CC, 16/6/06).

GYPSIES

Gypsies on Employment Site

Gypsies had lived at Cartmore Industrial Estate, Lochgelly since 1997. Successful enforcement action taken with an extension up to June 1999. Another application had been submitted and called-in and while it did not accord with the development plan the accessible site close to existing settlements and facilities, with schools closeby plus a lack of suitable alternative sites justified granting permission (Fife C, 4/5/06).

Horse Breeding in Green Belt

It would be wrong to grant a further temporary permission to a gypsy at Leyden Hatch Lane, Swanley as approximately 80% of the site was given over to breeding horses which were then sold around the country. This was an appropriate activity in the green belt and a permanent but personal permission was therefore justified (Sevenoaks DC, 2/6/06).

ENFORCEMENT

Costly Wildlife Failure

A wildlife pond had been created in a flood plain at Taw Hollow, near Burrington. An enforcement notice expressed concern about flood storage and impact on a wetland habitat. The spoil could be deposited on another area and wildlife importance would be increased. Appeal allowed with partial costs on the wildlife issue as the council had not properly investigated this (N Devon DC, 1/6/06).

Parking or Storage?

A mobile home was left on agriculture land at Townsend Avenue, Irby. It had not been there for more than 10 years. This was a storage use not parking because it was put away for a period of time when not needed and not for a short-term activity such as parking (Wirral MBC, 12/6/06).

Failure to Specify Restoration

An enforcement notice was served against a mobile home at Storrington Road, Pulborough specifying its removal and submission of a restoration scheme for the site. As the notice did not specify the steps to be taken and the type of scheme required it was a nullity and was quashed (Horsham DC, 14/6/06).

LEGAL ISSUES

Grassed Area not Highway

A grass track gave access to rear gardens and allotments at Sadlier Road, St Albans. The council said this was a public highway and thus a rear dormer was restricted. However there was no evidence that the public passed and re-passed and it only gave access to local houses. Appeal for an LDC allowed (St Albans DC, 8/6/06).

Two-Stage Extensions

An LDC was issued for a single storey rear extension at Park Grove, Edware. Permission then granted for a two-storey extension and work commenced on both. The inspector held that the single storey extension had been “substantially completed” because the roof and walls were in place at a time when the two-storey extension had not been completed. Appeal allowed (Barnet LBC, 8/6/06).

Gravelled Hard Surface

It was claimed that this was not a hard surface but engineering works had been undertaken through partial excavation of the rear garden of a flat at Peaches Close, Cheam. As a flat did not have permitted development rights permission was required and granted (Sutton LBC, 8/6/06).

House not Abandoned

A replacement dwelling at Norton Disney Road, Carlton le Moorland has been allowed as the use had not been abandoned despite the house being empty for over 40 years. The previous owner had kept it in reasonable repair and only recently had tiles been stolen. It would not impact on the landscape any more than the existing dwelling and appeal allowed (N Kesteven DC, 26/6/06).

Failure to Observe Condition

A housing scheme at Castleton Way, Eye required approval of landscaping before commencement. A letter was submitted and broadly agreed although the officer said this was not an express approval. The start was therefore not lawful and an LDC could not be obtained. Appeal dismissed. (Mid-Suffolk DC, 10/4/06)

No CPO for POS

Open space at Bank Street, Newton Abbott not required because of a quantitative or qualitative shortfall in the town centre. The objective was to create an open area as a setting for a new supermarket but the owner's human rights would be breached as she was applying for commercial development on the site which could be appropriate depending upon its form. Order rejected (Teignbridge DC, 6/6/06).

Miscellaneous

Access Harms Human Rights

12 houses at Cranston Road, East Grinstead would require a new traffic island. This would be close to a house occupied by a family who had a child with severe learning disabilities. She had great difficulties in going to school and it often took between 15 and 20 minutes to coax her into and out of the minibus. This would stand close to the traffic island and block vehicles. It would be wrong to prejudice her human rights and appeal dismissed (Mid-Sussex DC, 17/5/06).

Archaeological Condition Valid

At Bancroft, Hitchin the mixed-use scheme had been nearly completed but with no agreement on the archaeological condition. Investigations had shown a kiln and it was still appropriate for this to be excavated and finds taken to a museum. Appeal to discharge condition dismissed (N Hertfordshire DC, 24/5/06).

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