

PLANNING NEWSLETTER

Issue 16 Part 2 November 2006

INTERESTING CASES AND DECISIONS

CONTENTS	
p.2	PLANNING LAW
p.2	Green Belt Sacrosanct
p.2	Holiday Let Challenged
p.2	Office Remains in Green Belt
p.2	Home Saved from Demolition
p.2	Tree Roots Cause Nuisance
p.2	Public Inquiry Reinstated
p.2	PLANNING APEALS
p.2	Countryside Development
p.3	Housing: Need
p.4	Housing: Design – Density - Affordability
p.5	Housing: Prematurity
p.5	Housing On Employment Land
p.6	Employment Land Use
p.7	Retail Uses
p.8	Services
p.9	Conditions And Obligations

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

PLANNING LAW

Green Belt Sacrosanct

The fact that a council designated a site as green belt was a planning judgment. A similar decision by the Court of Appeal on the site some years ago meant that the designation could not be overturned. Challenge rejected: (*Tiggerrell v Tunbridge Wells BC*, 15/9/06)

Holiday Let Challenged

Conversion of a granny annexe to a holiday let at appeal did not sufficiently take into account emerging structure plan policies seeking to restrict new housing and holiday lets. These policies should have been dealt with more fully and challenge upheld: *Lake District NPA v First Secretary* (28/7/06).

Office Remains in Green Belt

An office was given a temporary permission and when this expired, on appeal it was made permanent. The council felt that there would be more traffic but the inspector thought that a remote access computer system would reduce this as people would not have to travel to the office. Harm would thereby be reduced. Challenge dismissed: *Cherwell DC v First Secretary* (14/9/06)

Home Saved from Demolition

A house was compulsorily acquired on the basis that it was within land “under-used” or “ineffectively used”. The order was confirmed on this basis and an area wide approach could be taken. However, it was said that this was the “predominant” state of the land and watered-down the statutory test. Decision quashed: *Pascoe v Secretary of State* (27/9/06).

Tree Roots Cause Nuisance

The roots of a tree protected by a TPO caused damage to a property. Although there might be other ways of protecting the property eg by engineering works, work could go ahead on the tree as this would remedy a nuisance as provided for in the statute. Appeal allowed: *Perrin v Northampton BC* (26/9/06).

Public Inquiry Reinstated

An inquiry was set for October by the Planning Inspectorate but without consultation was put back to next February. The failure to consult was fatal and the inquiry will now go ahead as planned. Challenge upheld: *R (Western Power) v Planning Inspectorate* (28/9/06).

PLANNING APPEALS

COUNTRYSIDE DEVELOPMENT

Design Jars in Countryside

Para 11 of PPS7 (rural areas) supports new dwellings, which have truly outstanding design; significantly enhance the immediate setting; and are sensitive to the area. A house at

Preston St Mary, Suffolk would draw on its rural surroundings but be a modern construction with extensive energy saving devices but these were not especially innovative nor was a steeply pitched brown zinc roof and metal chimney. A large turret was energy inefficient and these measures had been compromised by the appellant's domestic arrangements. Traffic movements along Lanes also meant the appeal should be dismissed (Babergh DC, 14/7/06).

Gap Stops Car Showrooms

Three such buildings at Rochester Road, would be in a strategic landscape gap in a gateway to the town. Although on the edge of the urban area the buildings would erode the gap and despite allegations about lack of alternative sites and economic advantages the appeal was dismissed (Medway C, 31/7/06)

A Barn Converts to Houses

Permission was given for a barn at Pennington, Leigh for use as a dwelling but it suffered from major structural problems and collapsed. Two new dwellings would be of the same size and inappropriate in the green belt. However, the impact would be little different and it would only be fair to allow the appeal (Wigan C, 31/7/06)

Critical Wildlife Impact

Housing at Exeter Road, Teignmouth would be in the countryside and harm the area of great landscape value. Also no study had been undertaken of the protected curlew buntings and the legal obligation did not contain adequate mitigation measures. Appeal dismissed (Teignbridge DC, 3/8/06)

Tennis Courts Rally To Housing

Over-provision of courts meant that those at Sturgess Avenue, NW4 could be used for housing and would fit in with the area following detailed design. Replacement courts in the park were acceptable, but it was not necessary to link them to the housing because of the surplus spaces, and the profit contribution could be used as agreed with the council. Appeal allowed (Barnet LBC, 26/7/06)

HOUSING: NEED

Urgent Housing Need

On the site of East Taphouse, Liskeard 31 houses were proposed, 21 of which would be affordable. There was an urgent need for this and as the site was previously-developed it would benefit the adjoining village and be sustainable. While this was not an imaginative layout the design was not so poor as to withhold permission. Appeal allowed (Caradon DC, 30/8/06)

Affordable Housing in Green Wedge

A shortage of this type of housing, particularly larger homes meant that an identified green wedge at Richards Way, Slough could be used for this purpose as there was a compelling need in the locality and the region. Appeal allowed (Slough BC, 22/8/06)

HOUSING: DESIGN – DENSITY - AFFORDABILITY

Density Increase Sanctioned

The council envisaged 500 dwellings at Station Road, Thatcham but further units would lift this to 814. The densities were in line with PPG3 with use of brownfield land in a sustainable location. The gardens were adequate and concern about informal public open space was not justified. Appeal allowed (W Berkshire C, 4/8/06)

Design Questioned

268 units at Salter Road, Rotherhithe would, said the inspector, be too high in relation to an adjoining school and to nearby houses with an unacceptable mass. However, the Secretary of State placed significant weight on the high level of affordable housing plus the new community and health facilities. Appeal allowed (Southwark LBC, 8/8/06)

Lack of Children’s Play Space

While housing in principle was acceptable at Stone Road, Stafford the lack of a play space for the 50 dwellings meant dismissing the appeal. These would be two bedroomed properties and whilst there would be gardens there was a need for a kickabout area or some play equipment (Stafford BC, 30/8/06)

Flats and Traffic Impact Community?

61 flats at St John’s Road, East Grinstead would increase traffic in a road where there was a strong sense of community giving rise to local opposition. Highway works including passing places would mitigate the impact. Although the road would have a more residential character the appeal was allowed (Mid-Sussex DC, 31/7/06)

High Energy Efficiency

Conversion of a school at Herringswell, Bury St Edmunds into 12 flats had been permitted while 34 was sought. Argued this was an unsustainable location but the increase in density came close to PPG3 standards and all the homes would achieve a “very good” rating in terms of energy efficiency. This favoured allowing the appeal (Forest Heath DC, 8/8/06)

Critical Renewable Energy

Structure and local plan policy sought a minimum of 10% energy from renewable resources. Sheltered flats at Limpsfield Road, Warlingham were supported by a statement which argue the difficulty of this site making a contribution. As it did not comply with the policy appeal dismissed (Tandridge DC, 31/7/06)

Adapting Listed Building Questioned

While 69 sheltered housing units in the grounds of Cann Hall, Clacton-on-Sea were acceptable in principle because the garden had been compromised by nearby housing. However, conversion of the hall for use by a warden and community facilities did not give sufficient details as to how this Grade II building would be affected. Appeal dismissed (Tendring DC, 17/7/06)

Sufficient Parking Available

24 flats with similar parking at Pottery Terrace, Pillgewenly would replace a social club and be three storeys high as against two in the vicinity. This would create a landmark building. One parking space per flat sufficient as this was an accessible site (Newport CC, 29/8/06).

Affordable Housing Denied

Offices and housing on a site under 0.5ha at Silver Street, Nailsea would not affect the character of the area nor protected trees. As the site was below the council's threshold for affordable housing, this was not required. Offices would help diversify the economy. Appeal allowed (N Somerset C, 30/8/06).

HOUSING: PREMATURITY

Premature Housing

Housing at New Terrace, Staverton was refused because there would be an over-supply of such land in 2016. However if all sites came forward plus windfall there would only be a surplus of 14% which was small. As it was agreed this was a suitable and sustainable greenfield site then appeal allowed with costs as the council did not show what harm could arise from prematurity given compliance with development plan policies (W Wiltshire DC, 4/9/06).

Housing Prematurity Rejected

Housing at Sampson Street, Hanley could prejudice a forthcoming area plan which would look at alternative sites. However the development plan was met and as the new plan had not yet been published it could not be prejudiced. Appeal allowed with costs as the planning policies would not be harmed (Stoke-on-Trent CC, 4/9/06).

Prematurity Argument Rejected

A 11.5ha housing site at Southview, Trowbridge would not lead to an over-supply of such land, particularly when the regional strategy was in place and would require more land in the longer term. The continued release of sites would be necessary and thus appeal allowed (W Wiltshire DC, 13/9/06).

HOUSING ON EMPLOYMENT LAND

Housing Supply Thwarts Environmental Improvement

14 dwellings at a former factory in Elton Vale Road, Bury was acceptable in principle. Adjoining reservoirs were unsafe and the housing would fund repairs rather than draining them with harm to wildlife. This was acceptable but as there was over 10 years land supply the appeal was dismissed (Bury MBC, 27/7/06)

Employment Loss Halted

350 dwellings on a 4.5ha employment site at Chester Road, Erdington would be on a good quality site. The supply was deficient with the need to retain this site for jobs, although it

could be satisfactorily built-upon for housing. Appeal dismissed (Birmingham CC, 9/8/06)

High Density Wins Through

Former employment land at Russell Way, Crawley was on a small site and its loss would not prejudice job opportunities. It would aid affordable housing and although the blocks would be tall (up to 10 storeys) they would not appear out of place at a density of 333dph. Appeal allowed (Crawley BC, 24/8/06)

Inadequate Marketing

97 flats at Watsons Road, Wood Green would be on employment land but only six months marketing had taken place with two offers rejected. The nature of these was uncertain. Also there was a lack of green space and too much hard landscaping. Appeal dismissed (Haringey LBC, 24/8/06)

Employment Loss Denied

123 homes at Station Road, Bristol would be on a 1.7ha site with buildings of 7,463m², 56% occupied. There was only 1.5 years employment land supply available, and although the economic assessment indicated such a scheme would not go ahead, there could be alternatives. Appeal dismissed (S Gloucestershire C, 4/9/06).

Reduced Employment Acceptable

A mixed employment/residential scheme at Felstead Street E9 would have 60% less industrial floorspace than previously. This was acceptable as it would regenerate the site in a rundown area meeting the need for more affordable housing in a sustainable location. Appeal allowed (Hackney LBC, 16/8/06).

Well-Located Employment Site

A 4.45ha site for 220 dwellings at Britannia Road, Morley would be accessible, but as a backfilled quarry it was zoned for employment. Housing targets could be met and there was a need to retain employment sites to 2016. This was a large site and it would be wrong to release this. Appeal dismissed (Leeds CC, 7/9/06).

EMPLOYMENT LAND USE

Costly Traffic Error

Demolition of an office and erection of 15 small industrial units totalling 3,000m² at Adrienne Avenue, Southall led to a request for a traffic assessment. This was for schemes above 2,000m² but only applied to offices. In this case the threshold was 4,000m² and there would be no greater traffic than existing. Council wrong to request such an assessment and costs awarded against them in allowing the appeal (Ealing LBC, 4/9/06).

Car Showroom Aids Employment

With a large supply of employment land the loss of a small site at Morton Park, Yarm Road would allow new employment. A hospital and children's nursery had been permitted nearby and therefore a car showroom was appropriate in this location. Appeal allowed (Darlington BC, 8/9/06).

RETAIL USES

Superstore Impact Hits College

A replacement college funded by an ASDA at Bolsover Road, Worthing would create employment, but was 150m from a shopping area and would impact heavily on this despite a supportive need statement. The centre could lose its anchor supermarket with other shops closing. The benefit of a new college did not override this. Appeal dismissed (Worthing BC, 31/7/06)

Costly Extension To Shop

Extending a pfs shop at Ruxley Lane, West Ewell would not, with conditions, harm residents' amenity nor would it necessarily mean more shoppers would be drawn from the local area on foot or a bicycle. There was no conflict with traffic flows and the appeal was allowed with costs as the council made their decision against officers' and consultees' advice, motivated by local opposition (Epsom & Ewell BC, 31/7/06)

New Shop Harms Local Centres

Extending the shop at Strat Rode pfs, Warwick from 72m² to 279m² would mean a significant increase in turnover making it a local attraction, contrary to government guidance sustaining existing centres. Appeal dismissed (Warwick DC, 31/7/06)

Maximum Retail Use

A discount supermarket at Palmerston Road, Bournemouth was initially criticised on design and a second application incorporated 13 flats over the store although it was set back into the site. This underpinned its commercial viability and with a taller building the design was acceptable. Appeal allowed (Bournemouth BC, 7/8/06)

Large Store Out Of Scale

An extension to Tesco's at Burnham-on-Sea was required, it was said, to compete with nearby towns but despite a qualitative need there was not a quantitative one. Also the store's size was out of scale with its location and permission was refused (Sedgemoor DC, 6/9/06)

Jobs Support Superstore

An Asda at Bradford Street, Keighley would meet a quantitative need as well as a qualitative one because a nearby store was over-crowded. It would meet the needs of those in deprived areas and was well located. The sequential test was satisfied with no adverse effect on vitality and viability of other centres. Loss of employment land would be offset by up to 400 new jobs and appeal allowed (Bradford MBC, 7/9/06).

Sequentially Preferable Site

An Aldi supermarket at South Harbour Road, Fraserburgh would be outside the town centre where there were already four such stores. There were alternative sites and one could be redeveloped with help from the council with a mixed-use scheme. There was no qualitative need and appeal dismissed (Aberdeenshire C, 5/9/06).

Retail Prejudices Open Land

A small retail scheme of 581m² plus a public house and care home at Agecroft Road, Pendlebury would be within an open space corridor which should be retained given nearby recent development. There was no need for the scheme and turnover would vary depending on the operator and might not be supported by convenience goods spending in the catchment area. Appeal dismissed (Salford CC, 4/9/06).

SERVICES

Nursery Capacity Increased

Allowing 22 children instead of 16 would not impact on local residents as most activities were within the building. There would be an increase in car usage particularly from a wider area, but some local children might take up places and others might share trips. With a demand for such places the appeal at South Gorley, Hampshire was allowed (New Forest DC, 31/7/06)

Attractive Amusement Centre

Although non-retail uses at Union Street, Aberdeen would be raised from 27% to 33% with an increased gap in units this did not tell against the use as it attracted as many visitors as some shops. It would assist the centre and appeal allowed (Aberdeen, CC)

Replacement Pub Rejected

A farmhouse at Walsall Road, Lichfield already had permission for the sale of food and drink. This and other buildings were to be demolished and a new restaurant built with 14% less footprint and 20% less volume in this green belt location. There would be one block as against the open feel of the existing buildings. This would impact on the openness of the area, particularly with new car parking. The sequential test applied and had not been properly undertaken. Appeal dismissed (Lichfield DC, 2/8/06)

Too Many Service Uses

Change of use of a shop to a pub at Fleet Road, Fleet. Secondary shopping parades already had 33% non-retail units as against the policy of 25% and while there would be assistance to vitality there could not be unrestricted growth of such uses. Crime and disorder were a matter for the license. Appeal dismissed (Hart DC, 29/8/06)

Health Studio Lacks Parking

Conversion of an office/workshop at Holburn Street, Aberdeen to a health studio would not have parking whilst in a sustainable location with sufficient capacity in surrounding streets. National policy on reducing parking should be given greater weight than local policies. Appeal allowed (Aberdeen C, 24/7/06).

No Community Use

Only one building remained of a working men's club. This was not a public facility and therefore did not fall foul of a policy on retaining community centres. The main part of the club had been lost from a fire and the conservation area would be enhanced by the erection of 32 flats at Ben Lane, Hillsborough (Sheffield CC, 19/8/06).

Basement Snooker Club

This use at Chatsworth Road E5 would not prejudice the shop's operation nor harm those living above as it opened 24 hours a day. There was no policy preventing loss of storage or a ratio of this to retail. Appeal allowed (Hackney LBC, 31/8/06).

Coffee Shop Survives

A Caffe Nero at High Street, Sevenoaks had 80% of trade on the premises with remainder as takeaway. It was comparable with local retail units and it would not harm the primary shopping frontage. Customers would visit other shops nearby. Appeal allowed (Sevenoaks DC, 11/9/06).

CONDITIONS AND OBLIGATIONS

Incidental Condition Deleted

Alterations to a building in the garden of a house at Nottingham Road, Heronsgate attracted a condition that it should only be used in conjunction with the main house to stop separate occupation. There was no evidence that it would be used otherwise and no change to the status of the building. Therefore condition deleted (Three Rivers DC, 31/7/06)

Planning Obligation Discharged

A building in the garden of a house at Church Lane, Godstone was for residential use but a condition and planning obligation made this for ancillary purposes only with no separate occupation. Circular 5/05 said conditions should be used first and these could be enforced. Therefore obligation not necessary (Tandridge DC, 2/8/06)

Illegal Parking Condition

Conversion of two flats into six at Marine Parade, Brighton had a condition requiring an obligation to pay £2,000 to prohibit residents from gaining parking permits. This was contrary to government advice regarding the use of conditions which should not require payments or obligations. Appeal allowed (Brighton CC, 30/8/06)

Density Outweighs Financial Aspects

Four houses instead of one at Windsor Road, Maidenhead required contributions to school places and a climbing wall in a library. There were <no> surplus school places and the wall had no relationship with the housing. A simple formulae could not be used as Circular 5/05 required the contributions to be fairly and reasonably related to the scheme, which these were not. However, the density of 15dph was below government guidelines of 30dph and meant dismissing the appeal (Windsor & Maidenhead RBC, 24/7/06)

Landscape Condition Breached

In 1974 permission given for four houses at Warninglid, Haywards Heath and two built. Landscaping details had been submitted 11 months after construction started and while the two houses completed were immune from enforcement the remaining two were not as the condition had not been approved from the outset. Appeal dismissed (Mid-Sussex DC, 30/8/06).

Dormer Window Stays

If a dwelling fronts a highway then roof extensions are not permitted. At Poplar Grove, Friern Barnet the house fronted a courtyard used for parking and access. This was not a public highway and therefore the dormer could remain. Appeal allowed (Barnet 5/9/06).

For more information please speak to your usual contact at CgMs

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.