

PLANNING NEWSLETTER

Issue 11 November/December 2005

LATEST NEWS

THE ODPM'S CHRISTMAS PRESENTS

The ODPM has been clearing its desks for Christmas and has sent out lots of large presents for us all to read and comment on over our Christmas break. These include:-

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

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

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

 [The new Green Belt Direction \(52k\) >>](#)

CGMS HAS THE LARGEST PLANNING TEAM IN LONDON

The latest 'Planning' magazine survey has just been published which shows that CgMs has the largest team of planning consultants in London.

GLA – REVIEW OF THE LONDON PLAN

a) Housing SPD

The GLA have been busy, as usual and have just published a new SPD on Housing. We will produce a News Bulletin on this shortly.

b) Timetable

- Publication of Statement of Intent (i.e. issues to be reviewed before Christmas, 8 week consultation)
- Publication of final 5 Sub Regional Development Frameworks – end February/end March
- Draft London Plan April/May 2006 – 3 month consultation
- Official Consultation London Plan September 2006
- EIP Spring 2007
- Adopt early 2008

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MORE PLANNING POWERS FOR KEN LIVINGSTONE?

The Office of the Deputy Prime Minister published in November 2005 'The Government's proposals for additional powers and responsibilities for the Mayor and Assembly.' This paper is subject to public consultation until 22 February 2006.

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

PLANNING SERVICE TARGETS

The ODPM has issued research that it claims demonstrates the delivery of planning services is improving. It states that the percentage of authorities processing 60% of major applications within 13 weeks, one of its key targets, has increased by 13%.

However subsequent information from the ODPM has shown that "some authorities admit that they are now more likely to refuse applications in order to meet performance targets". Lies and damn statistics!

CASINOS AT RED

There has been "no change of policy" over the number of super-casinos, the Government has insisted. Ministers had originally proposed allowing up to 40, before scaling plans down to eight and finally just one. Stephen Crow, ex-Chief Planning Inspector, has been appointed to head a five-strong Casino Advisory Panel which will report by the end of 2006.

This advice will allow the Culture Secretary to specify in 2007 areas in England, Wales and Scotland for one of the so-called "super-casinos" and 16 other smaller ones

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PLANNING LAW

Argument Over Permission

An outline permission existed on a site and three reserved matters applications had been made but not determined as the council disputed the validity of these. However at appeal on another outline application they agreed the reserved matters were satisfactory but the inspector found the council were implacably opposed to the development. He therefore dismissed the appeal.

This decision has been quashed that, while it was technically correct that no planning permission could currently be implemented, this did not justify his stance as the council were under a continuing duty to determine the reserved matters applications. Furthermore he had failed to have regard to the evidence and had given no intelligible reasons for his conclusions. Decision quashed: *Billings v First Secretary* (27/9/05).

Tree Prosecution Continues

An owner felled a tree claiming that it was dying following an arboricultural consultant's report. The council following removal of the tree disputed this and commenced a prosecution. The owner's proceedings were rejected as the court felt that he had little prospects of success in stopping their action: *R (Pooley v St Edmundsbury BC)*, 21/9/05).

Extent of Parking Challenged

Enforcement notices were served and upheld in respect of off-airport parking. Cars were booked-in at a farmhouse and it was alleged this was material change of use. The owner claimed a 10-year right but the inspector failed adequately to deal with this and challenge upheld: *Wedlake v First Secretary* (30/9/05).

Extent of Service Uses

An inspector granted permission for a betting office. The council said that their argument against bunching had not been adequately taken into account. The inspector was entitled to proceed on the written representations and even if these were ambiguous he did not have to order a hearing/inquiry. He had adequately dealt with the matter of bunching and challenge rejected: *Waltham Forest LBC v First Secretary* (3/10/05).

4 or 10 Year Rule?

A condition on a house extension restricted occupation to a specified relative and thereafter only for incidental purposes. The council claimed a breach since 1996 but the inspector quashed the notice as he felt that the latter condition was invalid and 4 year rule applied. However the conditions had to be read together to make them intelligible and this was perfectly legitimate. As this was a breach of condition case the 10 year rule applied. Decision quashed: *Arun DC v First Secretary* (5/10/05).

Status of Sandwich Shop

The use of a property as a sandwich shop constituted use as a victualler contrary to a restrictive covenant dating from 1950. There was nothing to displace the inference that the parties to a lease of commercial property intended the word "victualler" to bear its ordinary general meaning and not the limited and specific meaning of "licence victualler": *Joint London Holdings v Mount Cook* (7/10/05, CA).

PLANNING APPEALS

HOUSING: DESIGNS

Overconfident Design

Demolition of a former public house at London Road, Guildford and replacement with 91 apartments would be of a design overstepping the critical dividing line between legitimate self-confidence and over-statement. The distinctive mono-pitched roofs and four storey blocks at a density of 170dph would be excessively large and out of character with a mature suburban area. Appeal dismissed (Guildford BC, 3/8/05).

House Design Challenge

The council refused to negotiate regarding design. It also had adverse comments regarding flooding and maintained an objection to this despite a risk assessment that said there would be little impact. The appeal at Hermitage Meadow, Clare was allowed with costs because of the council's stance (St Edmundsbury BC, 24/8/05).

Lower Density Supported

14 units at Dudbridge Road, Stroud would be acceptable adjoining a listed building. The council's argument for 20+ units was out of line with PPG3 as the proposed density was 55.9dph. There would be no prejudice to an adjoining site. Appeal allowed (Stroud DC, 30/8/05).

Individual Site Development

14 houses at Pampisford Road, South Croydon could have been part of a wider scheme with the adjoining land. There was no common ownership and the site should be treated on its merits. A suitable development could be formed below the threshold for affordable housing. This was not artificial. No need for an open space contribution due to such areas nearby. Appeal allowed (Croydon LBC, 13/9/05).

Tall Building Acceptable

Apartments up to 12 stories at Sedgwick Street, Homerton E9 would not be out of character with the area and would aid its regeneration. The council's policies were still in a state of flux and small changes in their sieving technique could alter the policy approach to the site. An amended scheme with 50% affordable housing was allowed (Hackney LBC, 19/9/05).

Impact on Area

The erection of apartments at Watling Street, Radlett would be harmful to the character and appearance of the area. However, there would be no harm to neighbours' living conditions or highway safety. Failure to specify a housing association was not fatal as there had been discussion with several of these and it was not necessary to name a particular one. Appeal dismissed (Hertsmere BC, 26/8/05).

Edge of Village Housing

64 units at Wysall Lane, Wymeswold incorporated features valued by the parish council. There was no harm to the conservation area or village character and access adequate. Appeal allowed (Charnwood BC, 5/9/05).

Energy on the Agenda

39 dwellings at Leaffield Road, would have safe access with no harm to badgers or trees and efficient use of land with good design. Public art provision not necessary. Reasonable to have condition requiring energy efficiency. Appeal allowed (Oxford BC, 19/9/05).

RELEASING HOUSING SITES

Even Housing Release

Redevelopment of a pig breeding and research station at Field Lane, Thorpe Willoughby would be just outside a village earmarked for expansion. However 88 dwellings would be equal to the windfall provision for a year and would prevent other sites coming forward. Services were some distance away and despite it being brownfield the appeal was dismissed (Selby DC, 23/8/05).

Competing Sites

There were two sites for affordable housing. That at Old Church Road, East Hammingfield was close to the village boundary. However, the other, supported by the council, was more advanced with a housing association ready to build. On the appeal site the S106 agreement contained errors and inconsistencies and thus preference should be given to the alternative site. Appeal dismissed (Chelmsford BC, 25/8/05).

Impact on Play Space

Use of an informal play area at Burleigh Piece, Linden Village would erode the largest such area in the village and although it had no play equipment it was used for ball games and bicycle riding. Space elsewhere was not sufficient and this land serves an important recreational purpose. Appeal dismissed (Aylesbury Vale DC, 23/8/05).

3 or 4 Affordable Units?

Housing permission had been obtained at Stourton, Shipston-on-Stour for a scheme including 5 affordable units. The housing association withdrew and then offered the company a reduced amount. They then offered only 3 units due to the change in economic circumstances. The inspector thought the figures justified 4 units and dismissed the appeal (Stratford on Avon DC, 13/9/05).

EMPLOYMENT LOSS

Harm to Employment

A wine bar from part of a snooker club at Kingsland Road E13 would result in the loss of employment potential. There was inadequate access for disabled people which could only be provided with harm to the listed building. Appeal dismissed (Hackney LBC, 1/9/05).

No Loss of Employment

4 houses and 5 flats redeveloping a railway maintenance area at Amyard Park Road, Twickenham would not be loss of employment land. There would be no harm to the character or appearance of the conservation area. Adequate mix of house types. Appeal allowed (Richmond-upon-Thames RBC, 1/9/05).

Employment Loss Questioned

Offices and 8 flats at Tudor Road, Hackney E9 Would take employment land but little weight could be given to the UDP as this had not been raised as an issue on refusal. Similar development had taken place nearby but in this case the poor outlook meant dismissing the appeal (Hackney LBC, 31/8/05).

Major Housing Scheme

Redevelopment of RAF Cardington with 970 dwellings and associated uses has been allowed as there was no need for employment reuse. There would be adequate transport infrastructure and 30% affordable housing. Appeal allowed (Bedford BC, 14/9/05).

Large Employment Site

370 dwellings (30% affordable) on 5.6ha at New Hythe Lane, Larkfield would take allocated employment land but would not have a serious implication for the supply of this or prejudice the outcome of the employment land review. Appeal allowed (Tonbridge & Malling BC, 22/8/05).

GREEN BELT

Early Morning Disturbance

Change from an elderly persons' home in the green belt to apartments for agricultural workers at Gravel Lane, Banks could introduce a noisy use disturbing local residents with minibuses leaving at 6.30am and 7.30am. Their fears about the transient occupants were real but it was their likely disturbance that lead to dismissal of the appeal (W Lancashire DC, 16/8/05).

Hospital Replacement Thwarted

Housing at Darenth, Kent would be on a demolished hospital site. This was shown for redevelopment purposes but the proposed footprint would be spread over a wider part of the site making it more intrusive in the green belt. There was no housing need at the present time and other emerging sites were sequentially preferable. Appeal dismissed (Dartford BC, 22/).

RETAIL AND SERVICES

Sequential Test Fails

A 2,433m² non-food retail warehouse at Snipe Retail Park, Ashton-under-Lyne would reduce leakage of spending with a need established. However, there were sequentially preferable sites available. Appeal dismissed (Tameside MBC, 5/9/05).

No Prejudice to Redevelopment

A food and drink use at Imperial Park, Hartcliffe Way would be acceptable as part of a scheme and would act as a catalyst to this. There would be wider regeneration benefits and appeal allowed (Bristol CC, 31/8/05).

MISCELLANEOUS

Motorway Service Area

A new service area at J47, A1 (M) has been approved on the basis that these should be provided at about every 50kms. Other sites would not be available within a reasonable period and this was the best scheme of those submitted (Selby DC, 4/8/05).

Noise & Disturbance Hits

A school extension in two houses at Chardmore Road NI6 would mean pupils and cars intruding into the residential area. There were other schools nearby but this was not the right location. Appeal dismissed (Hackney LBC, 23/8/05).

Green Travel Plan

A condition requiring this at Kettering Venture Park was struck out as the building at 1,275m² fell below the threshold in PPG13 Annex D. Furthermore, much of the surrounding employment had been created without such a plan and there were no local policies to support this. Appeal allowed (Kettering BC, 23/8/05).

Coach Station Expands

Housing adjacent to at Bradford Street, Digbeth was next to a bus station which needed to expand. This should be supported in accordance with the council's policies. Development might impinge on this. Appeal dismissed (Birmingham CC, 25/8/05).

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.

CgMs NEWS

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PLANNING

Basford West, Crewe

Acting on behalf of Freightliner Ltd, CgMs advised that planning permission was not required for Freightliner's new operational building at the Basford West railway marshalling yard as it constituted permitted development under the Town and Country Planning (General Permitted

Development) Order 1995. Freightliner erected the three storey building after advising the Council in its view the development was permitted by Part 17 of Schedule 2 to the Order which allows railway related development required in connection with the movement of traffic by rail. Crewe and Nantwich Borough Council insisted that the “office” development required express permission. However, CgMs supplied additional information to the Council on the detailed operation of the building including relevant case law, which enabled the Council to change its position and agree that the development was permitted by the Order.

For further information please contact Tony Collins at tony.collins@cgms.co.uk

HISTORIC BUILDINGS

The CgMs Historic Building Recording Team have been instructed by Weston Homes PLC to undertake the analysis and recording of Barton Mill, Canterbury Kent. Barton Mill, located on the River Stour, is a predominantly 19th century Mill, historically associated with both paper and flour milling, with elements late 18th century date surviving. Much of the Mill was destroyed by fire in recent years however a number of key elements and ancillary structures remain.

Following a detailed Historic Building Record of the former USAF aircraft Hangars at Greenham Common, CgMs are now finalizing a comprehensive record of the remaining structures. The work has resulted in the full cataloguing of the historic drawing archive, a full photographic record and an a detailed description and analysis of the buildings formerly associated with this infamous Cold War site.

Burberry Store, Regent Street. CgMs were commissioned by Burberry Retail (UK) to undertake a detailed assessment of the Burberry store, part of Heddon House, a Grade II Listed building, in support of planning permission and listed building consent. The assessment appraised the proposed scheme, identifying the impacts to the listed building.

CgMs Historic Building Analysts have been undertaking the recording of the former Drage Shoe Factory (later Gola Shoes) in Bozeat, Northampton, on behalf of Wilby Homes. The factory includes late 19th and 20th century elements and forms part of the wider shoe manufacturing heritage of the Northampton region.

For further information please contact Jon Lowe at jon.lowe@cgms.co.uk

CgMs Success - Appeal won in Historic Town

Built c.1865, Haining Croft is a detached property in private grounds within Hexham Conservation Area. Its last use was as a residential care home. In May 2005 Tynedale District Council refused an application by Millhouse Developments Limited for the conversion of the house and a coach house to 10 residential units, and for the erection of a new building in the grounds containing a further 6 residential units. The application was refused on the advice of English Heritage (and on several other planning grounds) and CgMs provided expert witness at public inquiry on the impacts of the proposed development on the character and appearance of the conservation area. In allowing the appeal, the Inspector agreed with CgMs’ analysis of the proposals, namely that they would preserve and enhance the character and appearance of the Hexham Conservation Area.

For further information please contact Jonathan Edis at jonathan.edis@cgms.co.uk