

PLANNING NEWSLETTER

Issue 1 | October 2004

PLANNING SYSTEM SHAKE UP

Following the acquisition of Anthony Bowhill & Associates by CgMs we are continuing their News Sheet which has become popular with their clients and fellow professionals. We hope that it will be appreciated by a wider audience.

If you require any information about items in the News Sheet please contact Tony Bowhill in the first instance, tel: 01702 551148, email: tony.bowhill@cgms.co.uk or your usual planning contact.

PLANNING POLICY STATEMENTS

These set out the Government's national policies on different aspects of land use planning in England. They are gradually replacing Planning Policy Guidance notes and there are several draft PPSs currently under consultation.

The first PPS to be approved is No. 7: Sustainable Development in Rural Areas.

The key objectives in the countryside are:

- Good quality, carefully-sited accessible development benefiting the local economy and assisting the local environment;
- Strictly controlling new building in the open countryside;
- Priority to re-using previously-developed (brownfield) sites except where these have poor sustainability e.g. remoteness.

One controversial issue is the building of new houses in the countryside. The PPS says that very occasionally the exceptional quality and innovative nature of the design of a proposed, isolated new house may provide special justification for granting permission. Such a design should be truly outstanding and ground-breaking, for example, in the use of materials, methods of construction or its contribution to protecting and enhancing the environment, so helping to raise standards of design more generally in rural areas.

We will be publishing more information on each of the new PPSs in the near future and will circulate these widely to clients and fellow professionals.

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

NORTHAMPTON OFFICE

Wykes Farm
Allens Hill
Bozeat
Northampton NN29 7LW

Tel: 01933 666391
Fax: 01933 664861

FORWARD PLANNING

Two PPSs set out the new development plan system introduced by the Planning & Compulsory Purchase Act 2004 – PPS11: Regional Spatial Strategies and PPS12: Local Development Frameworks.

A regional spatial strategy will include a regional transport strategy and provide a spatial framework to inform the preparation of local development documents, local transport plans and regional and sub-regional strategies and programmes that have a bearing on land-use activities.

Preparation of an RSS is the responsibility of the Regional Planning Board part of the Regional Chamber. The RPB is composed primarily of representatives from constituent authorities but with additional independent members.

An RSS will be a statutory document forming part of the development plan system. Although it will not identify precise locations for development nevertheless its influence in steering growth to particular areas will be of the utmost importance.

Complementing an RSS will be Local Development Frameworks prepared by District Councils. These will set out in detail areas for development, mirroring to some extent existing local plans although not containing such detailed information.

The LDF will not necessarily be one document but may be a folder of documents covering:

- The core strategy
- Site specific allocations of land
- Area action plans (where needed)

A proposals map illustrating the spatial extent of policies must be prepared and maintained to accompany all development plan documents.

Preparation of an LDF is preceded by a statement of community involvement which shows how the community will be involved and should take about 12 months to prepare if an independent examination is required. Alongside this the development plan process will be started with an indicative timetable of 3 years given for all stages.

Inevitably there will be an inquiry into the plan and the Inspector's recommendations will be binding on the authority. Once adopted the plan will then be monitored and reviewed so as to be swiftly updated as events change.

Developers, landowners and occupiers will need to be involved at all stages with the development plan process. They are part of the local community and will need to participate in the early stages of the plan. Statutory consultation on the plan will be a minimum of six weeks giving only a narrow window to object/comment and thus ensure a place at the public inquiry.

CgMs will be monitoring the new plans as they begin to emerge and advising clients about their implications for particular sites. Please discuss your requirements with any of the Directors so that early involvement in the new system can be ensured.

RENEWABLE ENERGY

Draft PPS22 considers planning aspects rather than the broader issues as to the use of renewable energy. It covers energy flows that occur naturally and repeatedly in the environment – from wind, the fall of water, movement of the oceans, from the sun and also from biomass.

The guidance covers technology such as onshore wind generation, hydro, photovoltaics, passive solar, biomass and energy crops, energy from waste (but not energy from mass incineration of domestic waste), and landfill and sewage gas.

The PPS looks at locational considerations including internationally designated sites, national designations such as SSSIs and AONBs, Green Belts and buffer zones and local designations around important sites.

The PPS identifies the visual effects of such development, likely noise and odour and particular implications of biomass projects and wind turbines.

Of particular interest is the fact that planning authorities may include policies in local development documents that require a percentage of the energy used in new residential, commercial or industrial developments to come from on-site renewable energy sources. These targets should apply where the installation of renewable-energy-generation equipment is viable given the type of development proposed, its location and design.

Consultation finishes on 30th January 2005. If you would like CgMs to make representations on your behalf please contact one of the Directors.

BIODIVERSITY AND GEOLOGICAL CONSERVATION

Draft PPS9 reiterates the Government's vision for conserving and enhancing biological diversity in England and sets out the broad aim that planning, construction, development and regeneration should have minimal impacts on biodiversity and enhance it wherever possible. Internationally designed sites as well as sites of special scientific interest and local sites should be fully taken into account as well as ancient woodlands and networks of natural habitats.

Consultation continues until 9th December and if you would like to make any comments please contact a Director.

PLANNING APPEALS SLOW

You may have noticed that the time for completing appeals is becoming ever longer. Over the past three years appeals have risen 9.2%, 10.6% and 21.5% respectively giving a 47% rise since 2000. The Planning Inspectorate have sophisticated monitoring and prediction of appeals but seem to have been caught unawares by this rapid increase.

As a result currently lodged written appeals are now taking 50 weeks to get a site visit and with the decision after this it will often be over a year before the result is known. There are similar delays in arranging inquiries and hearings. Although contract (part time) Inspectors are being recruited it is likely that the system will remain in a poor state for some time to come.

If you are experiencing difficulty with an appeal please do not hesitate to contact one of

the Directors and we will see if a speedy solution can be found.

GOVERNMENT TRANSPORT STRATEGY

A long-term strategy for a modern, efficient and sustainable transport system backed up by sustained high levels of investment over the next 15 years has been launched by Transport Secretary, Alastair Darling. Transport is at the core of land use strategies. Growing congestion means that new housing and industry will be curtailed and potential growth limited.

Britain's transport networks will benefit from average annual increases of 4.5% over the next three years, from £10.4bn this year to over £12.8bn by 2007, as well as additional spending of 2.25% above inflation each year through to 2015.

The Future of Transport White Paper looks at the factors that will shape travel and transport over the next 30 years and sets out how Government will respond to the increasing demand for travel, maximising the benefits of transport while minimising the negative impact on people and the environment.

LIVE/WORK UNITS

These do not neatly fall into any planning use category. The temptation often is to live in them rather than carry out a mixed use.

This approach has been supported in a recent County Court decision where the judge held that the term live/work was "vague and arguably ambiguous" and should be interpreted broadly to mean "live and/or work".

This decision was made in the context of obtaining a new lease under the Leasehold Reform, Housing and Urban Development Act 1993 but will have obvious implications for the planning system. Already the London Borough of Hackney has served a number of contravention notices on properties where it is felt that the work element is missing. The outcome of these proceedings is awaited.

WASTE MANAGEMENT LAW

International lawyer Richard Hawkins and Heidi Shaw have produced the Practical Guide to Waste Management Law (Thomas Telford publishing, £35).

They look at the legislative history and then the classification of waste as well as the administrative bodies who deal with this. Waste minimisation, recycling, bioprocessing and recovery as well as energy recovery, incineration and landfill are dealt with. The role of the planning system is examined as well as integrated pollution prevention and control along with environmental crimes.

Health and safety in the industry is covered as well as the movement of waste. This is a thoroughly commendable book on a difficult topic which is increasingly affecting all of our lives.

PLANNING LAW

DECISIONS CHALLENGED

HEALTH RISK MINIMISED

A mobile phone mast satisfied international safety guidelines but the Inspector dismissed the appeal as the mast's beam would be across two primary schools. The decision has been quashed as there would be no material harm to living conditions including young children because the guidelines were met: T-Mobile -v- First Secretary (24/6/04).

WIND TURBINES HARM PARK

Two groups of turbines were proposed next to a historic parkland and ancient monument and would adversely affect them. The company claimed only one group would cause such harm and this had influenced the Inspector regarding the second group. The court held he was entitled to come to an overall conclusion and dismissed the challenge: Community Power -v- National Assembly (15/6/04).

USED OR UNUSED PROPERTY

In dismissing a listed building appeal for a link between two gatehouses the Inspector said that one of these was occupied and in use. In fact only minor work had been undertaken in anticipation of a permission under delegated powers but it had to go to the committee because of objection and was refused. The decision was quashed as the Inspector had not taken into account the building's potential deterioration if the appeal were dismissed: Thompson -v- First Secretary (16/6/04).

SIGNIFICANT TRAFFIC CONGESTION?

Two flats without parking were dismissed at appeal because of alleged parking congestion. The council's statement for the appeal was deficient but it was clear they were concerned about traffic. The Inspector was aware of this and dealt with the matter satisfactorily. Challenge rejected: Braeside Developments -v- First Secretary (21/6/04).

RESIDENTS' HUMAN RIGHTS

A 20 storey tower next to Tate Modern did not infringe such rights as the loss of privacy and light etc. had to be balanced against the advantages of the scheme. The Inspector had correctly done this although he had not specifically mentioned the principle of proportionality. Challenge dismissed: Lough -v- First Secretary [2004] PLSCS 170 (CA).

CRITICAL FLOODING ISSUE

In reconsidering an appeal the Inspector looked solely at the flooding issue and found the scheme unacceptable. However, he had not fully considered the existing flood defences nor the agreed flood-risk assessment or the unchallenged expert evidence. Decision quashed: Thomas Bates & Son -v- First Secretary [2004] PLSCS 172.

PARAMOUNT HIGHWAY CONSIDERATIONS

At appeal the highway authority withdrew its objections because of proposed road widening. However, third parties still objected and argued that the X distance should be 4.5m instead of 2.4m accepted by the authorities. The Inspector selected 2.4m but gave no cogent reasons for this despite the objector's evidence. Decision quashed: Ashton -v- First Secretary (19/7/04).

WITHOUT MERIT AND LATE

Challenge to an Inspector's decision was outside the six week limit. Also the rival developer was a "complete stranger to the application site" and a local resident only appeared because of the financial support given by the commercial challenger. Challenge rejected: Morbaine -v- First Secretary (19/7/04).

RETAIL FALLS TO BIASED CHAIRMAN

A planning application for retail development was under consideration and the planning committee chairman phoned an objector to discuss the matter and threatened a CPO on his property if he did not sell to the developer. This constituted bias and he did not have an open mind on the application. It meant quashing the decision but complaints about the EIA procedure, failure to serve certain notices, procedural errors and a poor officers' report were rejected: R(Ghadami) -v- Harlow DC (30/7/04).

UNFAIR PLANNING DECISION

Where there was a dispute as to the number of votes cast in a meeting of a planning committee to which no statutory or procedural rules governing the meeting applied, the court had jurisdiction to quash the decision where, on the facts, what had happened amounted to procedural unfairness. Thus a dispute over the counting of votes and differing evidence as to what happened vitiated the decision: R(Tromans) -v- Cannock Chase DC (Times 25/8/04).

CLIFF PROTECTION HALTED

Stabilisation of the cliffs at Brighton was necessary and the council proposed that bolts should be used. However, a condition in the permission would potentially allow wire meshing which would be unacceptable. Decision quashed: English Nature -v- First Secretary (23/7/04).

ANIMAL LABORATORY CHALLENGED

The Science Minister wrote to an inquiry stating the laboratory was in line with national policy. This led to allowing the application against the Inspector's recommendation. Activists argued this was procedurally unfair and also the permission did not restrict laboratory use to animals only. Challenge rejected: National Anti-Vivisection Society -v- First Secretary (30/7/04).

COMPASSIONATE REASONS OVERLOOKED

In dismissing an appeal for an ethnic minority training centre the Inspector said there were no compassionate reasons but extensive ones have been put forward at the inquiry. Failure to deal with these meant quashing the decision (11/6/04).

RECONSIDERING APPEAL

An appeal was dismissed but the decision quashed. The second Inspector looked at the matter afresh and felt that the "fallback" situation did not apply contrary to the first Inspector's conclusion. The second Inspector was perfectly entitled to "decide the case anew" and that, "in fact, had been under a duty to do so": Exmouth Marina -v- First Secretary (17/6/04).

ENTIRE DECISION QUASHED

Where an Inspector had dismissed an appeal on one ground only but on another ground had found in favour of the appellant it was right to quash the entire decision so that all matters could be reconsidered: Qaadria Jilanni Trust -v- First Secretary (10/6/04).

RETAIL CHALLENGES

RETAIL WAREHOUSE SHOP

A retail warehouse contained a condition that it was to be so restricted and for no other purpose within Class I of the Use Classes Order 1972. This did not restrict the use to bulky goods (as was intended) and a lawful development certificate was rightly granted on appeal for an open AI use: Medway Council -v- First Secretary (24/6/04).

QUANTITATIVE NEED ESTABLISHED

Despite this the First Secretary disagreed with his Inspector that there was a quantitative need for the store's extension. He disagreed that the estimated growth in convenience expenditure proved this. However, he did not give detailed reasons for the disagreement and the decision was quashed: Sainsbury's -v- First Secretary [2004] PLSCS 165.

DEMOLISHING BUNGALOW

Permission had been granted for a new dwelling provided a bungalow was demolished. A new dwelling had been built and sold while the bungalow still remained. An injunction to remove this has been upheld: Sedgemoor DC -v- Gosbee (9/9/04, CA).

TOWN CENTRE LOCATION

A challenge to an M&S permission in a Yorkshire town centre has been rejected. Although it was outside the shopping area it was still in the town centre and not edge of centre: R(Co-operative Group) -v- Rushcliffe BC (28/7/04).

CONSERVATORIES AT NURSERIES

The sale of conservatories and double glazing at a nursery/garden centre in Derbyshire have been ruled part of the AI use. Appeal allowed.

PLANNING PROCEDURES

PLANNING OBLIGATION MISUNDERSTOOD

Granting planning permission for a retail scheme the council misunderstood the import of a planning obligation restricting use of the site to that of "a retail warehouse for the storage and distribution of durable goods". The decision was therefore quashed: R(Legal & General) -v- Rushmoor BC (8/04).

IMPACT ON TUBE

Failure to notify a development scheme or advertise it in a local newspaper lead to its quashing: London Underground -v- Hackney LBC (1/9/04).

POSTPONING INJUNCTION

A radio mast was put in position without permission and an injunction secured for its removal. However, although operated by a commercial company it was the mainstay of the police's activities in an area and the injunction was reluctantly postponed to allow an alternative site to be found (7/6/04).

FAILURE TO ADDRESS INSPECTOR'S REPORT

An Inspector recommended land be excluded from the green belt and allocated as a reserve site. The council summarily rejected this and their reasons were held to be deficient. This part of the plan was quashed: Grant-Nicholas -v- Bromsgrove DC (14/6/04).

ENFORCEMENT

BREAK IN IMMUNITY PERIOD

A property in London was used for more than ten years as temporary sleeping accommodation and was thus immune. However, after this there was a letting for 155 days and thereafter temporary lets against which the council enforced. They were entitled to do this as the letting interrupted the temporary activities: Fairstate -v- First Secretary [2004] PLSCS 169.

ANCILLARY USE REMOVED

Car repairs and storage were ancillary to an illegal bungalow. Injunction obtained to remove dwelling although the enforcement notice did not specifically mention the car business. This was ancillary and included within the general terms of the notice: Maldon DC -v- Hammond (30/7/04).

ONE OR FOUR SITES?

One permission existed for mining on four sites but it was held that each site had its own permission. Where two sites had been dormant over a long period they required further permission and new conditions to restart: Stancliffe Stone Co. -v- Peak District NPA (22/6/04).

GYPSIES

GREEN BELT PRECEDENT?

A gypsy caravan appeal in the green belt was dismissed because of harm and lack of very special circumstances. Also it would create a precedent. Arguing from earlier cases it was said this was not a relevant consideration. However, common sense dictated that others would follow if the appeal was allowed and this matter was rightly taken into account. Also the applicant's rights under Article 8 had been considered and a temporary permission was not warranted given the eight years planning history of the site: Wood -v- First Secretary (11/6/04).

GYPSY'S CIRCUMSTANCES

Although there was some harm in a caravan site the personal circumstances such as

closeness to school and services meant allowing the appeal. The council said the Inspector had misunderstood a policy applicable to a designated site but this was not so. The Inspector had carried out the correct balancing exercise. Challenge rejected: Tewkesbury BC -v- First Secretary (1/7/04).

UNLAWFUL OCCUPATION QUESTIONED

Lengthy occupation of a site by a gypsy without permission was not expressly mentioned by an Inspector but he had rehearsed the entire planning history. The very special circumstances were the applicant's chronic ill health and the Inspector struck the right balance. Challenge rejected: S Bucks DC -v- Secretary of State [2004] PLSCS 164 (HL).

GYPSIES IN FLOOD PLAIN

Because of personal circumstances gypsies were granted permission for a site in a flood plain. However, "wholly exceptional" circumstances had to be shown though there were no other sites available and this one had been developed in the past. These were not sufficient to overcome the strong policy presumption against development. Decision quashed: Newark & Sherwood DC -v- First Secretary (9/7/04).

MISCELLANEOUS

SUBSTANTIAL PREJUDICE?

A rival developer challenged a scheme because of a defective screening opinion for an environmental assessment. It was held that he had not demonstrated "substantial prejudice" under the 1999 Regulations so as to challenge the grant of planning permission: R(Younger Homes) -v- Calderdale MBC (2/7/04, CA).

BURDEN OF PROOF

In alleging that a highway existed the Inspector accepted this would be by "demonstrating a reasonable allegation" rather than the normal civil burden on the balance of probabilities. Decision quashed: Todd -v- Secretary of State (22/6/04).

BREACHING EXCLUSIVITY AGREEMENT

The Co-op agreed to give a prospective purchaser exclusive rights for seven weeks and then to go ahead. However, in the meantime they issued particulars to another interested party who subsequently completed after the period expired. The first purchaser would not have proceeded and was not entitled to a loss of profits claim but an indemnity for abortive costs incurred during the negotiations: Dandar Holdings -v- Co-op Retail Services (23/6/04).

RIGHT OF WAY OVERLOOKED

In purchasing a development site a CPO over the property was not noticed and the claimant said they would not have purchased the site. However, the court held they would have gone ahead and obtained a £300,000 price reduction. This was the extent of the solicitors' negligence: Asiansky Television -v- Bayer Rosin (11/6/04).

PLANNING APPEALS

RETAIL: IMPACT

POOR RETAIL CATCHMENT

An Inspector recommended a retail park at Northfield Avenue, Kettering but the ODPM has rejected this as the catchment area was too widely drawn and therefore would not support the expenditure. There was insufficient flexibility in assessing alternative sites and it was not generally served by a variety of means of transport (Kettering DC, 17/5/04).

ONE STORE ACCEPTABLE

A B&Q has been allowed at Shroggs Road, Halifax and refused at Cripplegate, Halifax as there was a quantitative need for one additional store. The alternative scheme would be unacceptable due to harm to the Conservation Area and a Grade I listed church. Application approved (APP/A4710/A/03/1124442, Calderdale MBC, 11/6/04).

RELOCATION OF TESCO'S

8,000m² store plus 600 parking spaces on the Shrewsbury cattlemarket site would be a relocation. Company differentiated between main bulk food shopping and top-up shopping needs to show that there was a quantitative need. It was inappropriate to disaggregate the convenience and comparison goods floorspace. The sequential test was satisfied. Application approved (Shrewsbury & Atcham BC, 22/7/04).

DIY NEED UPHELD

A Wickes store at Winterstoke Road, Weston-super-Mare has been allowed 1km west of the centre. There was a clear quantitative need for the scheme and a comprehensive sequential assessment had been carried out. There was also potential for linked trips to other warehouses (N Somerset DC, 5/8/04).

RETAIL PARK EXTENSION

A 5,760m² retail warehouse park extension at Spire Road, Washington would claw back comparison goods expenditure and not harm the town centre 2km away. Alternative site unavailable although sequential test not robust. Accessible by a range of transport. Units to be at least 929m². Application approved (Sunderland BC, 29/7/04).

ASDA AND TESCO HALTED

These two stores at Newport Road, Middlesborough of 8,826m² and 17,564m² respectively exceeded convenience floorspace required in the town. Asda would relocate from a district centre and there was no evidence why they could not continue trading to support its role. Tesco had not properly carried out the sequential test disaggregating between convenience and comparison goods. Applications rejected (Middlesborough MBC, 5/8/04).

B&Q HITS PREFERABLE SITES

A B&Q at Darlington Road, Northallerton would adversely impact on two preferable sites in a North Yorkshire market town. The council's and appellant's retail assessments were incompatible and the Inspector decided there was insufficient capacity for three stores. The other sites were sequentially preferable. Appeal dismissed (Hambleton DC,

24/8/04).

SAFEWAY EXTENSION

On a retail park at Stoke Road, Hinckley designated as a local centre the extension would not harm nearby retailing. There was a quantitative and qualitative need although this was not a true district centre in terms of PPG6. Travel by car would be reduced. Application approved (Hinckley & Bosworth BC, 22/6/04).

RETAIL: SEQUENTIAL TEST

LIDL IS INFLEXIBLE

A 1,572m² store at Twenty Row PH, Leasowe Road would be on the edge of the urban area. It was claimed that a site for new shops including one of 1,300m² in a district centre was not suitable as another retailer was taking this. While there was a quantitative need this should be satisfied in the centre and the company had not displayed the necessary flexibility for the sequential test. Appeal dismissed (Wirral MBC, 29/4/04).

IKEA LOSES OUT

An Ikea store at Tiviot Way, Stockport on J27 M60 motorway would be 28,000m² with 1,400 parking spaces. It was argued that a showroom, a marketplace and a warehouse were required but this indicated inflexibility in the sequential test. Only nearby town centre sites had been evaluated and a wider search should have been made. Development was too large for the locality and would be an uninspiring feature. Not accessible by a range of transport. Application rejected (Stockport MBC, 2/8/04).

TESCO STORE EXTENSION

At 288m² this would increase the total floorspace to 2,498m² on an out-of-town retail park at Teeside. While there might be a qualitative need, the quantitative aspect had not been fully considered and there had been no effective search for town centre sites for the entire store rather than the addition. Floorspace should strengthen the town centre. Too far for linked trips by foot. Bus services were not extensive. Appeal dismissed.

RETAIL: DESIGN

ALDI STORE POOR DESIGN

The store was next to a high quality health centre in a Cheshire town. Despite materials found in the locality the relatively low building would be alien, obtrusive and inflexible in its use of materials and the general concept and was thus unacceptable. Appeal dismissed.

DESIGN OF RETAIL WAREHOUSE

A store abutting the River Dee bridge at Garthdee Road, Aberdeen would be similar in scale and form to others immediately adjacent but its functional design would not have the quality necessary for this gateway site. Its impact was on the bridge which was listed. Appeal dismissed (Aberdeen CC, 22/6/04).

SOMERFIELD -v- TESCO

At Station Road, Cullompton the site already had permission for retail and part was to be developed by Tesco. On the other part Somerfield proposed a store but the Inspector said this would lead to over-provision. Also they had not carried out a flood assessment risk. Appeal dismissed (Mid-Devon DC, 21/6/04).

RETAIL: EMPLOYMENT SITES

EMPLOYMENT TO RETAIL

A 9,755m² retail warehouse in Newcastle permitted. The employment site was unlikely to go ahead. There was a need for the retail floorspace but the sequential test had not been properly applied and had been dealt with on the format approach. However, application approved.

EMPLOYMENT SITE GOES RETAIL

The land at Watling Street, Gillingham was allocated for employment but due to slow take up and the availability of sites elsewhere was unlikely to be so developed in the near future. It was suitable for a B&Q warehouse. A large number of other sites had been examined with only one in the town centre being remotely suitable. However, even in a disaggregated form it would not be suitable and was not available. Application approved (APP/A2280/A/03/1114983, 14/6/04, Medway C).

B&Q GET GREEN LIGHT

A B&Q unit with garden centre on vacant industrial buildings at Slatyford Lane, Newcastle met a quantitative and qualitative need with the sequential test satisfied. There would be no harm to the vitality or viability of nearby centres and this was a sustainable location. Application approved (Newcastle-upon-Tyne, 12/8/04).

RETAIL: TESCO EXPRESS

TESCO EXPRESS

The proposal including a pfs in a West Midlands shopping centre would be acceptable in size and scale and would not attract trips from outside the centre's catchment. Appeal allowed.

TESCO INCREASES DRAW

A Tesco Express in Essex would have a catchment of 1,500m as against the council's policy limit of 800m for a local store. It would draw trade to the locality but would unacceptably hit local shopping centres. The sequential test had not been properly applied. Appeal dismissed.

HOUSING: HARM TO LOCALITY

NOISY STUDENTS ANNOY?

Six blocks for up to 632 students in a Cardiff suburb would be close to terraced property. However, there would be separation and with 24 hour management and a complaints procedure problem students could be expelled. The new accommodation was urgently required and would relieve pressure on the housing stock. Appeal allowed.

HARM TO AREA'S APPEARANCE

42 key workers flats redeveloping a school at Greenway, Chesham would make efficient use of land at 69dph but out of keeping with the character and appearance of the area. Harm due to scale and mass particularly affecting the residential amenity of nearby houses. Appeal dismissed. (Chiltern DC, 10/6/04).

POOR HOUSING HARMS BATS

Redevelopment of two houses at Andover Road, Newbury by 14 dwellings would be visually intrusive because of their massing, bulk and height and harm the character and appearance of the streetscene. The layout was unneighbourly and unsympathetic to adjoining residents' amenities. Further it would reduce foraging for local bats and this added weight to the objections. Appeal dismissed (W Berkshire DC, 23/6/04).

HOUSING: LOCAL PLAN ISSUES

LINK ROAD DECISIVE

25 houses on an allocated greenfield site were acceptable in principle but were on the route of a proposed link road in the emerging local plan. It was desirable to protect this in the interim. Appeal at Gorslas, Nr Cross Hands dismissed (Carmarthenshire CC, 11/6/04).

GREENFIELD -v- BROWNFIELD

A 4.2ha greenfield site in Derbyshire allocated in the local plan for housing should go after brownfield sites which would meet current needs. The 1990 allocation predated PPG3 and while the site was in a sustainable location it was necessary to bring forward brownfield sites first. Appeal dismissed.

CONTRIBUTIONS QUESTIONED

Flats at Lady Margaret Road, Sunningdale would be out of character with the area but the council did not fully take into account emerging decisions and nearby blocks. Contributions towards public open space and education but not highways and public transport as there was no specific highway requirements in the area nor was there an identified need for additional facilities at the library or a youth counselling scheme more than 1.5km away. The council's stance on character of development was unreasonable and costs awarded but not in regard to its attitude on contributions. Appeal allowed (APP/T0355/A/03/1131591, Windsor RBC, 11/6/04).

ARCHAEOLOGICAL INVESTIGATION

The importance of finding remains was sufficient to require a prior evaluation rather than relying on an investigation condition. Appeal at Charters Road, Sunningdale dismissed (Windsor RBC, 20/7/04).

HOTEL VIABILITY QUESTIONED

24 flats in a hotel at Jevington Gardens, Eastbourne would mean a loss of important tourist accommodation in a secondary area.

With high refurbishment costs its future was unviable. Appeal allowed (Eastbourne BC, 6/8/04).

EMERGING PLAN CHANGES STATUS

22 dwellings on a Cheshire site would accord with the local plan but the emerging plan put this outside the settlement boundary. A cul-de-sac scheme with large dwellings would create a hard edge to the urban area and was therefore unsuitable. Appeal dismissed.

HOUSING: RESTRAINT POLICIES

RESTRAINT POLICY BITES

In Worcestershire it was claimed that the 2006 housing target had already been exceeded and would grow to 390 dwellings by 2011. The cumulative impact of single plots would exacerbate this and therefore the appeal for one house was dismissed.

HOUSING OVER-SUPPLY THWARTED

17 flats at Barrington Road, Altrincham would replace a dilapidated eyesore and this amounted to an exception to the draft SPG restricting an over-supply of housing land. Appeal allowed (Trafford MBC, 21/6/04).

ROUNDING OFF VILLAGE

Residential development on 2.9ha at Myrtle Road, Hethersett would be in a sustainable location on the edge of a village. Appeal allowed (S Norfolk DC, 1/7/04).

HOUSING: EMPLOYMENT LOSS

EMPLOYMENT LOSS STOPS FLATS

13 flats from offices in a conservation area would mean an unacceptable loss of employment floorspace with harm to residential amenity due to noise. Appeal at Fairview Drive, Redland dismissed (Bristol CC, 2/6/04).

EMPLOYMENT HARM OUTWEIGHED

120 dwellings on an employment site at Butterley Hill, Ripley would be harmful due to loss of jobs but this was outweighed by the poor prospects of regeneration and insufficient demand for such units. This was a sustainable location with no harm to the surroundings. Appeal allowed (Amber Valley BC, 10/6/04).

INDUSTRIAL GOES RESIDENTIAL

13 homes at Rushes Road, Petersfield would be in an accessible and sustainable location close to a railway station and services. Re-use for residential would accord with emerging local policies while there was little demand for industrial use and low unemployment. Appeal allowed (E Hampshire DC, 18/6/04).

SUPERMARKET FOR FLATS

Three vacant ground floor offices at Mill Street, SE1 as a supermarket would not harm the

conservation area or residents' amenity. No harm due to loss of employment. Appeal allowed (Southwark LBC, 24/6/04).

HOTEL IS UNSUSTAINABLE

Change from an office to a hotel in West London was held to be a poor location not in a town centre. As use of the small rooms was inefficient for offices the hotel would make a good use but this did not overcome the main problem. Appeal dismissed.

ENABLING DEVELOPMENT

120 dwellings in Derbyshire on a factory site would enable a company to regroup on another part of the site and continue employment in the area. There was already sufficient employment land elsewhere. Appeal allowed.

LOSS OF OFFICES

14 flats from a vacant office in Station Road, Chesham was acceptable due to limited demand for the accommodation and the provision of smaller dwellings. Appeal allowed (Chiltern DC, 5/7/04).

HOUSING: AFFORDABLE

CARE HOME EVADES AFFORDABLE HOUSING

Communal sheltered accommodation with all meals etc. taken together was an institutional use (C2) and not new housing. Thus affordable housing was not required. At Church Road, Fleet the site was in a residential area but opposite major buildings and thus its bulk was acceptable and would not harm local residents. Appeal allowed (APP/N1730/A/03/1131839, Hart DC, 4/6/04).

AFFORDABLE HOUSING CONTRIBUTION

In a Surrey sheltered housing scheme it was argued no affordable accommodation should be provided based on high values. The company should make a contribution of £442,000 to provide 13 units elsewhere paid 18 months after the scheme commenced to allow the necessary revenue to be generated. Appeal allowed.

ADJOINING AFFORDABLE HOUSING

A condition was purportedly imposed on adjoining land at Bridge Hall Lane, Bury to provide affordable housing. Although this was in the same ownership these nearby sites were being developed independently. As the appeal site was below the relevant threshold affordable housing could not be demanded. Appeal allowed (Bury MBC, 12/7/04).

SITE CAPACITY QUESTIONED

There was no objection to 14 flats at Pampisford Road, South Croydon at 49 dph but the site was capable of providing at least 15 flats bringing it within the affordable housing threshold. Appeal dismissed (Croydon LBC, 7/7/04).

HAPPY KEYWORKERS

Redevelopment of a pfs at Chiswick High Road, W4 for 37 flats was over the affordable housing threshold and no economic costs to prevent this so 30% keyworkers secured by condition. Appeal allowed (Hounslow LBC, 18/8/04).

SERVICES

AMUSEMENTS NOT ENTERTAINING

An amusement centre in the primary town centre area at High Street, Rhyl between the job centre and a card shop would be appropriate as it had been vacant for two years. There were no suitable alternative premises in the entertainment zone and whilst this would be the first such use in the shopping area the appeal was allowed (Denbighshire CC, 8/6/04).

KFC DRIVES ON

2km from Penzance town centre this site at Heliport Link Road, Penzance would not constitute a key town centre use or a major travel generator. Need did not have to be established and as there were no sequentially preferable sites the appeal was allowed (Penwith DC, 26/7/04).

STARBUCKS COFFEE REJECTED

An enforcement notice at Tranquil Vale, Blackheath, SE3 alleged change from an A1 unit. The company said 59% of trade was take-away but council survey estimated this at 40%. Thus a mixed A1/A3 use. The shop did not draw people into the centre but merely served local needs. Appeal dismissed (Lewisham LBC, 27/7/04).

SCHOOL OFFICES

A former church hall used as an independent school required offices and these were allowed in an adjoining house taking up only two rooms thereby permitting the residential use to continue in accordance with planning policy at Exeter.

STAFF CARS DISCOURAGED

Increasing child numbers from 40 to 50 at a nursery in the West Midlands has been allowed on a temporary basis subject to implementation of a management plan discouraging staff and parents for using cars. Appeal allowed.

COUNTRYSIDE/GREEN BELT

BUSINESS -v- RESIDENTIAL USE

Conversion of 3 barns to residential at Cottons Farm, Wethersfield was acceptable in principle although there had been no marketing exercise for BI but an agent and the owner of another commercial site had indicated little demand in this relatively remote location. However, the conversion scheme did not respect the listed buildings and appeal dismissed including that for a barn which had collapsed and where costs were awarded because its re-erection would mean a new building in the countryside (APP/Z1510/A/03/1130099, Braintree DC, 14/7/04).

ENCROACHMENT INTO GREEN BELT

33 flats and 23 houses on a semi-derelict cotton mill in Derbyshire would go outside the designated major development area. This would be into the green belt and was unacceptable. Appeal dismissed.

OUTSTANDING QUALITY HOUSE

On a 24ha remote Oxfordshire site an appeal has been allowed for a truly outstanding house consisting of large and small bays in a somewhat Palladian style. While the landscaping scheme was not so detailed this did not detract from the architecture. Appeal allowed.

ENCOURAGING AIRPORT GROWTH

The council had encouraged expansion at Wolverhampton Business Airport. This meant allowing an appeal for new offices to replace existing cramped space in the green belt.

MISCELLANEOUS

SECURITY OF GAS SUPPLY

The storage of gas in underground caverns at Byle, Cheshire was frowned on by an Inspector but the Secretary of State felt that this would increase security of the gas supply and would meet the supply-demand gap consistent with national energy policy. Appeal allowed.

HARRODS' EVENING FUNCTIONS

A proposal to use the ground floor food halls and fourth floor restaurant to accommodate evening functions has been rejected as this would occur outstanding normal trading hours and be detrimental to surrounding residents.

INADEQUATE DESIGN REJECTED

Although Croydon Gateway site could be utilised for major offices and residential the outline scheme did not sufficiently show how this would be developed and future building controlled. Application rejected (Croydon LBC, 21/7/04).

INCONGRUOUS PHONE MAST

A 15m streetworks column at High Road, Woodford Wells would be highly conspicuous on all approaches to the junction and harm the narrow conservation area. It would also affect the listed Bancroft School. Appeal dismissed (APP/W5780/A/04/1140534, Redbridge LBC, 13/8/04).

SHELL CENTRE SPROUTS MIXED USE

Re-use of the building for offices, retail and leisure was acceptable although no sequential test had been carried out in respect of the leisure and retail elements. Views of the river would be maintained and the new build would not harm the conservation area or the listed building. Application approved.

□
pr□
is taken on any particular problem.