

# PLANNING NEWSLETTER

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## INTERESTING CASES AND DECISIONS

CONTENTS	
p.2	<b>PLANNING LAW</b>
p.2	Legal Challenges
p.3	Appeal Challenges
p.4	Planning Challenges
p.5	Miscellaneous
p.6	<b>PLANNING APEALS</b>
p.6	Housing: Planning Issues
p.7	Housing: Planning Gain
p.7	Housing: Design
p.9	Housing: Land Supply
p.9	Affordable Housing
p.10	Countryside
p.11	Flooding/Contamination
p.12	Retail
p.12	Services & Retail

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## **PLANNING LAW**

### **LEGAL CHALLENGES**

#### **Inadequate Discharge of Conditions?**

A quarrying permission was granted on appeal with conditions relating to landscaping, drainage and noise to be discharged. The landscaping plan failed to show adequately the existing vegetation and thus the permission discharging it was invalid. For the other two conditions the information was adequate. Further, a EIA at permission stage was adequate and did not require a further one to discharge the conditions: R (Anderson) v Bradford MDC (24/11/06).

#### **Modification to Agricultural Building**

Prior approval was sought for an agricultural building. The council wanted more details but had sent the letter to the wrong address. The building was erected and its purpose was questioned. An enforcement notice was served and upheld. However, the inspector should have considered whether the building could have been modified in terms of planning policy and amenity which he failed to do. Decision remitted for further consideration: Tapeccrown v First Secretary (21/12/06, CA).

#### **Noisy Night Club Annoys?**

Permission for flats was granted on appeal adjacent to a night club. The owners of this contended that their operation would be jeopardised by residents' complaints. The inspector had carefully considered the noise issue and imposed relevant conditions. He had looked fairly at all the evidence and his judgement could not be faulted. Challenge rejected: Luminar Leisure v First Secretary (8/11/06).

#### **Gypsies Harm Landscape**

The possibility of a precedent being established by granting gypsies even a temporary permission on the site was a material factor which the Secretary of State was entitled to take into account. He had dealt fairly with the health concerns of the appellants and overall his conclusion could not be faulted. Challenge rejected: McCarthy v Secretary of State (20/12/06).

#### **Temporary or Permanent Structure?**

A substantial building was erected on a site to house materials and implements for an adjoining building project. Temporary buildings for this purpose were permitted by the GDPO but the council had said this was a permanent building and served an enforcement notice. This was upheld as the inspector felt the building was permanent and did not accept the appellant's explanation. Challenge rejected: Wilsdon v First Secretary (6/11/06).

#### **Motorcycle Use Interpreted**

An application for a lawful development certificate of motorcycle use on a farm was rejected as this was partly for individual use as well as events. Further, there had been a break of 18 months because of foot and mouth disease and therefore the requisite 10-year period had not been satisfied. Challenge rejected: Miles v National Assembly (22/1/07).

## **Dogs: Owner's or Commercial Use?**

Permission was granted for kennels with a condition that the dogs housed should be only those of the owner. He was in fact a hunt master and therefore had many dogs. The council served an enforcement notice on the basis that a commercial kennel was being run and this was upheld. However a challenge has been successful as it was not clear on what information the inspector came to his decision: *Wallis v National Assembly* (8/11/06).

## **Workers' Accommodation Axed**

An appeal to retain temporary caravans for the T5 Heathrow project was rejected on appeal. It was said that the inspector had not taken fully into account the need for workers' accommodation but he had gone through all the evidence and was entitled to make a judgement on this bearing in mind the green belt location. Challenge rejected: *Villa Ria Trading v First Secretary* (8/12/06).

## **Poly Tunnels Require Permission**

Large areas of poly tunnels for soft fruit cultivation were held to require planning permission because they were permanent structures (for up to nine months) fixed into the ground. Furthermore, they were not covered by the temporary buildings provisions of the GPDO. Also large areas of caravans required permission as they were not exempt under the GPDO as being required for a particular season bearing in mind that they were occupied for nine months and then taken off the site but leaving necessary infrastructure for them to return. The poly tunnels had an adverse impact on the landscape and thus their refusal was upheld: *Hall Hunter Partnership v First Secretary* (15/12/06).

## **Ransom Strip and Design Debated**

A large site had in one corner a building which was not included in the planning application. It was said that this formed a ransom strip and the owner could not be deprived of this by virtue of a planning permission on the remainder of the site. This was rejected as such a strip was a matter of valuation not law. The inspector had some doubts about the design and thought that an alternative by a third party had merit. This was rejected by the Secretary of State who misunderstood the position and failed to adequately explain why he differed from the inspector. Decision quashed: *Dean & Sons v First Secretary* (11/1/07).

## **APPEAL CHALLENGES**

### **Green Belt Decision Quashed**

In seeking to extend a nursing home in the green belt the inspector rejected the evidence regarding viability and said that it would impact on the openness of the area. He did not fully take into account all the appellant's evidence on costings and thus the decision was quashed: *Jenkins v Secretary of State* (15/11/06).

### **Prejudiced Remark is not Bias**

Prior to a committee a chairman told an objector that he was minded to "go with the inspector's report". In the wider context this brief remark by the chairman was insufficient to suggest he had a closed mind and would not impartially consider the planning issues. Although the words gave rise to the possibility of bias, a fair-minded, an informed observer having considered all of the facts would not conclude there was a real possibility that the committee had been biased when granting permission. Challenge rejected: *Condron v National Assembly* (27/11/06, CA).

## **Second Bite Provisions Succeed**

An enforcement notice alleging a change of use was served giving an incorrect address. It was quashed. A second one was then served on the correct site alleging building operations. It was held that the council could take such action as the second notice was on the correct site and the intention was clear. Thus it was possible for there to be a second bite as provided by S171B of the Act: *Romer v Haringey LBC* (4/12/06).

## **Planning Unit Overlooked**

An enforcement notice was served on six caravans. The inspector said there was a change of use from agriculture but he should have first looked at the planning unit and then asked what effect the caravans had on this. Challenge upheld: *Deakin v First Secretary* (6/12/06).

## **Value of Affordable Housing**

It was agreed that such housing could be off-site and a financial contribution made. The council claimed this should be valued as though the units had been provided on-site but the developer said the units should be valued by reference to other properties in the same postcode. The inspector accepted this, but his decision has been quashed as it would be illogical and against the supplementary planning guidance to look at other properties rather than those which should have been provided on the site: *Richmond upon Thames LBC v Secretary of State* (7/12/06).

## **PLANNING CHALLENGES**

### **Environmental Assessment: Two Stages**

Following a European ruling it has been decided that a development project can require assessment at the outline and reserved matters stages, depending upon the particular circumstances: *R(Barker) v Bromley LBC* (6/12/06, HL).

### **Flawed S106 Agreement**

Permission was granted for mineral working on site A providing site B was not so used. However there were very few minerals left on site B. The council had used the wrong test in Circular 1/97 and had not looked at all the tests therein. Thus the agreement was not directly related to the proposed development and was not fairly and reasonably related in scale and kind. Also private rights under the 1966 Act should have been looked at. Challenge upheld: *R(Bleklow Industries) v Peak DNPA* (29/11/06).

### **Rival Redevelopment Refused**

A council could proceed with a redevelopment scheme via a particular developer even if the terms were not so favourable as proposed by another because there were social or economic reasons for so doing. Thus they could enter into a back-to-back agreement whereby there was an indemnity for their costs. This was a satisfactory arrangement: *Standard Commercial Property v Glasgow CC* (16/11/06, HL).

### **Incinerator Sites Attacked**

A local plan identified sites for waste incineration. It was alleged the council had wrongly rejected the inspector's conclusions on this matter. The issues would be addressed in the

waste framework document and thus there was no need for a second inquiry. The council's approach was correct and challenge rejected: *Day v Brighton & Hove CC* (24/11/06).

## **MISCELLANEOUS**

### **Additional Expert Evidence**

Permission to adduce additional expert evidence following an agreed opinion between experts can be granted in exceptional cases: *Stallwood v David* (Times, 27/12/06).

### **Disability Discrimination Test**

The test of whether there is discrimination for the purposes of Section 22(3) of the Disability Discrimination Act 1995 is a two-stage process involving first, establishing the reason for the treatment of the disabled person and then, whether that treatment is less favourable than that which would be accorded to comparators: *Williams v Richmond Court* (14/12/06, CA).

### **Unconscionable Conduct**

The council built a new highway interfering with the claimant's right of access. A new access was granted and the arrangement continued for many years. Then the council claimed that the access crossed a ransom strip and demanded payment for use of it. Held: although the strip did not form part of the highway the council's conduct meant that they were stopped from denying the right to the new access: *Bexley LBC v Maison Maurice* (15/12/06).

### **Advertisements Properly Removed**

Advertisement hoardings were different from those permitted by a permission. The council wished to remove them under a local act and served notice. They were removed but the owner contended that he could put back the previously permitted hoardings. As the site had not been continuously in lawful use for advertisements this was not possible. Challenge rejected: *R (Clear Channel) v Southwark LBC* (8/12/06).

### **Disproportionate Costs**

At the last minute an advertising company pleaded guilty to placing a large hoarding on a site without permission. Originally they said it was to hide building works but photographs showed this was not the case. They were fined £1,000 with £7,500 costs. They challenged the later saying it was disproportionate and on further analysis the judge struck out certain of the council's costs making the figure £2,250. The cost of the challenge at £3,500 was allowed out of public funds: *BPS Advertising v Barnet LBC* (5/12/06).

### **Wailing Noise Annoys**

A Rabbi was served with a noise nuisance notice following large congregations at a synagogue. The council sought to enforce this but the court held that this was an irritation rather than a statutory nuisance. It was their judgement and not that of the council's expert witness which was the final arbiter: *Hackney LBC v Rottenberg* (24/1/07).

### **Costs of an Appeal Challenge**

Developers often support the Secretary of State where a permission on appeal is under

challenge. The question arises can they claim costs if the challenge is rejected? In a recent case it was held that separate representation was justified as the appellant directly raised points on a developer's case concerning the landscape and visual impact of the proposal. This meant the developer's evidence was challenged and an appearance was therefore justified: *Renewable Energy Systems v Moray C* (4/1/07).

### **Challenge Out of Time**

A CPO was confirmed on 19/10/06 and a challenge entered on 21/12/06. The challenge should have been lodged within six weeks and was well over two weeks late. It was therefore time-barred and could not be considered as there were no extenuating circumstances: *Walker v Blackburn with Darwen BC* (25/1/07).

## **PLANNING APPEALS**

### **HOUSING: PLANNING ISSUES**

#### **Prejudice to Car Park?**

Erection of 58 homes plus 52 flats in at Mill Lane, Burscough was said to prejudice a park and ride scheme at an adjoining station. However a feasibility study was only due to be funded in 2007/8 and no details of the size or nature of the car park were known. There could be other land suitable for this and therefore the appeal was allowed with costs as the council had not shown how the scheme would prejudice improvements to the railway network (*W Lancashire DC*, 2/11/06).

#### **Flats outside Market Renewal Area**

262 units at Eccles New Road, Eccles would be on land just beyond the boundary of a housing market renewal area. Although this was intended as the focus of new development other areas should not simply decline. The high quality of this development would improve the area and appeal allowed (*Salford CC*, 13/11/06).

#### **Housing for Rowdy Students**

It was alleged that up to 59 units of student housing at Brunel Close, Exeter would swamp the locality with social problems arising from boisterous behaviour. The proportion of student accommodation in the ward was not excessive bearing in mind the close proximity to the university. The appeal was allowed with costs because of the council's unsubstantiated allegations about behaviour (*Exeter CC*, 20/11/06).

#### **Site Beats Land Supply**

A 5.7ha site at Cowdray Avenue, Colchester had permission for a nursery which would be implemented if the appeal failed. Although there was an adequate housing land supply it was in a highly sustainable location and delivered affordable housing. Housing was preferable to the nursery and appeal allowed (*Colchester BC*, 2/11/06).

#### **Housing Supply Overridden**

260 units at a density of 67dph at Middlegreen Road, Langley would be on the edge of the green belt on a poor employment site. Loss of this would not cause harm and although the housing would lead to an over supply it would meet the need for family and affordable

housing. Appeal allowed (Slough BC, 28/11/06).

## **HOUSING: PLANNING GAIN**

### **Bus Shelter for Elderly**

A condition required a shelter to be provided in the bus station prior to commencement of sheltered housing at Old Market, Nailsworth. This was reasonable as there were only 10 parking spaces on site and people would use buses more. However a condition restricting occupancy to those 65+ was changed to 60+ together with those 55+ residing with them (Stroud DC, 21/11/06).

### **Children Generate Education Needs**

14 small dwellings at Strode Road, Clevedon would accommodate children and thus there was a need for financial contribution towards school provision, upgrading all-weather sports facilities at a community centre and likewise children's play facilities. However, a library contribution was not justified. Appeal dismissed (N Somerset C, 28/11/06).

### **Housing Supports School**

A new school supported by residential at Tower Road, Epping would be mainly in the green belt. The benefits of the new school outweighed harm to the green belt and the countryside. Appeal allowed (Epping Forest DC, 21/12/06).

## **HOUSING: DESIGN**

### **Preserving Area's Character**

17 flats and 4 commercial units at Otley Road, Guiseley would replace industrial buildings and a terrace of vacant cottages. These were in poor repair and did nothing for the conservation area. The replacement would use natural stone and slate which would improve the area and maintain its character. Appeal allowed (Leeds CC, 20/10/06).

### **Basement Rooms Habitable**

12 flats without amenity space at Brady Street E1 would have part of the living accommodation in the basement with some light. In accordance with government guidance this would be acceptable and appeal allowed (Tower Hamlets LBC, 20/10/06).

### **Bulky Office Not Renewed**

Renewal of a five storey office scheme and seven storey students' hall of residence at St James's Street, Nottingham would be out of keeping with the area despite having permissions renewed in 1996 to 2001. PPS1 placed greater emphasis on design quality. In this case the buildings would be out of scale and not align well with their surroundings. Appeal dismissed (Nottingham CC, 13/11/06).

### **Lower Density Appropriate**

Redevelopment on a backland site of between 12.5dph and 17dph at Knedlington Road, Howden although below PPG3 guidance would make more efficient use of the land and reflect the character of the area. Appeal allowed (E Riding of Yorkshire BC, 23/11/06).

## **Flats Harm Listed Buildings**

A six-storey scheme of 136 units, 46 affordable (34%), would meet planning policies through market, special needs and affordable units. However, the height of the building at Clapton Common E5 would have impact on the conservation area and a nearby grade II listed church. It would appear in longer views. Appeal dismissed (Hackney LBC, 6/12/06).

## **Flats Replace Bungalows**

Sheltered flats would replace five bungalows at Kings Road, Horsham. Although there would be a continuous bulky building its form was broken down by architectural devices including a staggered footprint and breaks in the lines of ridges and eaves. It would make a positive contribution to the area's character. Appeal allowed (Horsham DC, 1/12/06).

## **Critical Planning Status Change**

Permission was given in 2002 for nine flats at Lillington Road, Leamington Spa with the demolition of a Victorian villa. In 2004 a conservation area was designated and this meant that greater care should be given to loss of the building. Its replacement did not have such a varied character and therefore demolition was not warranted (Warwick DC, 11/1/07).

## **Strength of Fallback Position**

Housing in the grounds of a listed mansion at Eccleshall Road, Sheffield would harm the setting of the building. Permission had been given for offices but the viability of this was questionable and its use as a realistic fallback position was doubted. In any event offices would have a more limited impact. Appeal dismissed (Sheffield CC, 8/12/06).

## **Parking Permits Prohibited**

In respect of four flats at Collingham Road SW5 the council required an obligation to prevent occupiers applying for a parking permit. The developer said he would give one space for a car club but this was not sufficient as there were severe parking pressure and residents should not add to this. Condition requiring obligation modified but otherwise principle of ban upheld (Kensington & Chelsea RBC, 29/11/06).

## **Comprehensive Development Sanctioned**

A mixed use scheme for 7,654m<sup>2</sup> of class B employment floorspace with an 80 bed hotel, a replacement retail store of 2,480m<sup>2</sup>, a nursing home, children's nursery and 370 residential units would be in a sustainable location and meet an identifiable need at Bicester Road, Aylesbury. The objection re loss of employment land was withdrawn. If this scheme did not go ahead then there would be piecemeal development which would thwart the more comprehensive approach required. Appeal allowed (Aylesbury Vale DC, 21/12/06).

## **Minimal Flooding Risk**

An assessment showed that, although in a flood plain at Knedlington Road, Howden, residents would be safe from a 1:1000 year event. Argued that flood banks would be breached but the overall risk would be acceptable. Environment agency had not objected. Appeal allowed (E Riding of Yorkshire C, 23/11/06).

## **HOUSING LAND SUPPLY**

### **Derelict Building Stays Put**

Demolition of a manor house and erection of 13 flats at Holly Road, Brahmall would replace a derelict and dilapidated building. The council's policies about windfall sites were stringent so as to stop a continuing over-supply of housing land. There was no cost justification or evidence about the structural condition of the building and in the absence of clear regeneration benefits the appeal was dismissed (Stockport MBC, 11/12/06).

### **Housing not in Factory Curtilage**

Although there was a large supply of employment land housing on part of a factory site with 25% affordable would not be within its curtilage because of the open nature of the land. As there was also sufficient housing land available the appeal was dismissed because of the greenfield status of the land at Reeds Lane, Moreton (Wirral MBC, 21/12/06).

### **Nursery is Brownfield**

A former nursery at Southgate Street, Redruth had been used for retail sales and partly as an electrical business. While it was now overgrown it had not blended in with the landscape and housing would be appropriate bearing in mind the district shortfall. Appeal allowed (Kerrier DC, 5/12/06).

### **Employment Land Supply Questioned**

Redevelopment for housing of part of an industrial estate at Wharf Road, Stanford-le-Hope was opposed because the site should be retained for employment purposes. Although there was a sufficient supply of this some sites were constrained and might not come forward. This one was close to a new port. Permission for commercial uses had been granted and there was no reason why these could not be viable. Appeal dismissed (Thurrock BC, 6/12/06).

## **AFFORDABLE HOUSING**

### **Open Market Sale Banned**

Affordable homes on a rural exception site at Kilburn, Fraddon were said to be affordable in the long-term. Rent would not exceed 1.25 times the mortgage payment and this was acceptable. The area in the agreement plan excluded a footpath and parking which was alright. If after 90 days there were no suitable applicants in the borough then the houses could be sold on the open market. This did not accord with PPG3 that in these cases such disposals could not take place. Appeal dismissed (Restormel BC, 23/10/06).

### **On or Off-Site Affordable Housing?**

Sheltered housing at Penn Road, Hazlemere was on a small site which with the high density proposed could not accept affordable housing thereon. Off-site provision was acceptable and the £421,600 offer was acceptable as against the council's requirement of up to £1m. However the scheme turned its back on the public realm and failed to integrate with the locality. Appeal dismissed (Wycombe DC, 10/11/06).

### **Affordable Housing Wins**

90 flats and 90 extra care sheltered retirement flats plus an office block close to the town

centre at South Park, Lytham would have a minimum of 60% affordable units which counted the local planning restraint on new open market housing. The design would not harm the character and appearance of the area. Appeal allowed (Fylde BC, 27/11/06).

### **Inadequate Affordable Housing**

Housing was acceptable in principle on an employment site at Brewery Lane, Thornhill Lees at 64dph. This was a sustainable site with a regular bus route and close to a local centre. 12.5% affordable homes as against an SPG's requirement of 20% was not acceptable because only poor evidence given regarding abnormal development costs. Application refused (Kirklees NBC, 6/12/06).

### **Affordable Housing Debate**

170 dwellings on a factory site at Brewery Lane, Thornhill Lees would be acceptable but 12.5% affordable homes, as against the council's requirement of 20%, were not justified. There might be additional costs as claimed but in the absence of details a condition on the amount of housing was not justified. Appeal dismissed (Kirklees MBC, 6/12/06).

### **100% Affordable Housing**

350 units at Franklands Drive, Addlestone would be on a reserve site. Although there was adequate housing land supply it was appropriate for this site to come forward. It would not give an undue concentration of social housing. Appeal allowed (Runnymede BC, 13/12/06).

## **COUNTRYSIDE**

### **Farming Enterprise Supported**

Five greenhouses and five polytunnels at Ockham, Ripley would reduce openness in the green belt but the planting of trees would screen the use. The company undertook research and faced international competition. PPS7 on rural areas supported proposals to enable farming to be more competitive adapting to new and changing markets. Appeal allowed (Guildford BC, 19/10/06).

### **Unightly Green Belt Site**

Demolition of a lime works at Lower End, Totternhoe and replacement with 40 homes would reduce the footprint but introduce an alien form of development, unlike the industrial buildings which had become associated with the former chalk quarry. The housing would be an incongruous, suburban feature in an unsustainable location. Appeal dismissed (S Bedfordshire DC, 26/10/06).

### **Countryside Care Home Questioned**

Replacement of an MoD training centre at Westwells, Corsham with a 72 bed care home, 18 extra-care apartment, 129 purpose designed living units plus a community centre and leisure/recreational facilities. There was no legal agreement regarding occupancy of the open market housing and this told against the scheme. Although there was need for more care homes and this used a brownfield site it was in a relatively unsustainable location and in breach of countryside policies. Appeal dismissed (N Wiltshire DC, 9/11/06).

## **Housing outside Settlement Boundary**

Horticultural Nursery at Southgate Street, Redruth was outside the settlement but identified for housing in a capacity study. But rejected by the council as it had blended in with agricultural surroundings. However the inspector thought it had not so blended-in and was therefore brownfield and would meet the housing shortfall. Appeal allowed (Kerrier DC, 5/12/06).

## **Poor Housing Location**

250 dwellings enabling the redevelopment of facilities at the national construction college Bircham Newton would not accord with the development plan. There was no justified need for the housing. Although there would be an improved bus service car usage would still be high and appeal dismissed (Kings Lynn & W Norfolk C, 21/12/06).

## **Marketing Campaign Thwarted**

At West End Farm, Great Carlton the agricultural occupancy condition had been breached since 1999. The appellant had just started to market the property at a discounted price when an enforcement notice was received. There had been no applications for similar dwellings for some time. The council had acted hastily and had not allowed the marketing campaign to proceed for the full 12 months in its policy. The appeal was allowed with costs (E Lindsey DC, 27/11/06).

## **Harmful Sports Complex**

A college wished to erect a large sports building plus a hard surfaced area and parking at Woodview Campus, Little Thurrock to improve courses. The entire site was in the green belt and in this particular location the building would effectively join development on either side of a narrow neck. There were potentially other locations for the building and appeal dismissed (Thurrock BC, 30/11/06).

## **FLOODING/CONTAMINATION**

### **Flooded Homes Acceptable**

Replacing 108 dwellings with a 173 that was allowed despite the risk of flooding. The existing housing was a 1950s neglected council estate. There was a flood management plan and although more people would be involved they would have adequate time to vacate their properties safely. Replacement of poor housing and a large amount of affordable housing was an added benefit. Appeal allowed (Runnymede BC, 6/11/06).

### **Flooding Harm Decisive**

16 houses adjoining a countryside settlement would harm the character of the area. It was within a 1:100 flood plain and at Mortimer Station storage capacity would be reduced. Measures to improve the situation could be undertaken but this was not sufficient. Appeal dismissed (W Berkshire DC, 15/11/06).

### **Contamination Ruins Site**

At Harbour Road, Rye a site have been used for solvent recovery, oil refining, tunnel distillation and gasworks waste. Signs warning the public about this had been erected. It was argued that a warehouse could be built with suitable conditions about decontamination

but the inspector felt there should be a comprehensive pollution survey before any detailed design could be undertaken. Appeal dismissed (Rother DC, 9/11/06).

## **RETAIL**

### **Poor Flexibility Downs Tesco**

A Tesco Extra at Chester Road, Stretford would be 8,184m<sup>2</sup> at maximum on a site with a permission for a superstore of 4,506m<sup>2</sup>. Owners of a small town centre mall argued that part of this could be used for such a store and the inspector agreed, though there would be considerable design and logistical problems. Thus there was insufficient flexibility by the appellants. Also the scheme could impact on local centres which was unacceptable. Appeal dismissed (Trafford BC, 3/11/06).

### **Garden Centre Goes Ahead**

A new garden centre of 3,000m<sup>2</sup> plus external display area and a garden park at Trago Mills, Newton Abbot would be on a remote retail site but required to meet modern day shopping requirements. This was a form of retail use. There was a quantitative need and sequentially preferable sites were not available. Whilst this was not a particularly sustainable location it already had shopping facilities and thus there could be linked trips. Impact acceptable. Appeal allowed (Teignbridge DC, 8/11/06).

## **SERVICES AND RETAIL**

### **All Night Dancing Banned**

A night club, gymnasium and squash courts would be in a former quarry at Wilminstone, Tavistock 1.5km outside the town centre. It would draw from a wide catchment and was better sited in the town centre. No sequential test had been undertaken and the main draw would be by private car. Appeal dismissed (W Devon BC, 21/11/06).

### **Islamic Culture Supported**

Change of an office to an Islamic education and community centre at Shirley Avenue, Windsor would not erode employment land as this was a poor location in need of redevelopment. There were no such facilities in the town and it would reduce travel elsewhere. If office hours were kept (except during Ramadan) then residents would be protected (Windsor & Maidenhead RBC, 22/11/06).

### **Training is not Employment**

Use of a vacant workshop as a training facility for local businesses at Bridge Street West, Newtown would erode the stock of employment land. It was outside the town centre and unsustainable in travel terms. Its loss would put pressure for industrial development on greenfield land. Appeal dismissed (Birmingham CC, 23/11/06).

### **Restaurant Swamps Retail**

A restaurant at Dean Street WI would be in a building which already had a mixed retail/coffee bar use. It was the last retail use in the area with many cafés and bars nearby. Loss of retail would have little effect on the area's character. There were already a large number of people in the vicinity and thus a few more would not harm residents' amenity. Appeal allowed (Westminster CC, 23/11/06).

### **New Drive-Thru Window**

The addition of this would generate approximately 14 additional vehicles per hour at Merantum Way, Abbey Mills which would be compatible with a large mixed use development nearby where there was significant traffic. Appeal allowed (Merton LBC, 5/12/06).

### **Hotel Retained for Tourism**

Demolition of Sealawns Hotel, Ogmere by Sea and replacement by 24 flats would mean the loss of an important community and tourism facility. The local plan set out the uses which should be retained. Although a hotel was not mentioned the bar and restaurant had been used by local people as well as the function room. Its loss would harm such activities. Appeal rejected (Vale of Glamorgan CBC, 21/11/06).

### **Range of Goods Widened**

In respect of a co-op at Old Mart Road, Aboyne 80% of the sales area had to be for convenience goods with the remainder durable goods excluding footwear, furniture, carpets, jewellery and watches. The store was in a town centre where new retail floorspace was encouraged and there was no justification for the restriction. Appeal allowed (Aberdeenshire C, 29/11/06).

### **Costs Award Justified**

Following the grant of outline permission for an industrial building at Meir Park the detailed design showed a different format. The design was poor leading to dismissal of the appeal but costs were awarded against the council because they failed to produce substantial evidence to support the refusal which was based merely on local opposition, nor why they went against the officer's recommendation (Stoke-on-Trent CC, 5/12/06).

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