

PLANNING NEWSLETTER

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INTERESTING CASES AND DECISIONS

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PLANNING LAW

APPEAL CHALLENGES

Hotel Costs Disputed

In respect of an appeal for flats on the site of an hotel the question of viability arose. Should the property be valued on the basis of an owner/manager as one level in the market? The objective approach taken by the council was to be preferred which the inspector accepted. Likewise his views on costs of refurbishment was not quantified but represented his view on the evidence. Challenge rejected: *Libra Homes v First Secretary* (30/11/06).

Showmen Harm Countryside

A site was found which was not within any particular countryside designation. Applications for winter quarters were refused and on appeal. The inspector considered that there would be extensive harm to the countryside and that the site was unsustainable. This was a planning judgement based on the evidence/professional experience and could not be faulted. Challenge rejected: *Jones v First Secretary* (31/1/07).

A Danger to Park Downgraded

A planning appeal decision had been quashed on two occasions and on determination was challenged for a third time. It was said that housing was preferred on the site as against the “fall back” position of continued industrial use. This use would pollute the nearby stream of national/international nature importance whereas the housing would divert contaminated water away from this. The Secretary of State disagreeing with this inspector said the site was unsustainable in terms of transport and thus not suitable for housing. He placed greater weight on this as against the benefits to the SSSI and his planning judgement could not be faulted: *Land & Development v First Secretary* (6/2/07).

Second Inspector Wrong

In an appeal decision the inspector said that with a suitable design the gap between buildings could be filled. However the design was not suitable and he dismissed the appeal. A new design was submitted but refused and on appeal the second inspector said that the principle of filling the gap was not acceptable and dismissed the appeal. He declined to comment on the first inspector’s approach. This was wrong and the court said that the second inspector “had not grasped the intellectual nettle” and “by deliberately refusing to comment [on the first inspector’s decision] withheld from view a material part of his reasoning”. Decision quashed: *Dunster Properties v First Secretary* (28/2/07, CA).

Waterside Policies Upheld

It was alleged that allowing an appeal for a large apartment scheme on the Thames, the importance of waterside activities had been ignored or given little weight. The inspector’s report and the Secretary of State’s decision both showed that clear regard had been made to the Blue Ribbon Network policy which governed this. Challenge rejected: *Berkeley v First Secretary* (9/3/07).

Noisy Bar Annoys

Extension of opening hours to 1:00am of a central London bar was refused on the basis that there would be noise and disturbance to local residents. The inspector was entitled

to reach a judgment that noise from those departing the bar would be significant, although there was no direct evidence expect residents' representations. The company could have carried out their own surveys. Challenge rejected: *Bar I v First Secretary* (13/3/07).

Occupiers' Disruption Material

Houses were built in the wrong position and closer to others. Permission was refused from their retention and on appeal but the inspector failed to have regard to the disruption which would be caused to occupiers either by modification or demolition. Although not raised in the appellant's written evidence there were questions about this and he should have grappled with this important matter. Decision quashed: *Britannia Developments v Secretary of State* (16/3/07).

Nature and Timing of Screening Opinion

A football stadium had been used on a series of temporary permissions. The claimant contended that an EIA should have been carried out but the council's screening opinion was negative. They were entitled to take into account their experience of the use and ameliorative action and an EIA was not therefore required. The date for challenge arose on the grant permission and not on the opinion which was a step towards this: *R(Catt) v Brighton & Hove CC* (4/4/07, CA).

Previous Inspector's Views Doubted

An inspector had refused permission for use of a pontoon as a restaurant. This continued and an enforcement notice served, but the second inspector dismissed this as he felt permission could be granted as conditions as to time were enforceable. He sufficiently explained why he deferred from the first inspector and challenge rejected: *Oxford CC v Secretary of State* (4/4/07).

Policy and Factual Situation Confused

An inspector dealt with two rear extensions in the same terrace. Due to changes in the UDP and an SPG incorrectly stated the policy position and in respect of one property said it had a flat roof rather than a pitched one which was factually wrong. Decisions quashed: *freedman v secretary of state* (27/3/07).

Affordable Housing Need Paramount

An inspector allowed an appeal for affordable housing outside the terms of a council's policy as he felt there was a pressing need for this. Although his decision was poorly worded, he was entitled to take into account this need and to balance it in favour of the proposal as against the development plan. Challenge rejected: *N Wiltshire DC v Secretary of State* (13/3/07).

CHALLENGING PERMISSIONS

Renewed Decision Supports Approval

It was successfully alleged that a council had not properly considered the distance between windows in an extension and the adjoining house. They conceded this and then reconsidered the matter taking into account the distance and confirmed their approval. The judge said that the reappraisal constituted a compelling reason why relief should not be granted in this case: *R (Jones) v Swansea CC* (15/2/07).

Failure to Cite Policy Document

Conversion of Middlesex Guildhall into the Supreme Court would entail considerable change to the grade II* listed building. The council carefully considered a detailed report, but there was no reference to PPG15 on historic buildings. However, the committee were generally aware of this having many listed buildings within their area. The challenge to quash the decision was rejected as the committee were fully appraised of all the details and had not taken an unreasonable decision: *R(Save Britain's Heritage) v Westminster CC (27/3/07)*.

LOCAL PLAN CHALLENGES

Green Belt Boundary Stays

A local plan inspector recommended that a site be excluded from the green belt. The council disagreed and placed the site in the green belt. As the boundary had not previously been fixed there was no need to show exceptional circumstances in disagreeing with the inspector as para 2.7 of PPG2 did not apply. The council's reasons for disagreeing were clear and challenge rejected: *David Wilson Estates v Mid Bedfordshire DC (24/1/07)*.

Prejudice to Market Site

An established market was affected by underground station rebuilding. This could take some time. The importance of the market was acknowledged by inspectors but the latest one failed to recommend its inclusion in the proposals schedule of the UDP. The council did not so included it and their decision has been quashed as the inspector's decision did not flow from his analysis that the market should be supported: *Camden Lock v Camden LBC (16/3/07)*.

MOL is Green Belt

It was intended to replace a house of 186m² with one of 626m² on the fringes of Hempstead Heath on metropolitan open land. Permission was granted on the basis that the proposal would maintain the openness of the MOL. The MOL had to be equated with the green belt and thus PPG2 applied requiring "very special circumstances" to be present and the existing and new dwellings to be compared. The wrong test had been applied and decision quashed: *R(Heath & Hampstead Society) v Camden LBC (3/4/07)*.

Critical Timing of Site Permissions

It was alleged that two sites allocated in a local plan could not be brought forward within the five-year phasing time scale. This period had commenced and there was no evidence to suggest that these sites would come forward in the near future nor that they would make a full contribution within the specified period. Allocation quashed: *George Wimpey v Tewkesbury BC (3/4/07)*.

ENFORCEMENT

Second Bite Provisions Hurt

A barn was refurbished incorrectly and an enforcement notice served. There was a muddle over plans and no statement from the council. On this basis the inspector allowed the appeal and did not deal with the planning merits. The council served a second notice

on the same facts and this was quashed as a nullity as, it was said, it could not be served on the same facts and there was an estoppel. After careful consideration of the case law this decision has been quashed as there were special circumstances which justified a departure from the inflexible application of the cause of action estoppel doctrine and fairness to the public interest had also to be considered: *R(E Hertfordshire DC) v First Secretary* (19/3/07).

Timing of Summons

Felling a tree without an licence is an offence. A summons has to be issued within the six months of the authority knowing about the matter. This expired on a Sunday and a draft summons was faxed to the magistrates on the Friday but subsequently issued on the Monday. Held: the summons was properly issued as it was the date of laying this which was important: *Rockall v Defra* (22/3/07, DC).

Injunction Stops Noise

A clay pigeon shoot applied for retrospective permission to continue. This was granted subject to noise conditions, including the erection of a bund. Work was started on this but complaints continued. It was contended that there had been a 10 years continuous use but this was effectively stopped by an earlier enforcement notice. Also the bund should have been completed but to require this by injunction was disproportionate as there would be a loss of jobs. However excessive noise over and above specified guidelines would not be tolerated and injunction granted for this: *Aylesbury Vale DC v Florent* (2/4/07).

Mayor Pre-empts Waste Options

A London waste disposal authority wished to invite tenders so as to minimise landfill operations. The Mayor directed that incineration should be the last resort and if used it should be “state of the art”. This direction was too prescriptive and outside the Act and meant foreclosing options which tenders might wish to put forward and could be illegitimately considered: *R(W London Waste Authority) v Mayor* (4/4/07).

GYPSIES

Failure to Respond to Consultation

A gypsy appealed against refusal of a caravan in the green belt. After the inquiry the inspector requested views on a new government circular but none were given. The council challenged the successful appeal but the judge said their submissions were “palpably hopeless and should never have been advanced” and the criticism of the inspector’s decision was “groundless”: *Doncaster MBC v First Secretary* (19/2/07).

Stop-Notice Regime not Discriminatory

A statutory provision in planning control legislation, which provides that stop notices should not prohibit the use of dwellinghouses but did not apply the same protection to residential caravans, does not discriminate unjustifiably against gypsies and Irish travellers and is therefore not incompatible with article 14 of the European Convention on Human Rights: *R(Wilson) v Wychavon DC* (6/2/07, CA).

New Consideration Irrelevant

Gypsy appeals were dismissed and a challenge instituted on the basis that Circular 1/06

which came into force subsequently required temporary permission to be carefully considered. The court did not have jurisdictions to deal with matters post a decision and could only deal with a decision on its merits. Challenge rejected: *Thompson v First Secretary* (26/3/07).

Gypsy Permission Under Attack

An appeal for caravans was allowed and local residents attacked this. They argued that the policy had been misunderstood, but the inspector had applied this fairly; a condition allowed six rather than four caravans, but this protected residents as it dealt with touring caravans; new evidence about residence of one gypsy could not be introduced; and a policy on horticulture had been dealt with properly. Challenge dismissed: *Dowling v Secretary of State* (22/3/07).

PLANNING PROCEDURE

Wrong Procedure, No Costs

In respect of an appeal for agricultural worker's home, the inspector felt the council wrong to want an S106 agreement tying this to the land. However, as suggested by the parish council, there was another building in the farmyard, which could be converted but did not have permission. He therefore dismissed the appeal without awarding costs. The decision was quashed as the appellant had not been given a "fair crack of the whip" and had not been able to deal with this point. Although the inspector agreed on the S106 point this did not merit an award of costs: *Van Dem Boomen v First Secretary* (19/1/07).

Abandoning a Lawful Use

If a Lawful Development Certificate is granted it is still possible that the use can be abandoned by active steps to the contrary or nil use for a substantial period. Inspector was right to find on the facts abandonment and challenge rejected: *M&M (Land) Ltd v Secretary of State* (5/2/07).

Critical Failure to Vote

Planning councillors attended a meeting of objectors to a gas installation. They expressed no opinion on the merits and made a declaration to this effect. There was no bias and they were entitled to vote at the committee meeting, but the monitoring officer gave wrong advice stating that they should consider their position particularly as they had not been at a prior site visit. Held – the advice was wrong and as there was no bias they could have voted. This might have affected the narrow outcome and decision quashed: *R(Ware) v Neath Port Talbot CBC* (30/3/07).

Minister's Intention Behind Policy

A court seeking to interpret a ministerial statement of policy is entitled to use his guidance to staff, which had also been issued to the public, as an aid in deciding, within a reasonable range of meaning, how it applied and what it meant: *R (Raissi) v Secretary of State* (22/2/07, DC).

A Stake in the Ground

The hammering of 554 stakes into the ground over a period of two days and leaving these 0.7m above the surface amounted to "other operations" thereby requiring planning

permission. This was rightly refused on amenity grounds and the inspector's judgment could not be faulted: *Beronstone v First Secretary* (13/6/06).

ENVIRONMENT LAW

SSSI Properly Designated

There was evidence that the presence of grassland fungi meant that a site was of regional importance and therefore designated as an SSSI. This was challenged on the basis that there were better sites elsewhere and not all relevant information had been taken into account. Held: it was not necessary to examine alternative sites as it was the merits of the particular site that were under consideration. Also it was not necessary to search exhaustively for information as a reasonable choice had been made in the circumstances. Challenge rejected: *R(Western Power) v Countryside Council for Wales* (26/1/07).

National Park Boundary Questioned

A national park was designated and in respect of part the inspector found there were potential opportunities for recreation and it was visually attractive. This did not follow the statutory formulae and the decision was quashed. On appeal it was held that although the law had been altered the matter had to be judged at the time of the designation and the decision to place the site within the national park could not therefore stand: *Meyrick Estate Management v Secretary of State* (1/2/07, CA).

Flawed Nuclear Consultation

Where it had been stated in a government White Paper that there would be the fullest public consultation before making a decision on a matter of substantial public policy but the information as to major relevant issues had emerged only after consultation had closed, then the decision-making process was fatally flawed: *R (Greenpeace) v Secretary of State* (16/2/07).

Noise Attenuation Condition Fails

Noisy filters were put in without permission and a retrospective application made. The committee were minded to refuse based on the noise but were subsequently told this could be reduced and granted permission with a condition requiring a scheme to be agreed. Nothing further was done and while there was some improvement in the noise the permission was quashed as the condition was unenforceable as there was no evidence it could be achieved only vague assurances from the EHO: *R(Snee) v Leeds CC* (7/3/07).

Noise Nuisance Completed

Noise from a theme park and pop concerts constituted a statutory nuisance and the court imposed maximum noise levels. Local residents claimed that the permitted level of 40dBa was too high, but this had been fixed in relation to an expert's report. They were not allowed to inspect the works, but adequate monitoring would deal with the position and a code of practice had been correctly taken into account. Challenge rejected: *Roper v Tussauds Theme Parks* (23/3/07).

MISCELLANEOUS

Experts' Statement not Privileged

A joint statement of expert witnesses produced under a court order is not privileged and the fact it is made with an eye to assisting a contemplated mediation does not change that fact: *Aird v Prime Meridian* (21/12/06, CA).

Loss of Light Damages

Where a new building prevents light to existing windows then damages can be claimed. The extent of these depends upon the particular windows but generally speaking the infringement should result in some of the potential profit being awarded as damages. In this case the court took one-third of the development profit and then rounded this slightly down to £50k as it felt right in terms of the price of avoiding an injunction: *Tamara v Fairpoint Properties* (8/2/07).

Vacant or Underused Land?

Occupied shops were next to unoccupied ones and under a vacant office tower. They were subject to a CPO and the court held that the test of whether the land "is under-used or ineffectively used" applies to the entire site and not just the subject properties: *McCabe v Secretary of State* (4/4/07).

PLANNING APPEALS

HOUSING NEED

Pressing Housing Need

162 dwellings at Skippetts House, Grove Road would replace a permission for 127. There was a pressing need for new housing and although affordable at 30.8% did not meet the council's policy of 40% this did not detract from the overall need. Appeal allowed against the inspector's recommendation (*Basingstoke & Deane BC*, 25/1/07).

Restraint Policy Blasted

Six houses and 10 flats at Shoppenhangers Road, Maidenhead would retain the spacious residential area character. Adequate outdoor amenity space and financial contribution by negative condition. Although sufficient land supply up to 2012 this was an area of high housing need and weight given to PPS3. Appeal allowed (*Windsor & Maidenhead RBC*, 5/3/07).

Land Supply Deficient

Up to 250 dwellings at Queens Drive, Hassocks would meet a shortfall of housing land to 2006. There was not a five-year land supply. Part of the land was a reserve site and the reminder would not impact unduly on the countryside. Appeal allowed (*Mid Sussex DC*, 15/3/07).

Lack of Housing Land

Failure to provide a five year housing land supply lead to the secretary of state being

mindful to allow an appeal for an 8.5ha site at Dilly Lane, Hartley Witney. This was a reserve site and on the basis of PPS3 the Council had to show a sufficient land supply, but were unable to do so. The decision was deferred for two months to allow them to bring forward further evidence (Hart DC, 4/4/07).

Slow Land Supply

271 dwellings and a 70-bedroom nursing home and six commercial units on 9.6ha at German Road, Bramley would be on an unallocated site rejected by the local planning inspector as being unsustainable. However it was close to two major towns and there were services. Housing site delivery had fallen behind schedule and thus with appropriate agreements the appeal could be allowed (Basingstoke & Deane BC, 3/4/07).

Prematurity and Oversupply Debated

An appeal was dismissed on the basis that although there was not a 10-year supply of housing land this could be remedied in the near future. The inspector had not fully justified his approach and how recent government guidance sought to support a 10-year supply. Challenge upheld: Wimpey v First Secretary (23/2/07).

HOUSING: EFFECT ON CHARACTER

Character of Road Decisive

The demolition of a dwelling in the leafy surrounds of Lansdowne Avenue, Codsall would remove a property similar to those nearby which gave the area its open spacious character. Replacement by dwellings in depth would harm the street scene and also have a potential effect on an oak tree. The roots might be prejudiced as new residents might seek to lop this because of its impact on light. Appeal dismissed (S Staffordshire C, 29/12/06).

Tall Flats Out of Character

Despite a six-storey permission at Middle Street, Southsea 12 storeys would be out of character and on the edge of the site leading to a cramped and claustrophobic effect. The mixture of materials which had a fussy effect emphasised the relatively small windows out of proportion and incongruous when used in a large amount of flats. Appeal dismissed (Portsmouth CC, 9/1/07).

Excessive Height and Lack of Viability

A part seven-storey office building at Park Street SE1 would match an adjoining building and therefore not be in character with the varied heights of the medieval street pattern. Furthermore, there should be an active ground floor frontage involving retail or food and drink uses so as to increase pedestrian flows in the area. Appeal dismissed (Southwark LBC, 9/1/07).

Urban Regeneration Falts

A large scheme of 283 apartments plus B I use at Victoria Way, New Charlton would be on a suitable site making a maximum contribution to affordable housing. The mix of dwellings was acceptable and the scheme's design had been carefully planned to maximise the site's potential. However, the high density in this urban setting plus the mass and height of the buildings would not sufficiently respect local context. There would be a loss of privacy for

local residents. Transport was inadequate as the local transit scheme was some years away and there was a lack of detail about parking and travel plans. Appeal dismissed (Greenwich LBC, 22/2/07).

Density Respects Character

62 dwellings at London Road, Broughton would be at 22dph instead of 30dph advocated by PPS3. This was acceptable because of proximity to a conservation area with an access through this and need to minimise traffic. Appeal allowed (Milton Keynes C, 4/1/07).

Landmark Sustainable Building

119 dwellings at Walmer Terrace, Plumstead would be of a “U shape” of blocks three and four storeys high with a slim 13 storey tower of high design. Density of 1,100/hr would only be allowed on sites of high public transport accessibility with exceptional design. This was such a site and with 15% affordable was acceptable but it was not suitable for family units although there were larger flats. Appeal allowed (Greenwich LBC, 14/2/07).

AFFORDABLE HOUSING

Fatal Lack of Affordable Housing

An application for 201 dwellings and public open space included only 10% affordable housing (30% local plan target) because of replacement recreational facilities. These were thought to be excessive and because of the sustainable location the 30% target should be sought. Appeal at GWR Sports Ground, Ocotan Way dismissed (Swindon BC, 10/1/07).

High Level of Affordable Housing

182 dwellings redevelopment of 48 flats on a 1.5ha site at Halliday Crescent, Eastney would not harm residential amenity but affect TPO trees. Given 40 units would be affordable appeal allowed (Portsmouth cc, 4/1/07).

Affordable Housing Not unviable

43 students flats and 9 houses at Mayorswell Close, Durham did not contain affordable housing as it was said this was unviable. However there was no evidence on this. Also to allow demolition without a satisfactory scheme in the conservation area was unwarranted. Appeal dismissed (Durham CC, 22/3/07).

HOUSING: DESIGN STANDARDS

High Density Starter Units

At a density of 110dph “debut” units at Dol Gorwel, North Cornelly would be for first time purchasers with a ban on by-to-let investors. Medical services would not be overloaded and crime would not be a problem. Appeal allowed (Bridgend CBC, 21/2/07).

Single Aspect Housing

On a long vacant industrial site at Atlip Road, Alperton density would be 186dph with many single aspect houses. This would not harm light and amenities but some units had small bedrooms and a condition requiring agreement on this was appropriate. Open space near

a canal would be provided and overcame any objections on this matter. Appeal allowed (Brent LBC, 27/2/07).

Noise and Air Quality Implications

Flats adjacent to the M6 at Birmingham Road, Great Barr would have high noise levels but there was no noise study despite this being amongst the busiest motorways. While this was not an ideal location for housing indicative loans could be met and there was an element of personal choice. Air quality was improving. Appeal allowed (Sandwell MBC, 12/3/07).

Renewable Energy Required

A new house at Meadway, Berkhamstead would be on backland and could prejudice adjoining development. However the access would provide for this, but the turning space would impact unduly on the dwelling and the appeal was dismissed. Failure to incorporate suitable energy conservation measures could be overcome by conditions. Appeal dismissed (Dacorum BC, 4/1/07).

Critical Lack of Parking

87 flats plus shop/restaurant uses at Queen Street, Leicester would have an acceptable design, but without parking there was no assessment as to how this would effect nearby streets. A transport study was required and appeal dismissed (Leicester CC, 19/2/07).

Houses Compromised Listed Park

Erection of each flats adjoining the grade I listed park at Mucklow Hill, Halesowen would undermine the character and tranquillity of the area which was of international importance. Appeal dismissed (Dudley LBC, 2/1/07).

Enabling Development Succeeds

Change from offices to residential at Woolley Hall, Littlewick Green and residential in the immediate curtilage would help to save the listed building despite its green belt location. While there were poor public transport links the previous offices could be re-started which would also be unsustainable. Restoration was paramount and would accord with planning policies. Application approved (Windsor & Maidenhead RBC, 30/1/07).

OPEN SPACE

Critical Loss of Open Space

Unused allotments at Glendower Avenue, Whoberley for housing was unacceptable as use of such a large area of urban green space could not be tolerated unless alternative provision was made. An assessment was being undertaken by the council and the outcome of this should be awaited. Appeal dismissed (Coventry CC, 9/1/07).

Open Space Compromised

Redevelopment of an informal open space at Hollybush Way, Cheshunt (0.5 acre) for housing would not harm public open space and with half the site as planning gain open space this would meet a community need and appeal allowed (Broxbourne BC, 5/3/07).

Bird Protection Supported

23 flats at Claremont Avenue, Camberley would be about 1km from the Thames Basin Heath SPA which sought to protect rare species. There would be a ban on residents having dogs or cats and this would mitigate impact, but the council were waiting a report of a technical panel on the future of the protected area. In the absence of their report and a mitigation strategy plus failure to identify an alternative recreation area to be enhanced meant dismissing the appeal (Surrey Heath BC, 14/2/07).

HOUSING: EMPLOYMENT LAND

Uneconomic Employment Scheme

89 dwellings on an employment site at Broadmeads, Ware would be on a derelict site in a conservation area. The council claimed a BI scheme was economic based on a steel framed construction. However given the location a brick and traditional pitched roof would be needed thereby increasing the costs. Storm water pumping had not been costed and thus industrial development was uneconomic. Appeal allowed (E Hertfordshire DC, 10/1/07).

Wharf Safeguarded

Peruvian Wharf, North Woolwich Road would contain a large building for handling aggregates together with 28,000m² offices, a hotel, leisure, fitness centre, retail and 1,474 residential units. The site was safeguarded within an employment area for riverside use and there was no evidence to suggest that this could not be attained. Appeal dismissed (Newham LBC, 15/1/07).

Loss of Uneconomic Wharf

Up to 270 flats with cafés, bars and restaurants at Imperial Wharf, Gravesend would make effective use on a brownfield site in a sustainable location. Although there was no housing supply need, 30% affordable flats would be a benefit. Loss of this employment site not important at Wharf likely to be of a viable size. However six-storey building would harm townscape and setting of adjacent conservation areas leading to dismissal of the appeal (Gravesham BC, 8/2/07).

Fall-Back Situation Improved

135 apartments plus 14 houses and 8,736m² offices on 4.6ha site would mean loss of 1.8ha of employment but would help meet need for smaller dwellings with a high density close to sustainable employment opportunities. Appeal allowed at Sdyala Road (Manchester CC, 12/2/07).

Refinancing of Existing Business

15 houses would redevelop an existing office/industrial/warehouse building at Park Road, Crowborough which would finance relocation of the business. No shortage of employment land. Appeal allowed (Wealden DC, 2/2/07).

Employment facade Retention

Retention of the facade of a laundry at Richmond Road, E8 was preferred giving 3000m² of

B1 floorspace plus 70 residential units. 85% of existing employment floorspace would be retained as against only 75% in an alternative scheme. This larger amount was preferable and appeal allowed (Hackney LBC, 16/1/07).

Employing the Gospel Effectively

A gospel hall and B1/B2/B8 uses replacing a cold store at Armstrong Way, Yate would mean the loss of a large part of the site to the hall when there was a need for industrial flexibility. The existing building could be re-used and the range of sites would be reduced. Appeal dismissed (S Gloucestershire C, 12/2/07).

Mixed-Use Meets Need

149 dwellings and 9,108m² of B1 space at Irwin Drive, Wythenshawe would meet a need for a smaller/private dwellings in an area of social renting. Small B1 uses would meet a local need and support regeneration. Otherwise the site would be used for car parking and this would be unacceptable. Application approved (Manchester CC, 12/2/07).

SHOPPING: EMPLOYMENT LAND

Fatal Loss of Employment Land

A Focus DIY store of 2,508m² plus a 929m² garden centre at West Hill, Wadebridge would meet a quantitative and qualitative need and be on a sequentially preferable site. However the loss of 1.2ha would erode the supply of employment land which was necessary to meet the needs of existing and new businesses. Although £100k had been offered towards economic development in the area this was not site specific and would not overcome the loss of such land. Appeal dismissed (N Cornwall DC, 11/1/07).

Employment Hinders Shopping

The erection of a retail warehouse at West Hill, Wadebridge would be on employment land. Although there was a quantitative and qualitative need and this was a sustainable location meaning retail facilities in a town would be self-contained, nevertheless loss of employment land was fatal and the matter should be dealt with through the LDF process. Appeal dismissed (N Cornwall DC, 11/1/07).

Employment Land not Required

A DIY store of 3,066m² plus 929m² garden centre at Launceston Road, Bodmin would be on a site allocated for business use but no harm to employment land supply and a qualitative and quantitative need with no sequentially preferable sites. A £300k contribution to compensate for loss of employment land. Appeal allowed (N Cornwall DC, 15/3/07).

SHOPPING IMPACT

Neighbourhood Centre Questioned

An outline permission referred to a neighbourhood shopping centre requiring a range of uses including a food store. A store of 2,760m² gross (1,942m² net) came under appeal as the council felt that at this size would undermine the vitality and viability of local shopping centres. This was an appropriate sized supermarket in relation to the function and scale of the centre and would not undermine other centres. Appeal allowed at Rawreth Lane, Rayleigh (Rochford DC, 25/1/07).

Tesco Rides On!

A replacement store at Brading for the existing store would have no perceptible trading difference. While it would not make a significant contribution to physical regeneration, social inclusion, employment and economic growth, what effect it would have would be positive. The existing store could be increased by a mezzanine and did not have control over food/non-food floorspace. This control would be introduced and the new proposal was acceptable (Isle of Wight DC, 21/2/07).

Over-Supplier of Parking

Bulky goods of 3,716m² at Sherwood Road, Aston Fields would cause no harm to other centres because of vitality and viability and would reduce overall car travel. No sequentially preferable sites. However over-provision of car parking meant dismissal of the appeal (Bromsgrove BC, 14/3/07).

ASDA Halts Trade Outflow

A 4,654m² store at Atlantic Village, Clovelly would be a redevelopment of an existing car park and a revamped factory outlet centre. There would be some visual impact but generally acceptable at weight given to energy saving measures. Qualitative and quantitative need but no sequential preferable site. No harm to vitality and viability of town centre and would reduce trade leakage by claw back whilst reducing over-trading at a nearby foodstore. Appeal allowed (Torridge BC, 1/3/07).

Cheers to out of Town Shopping

Two units with 439m² of floorspace and 14 parking spaces, one of which would be for wines and beers in bulk, were proposed at Washway Road, Sale but would be remote from a town centre. However PPS6 asked retailers to be flexible did not apply to small units and as this site was accessible by a range of transport the appeal was allowed (Trafford BC, 15/2/07).

Sequentially Preferable Site

A superstore of 7,900m² gross floorspace, including comparison goods, at Westgate, Rotherham would impact on a conservation area due to its bulk. At the same time there was an alternative town centre site and although negotiations on this had stalled it was preferable. Appeal dismissed (Rotherham MBC, 6/3/07).

Store Meets Need

An Aldi at First Avenue, Harlow would be on a sequentially preferable site in a neighborhood shopping centre with good accessibility and meet a qualitative need especially for those on low incomes. However the company's assessment of need was flawed and impact on competing stores questioned. Appeal dismissed (Harlow DC, 7/3/07).

Poor Design Quality

A small Tesco at Barnsley Road, Sheffield would be in a shopping centre but at the rear of the site with car parking in front. The council's policy was for frontage development and as this did not respect to the building line nor have a pitched roof the appeal was dismissed (Sheffield CC, 9/3/07).

Carpets beat Tesco

Relaxation of a condition on a carpet shop to permit Tesco of 400m² with a turnover of £3.22m was denied as the evidence on superstore over trading was not accepted and local shops could cope with top-up trade. Insufficient evidence to prove there were no sequentially preferable sites (Barnet LBC, 29/3/07).

GREEN BELT & COUNTRYSIDE

Retirement Homes in Green Belt

300 units for a continuing care retirement community at Storthes Hall Lane, Kirkburton would be on a site of a former hospital in the green belt. Because there would be less need to travel, this unsustainable site was acceptable and would therefore be an appropriate form of development on a major developed site in the green belt. Application approved (Kirklees MBC, 11/1/07).

Green Belt Leisure Inappropriate

A 120 berth marina, 72 bed hotel and other leisure facilities at Stockley Road, Bedworth would have an adverse impact on the openness of the area that as the boats would be in one place for a large part of the year and would not be a transient sporting type of use. There was conflict with the sequential approach focussing development in town centres and urban areas and there were no very special circumstances in terms of landscape, sporting or access benefits etc. Appeal dismissed (Nuneaton & Bedworth BC, 19/1/07).

Countryside Intrusion

Outline residential development at Tudwick Road, Tolleshunt Major would be partly outside the settlement boundary which would be intrusive and permanent rather than existing timber storage. This would harm rural character and affordable provision would not overcome this. Appeal dismissed (Maldon BC, 1/3/07).

Green Belt Hotel

Against the background of a permission for a 66-bedroom hotel at Barnet Road, London Colney in an "L" shape, one of 86 bedrooms in the green belt would not have a greater impact. There was a clear need for extra accommodation and thus there were very special circumstances leading to the appeal being allowed (Hertsmeare BC, 25/1/07).

Green Belt Tourism not Premature

A former mill site in Oldham in the green belt was identified as a major development site including employment, tourism and leisure. The conversion of farm buildings to eight holiday homes and two open market dwellings would not prejudice wider development as the tourism aspect had an economic purpose and the two houses would not cause disturbance to neighbours. Appeal allowed with costs as officers had recommended approval on three occasions and there was little evidence to support the council's case (Oldham MC, 26/2/07).

Existing Farmhouse Protected

Permission was given for an agriculture dwelling at Trench Farm, Ellesmere with a condition restricting its use and one likewise restricting the main farmhouse. It was argued that

this was unnecessary as there was no previous restriction and the farmhouse could not reasonably be sold without the land. Although there was no direct government guidance, the thrust of PPS7 and Circular 11/95 meant that there was a restriction on new dwellings and if two were required it was important that both should be protected. Appeal dismissed (N Shropshire DC, 24/1/07).

COMMUNITY FACILITIES

Community Facility Demolished

Prior demolition of a public house at Missenden Road, Great Kingshill meant that there was no contravention of the council's policy which resisted loss of a valuable community facility. Housing in its place was not objectionable and the appeal was allowed with the part costs as the council's case that the car park and beer garden remained constituting the social facility did not stand up in planning law (Wycombe DC, 10/1/07).

Solicitor Harms Town Centre Shopping

Use of a shop at Marston House, Blackfield at a solicitor's office would result in less than 50% of the units being in retail use. This was unacceptable, although it was argued she had a specialist local practice particularly for the elderly and disabled. Appeal dismissed (New Forest DC, 7/2/07).

LEGAL ISSUES

Validity of Certificate Failure

In submitting a planning application for flats at Berkley Avenue, Reading notice had been served on landowners but one had been omitted. He was in fact a signatory to the S106 agreement and therefore knew of the situation. The application/appeal were not invalid said the inspector who gave the owner a further 21 days to comment and then allowed the appeal (Reading BC, 29/12/06).

Old Permission Extant

A 1981 outline permission had a 1987 approval of reserved matters which was subject to conditions. Prior to commencement a planning officer had agreed their discharge and a letter from the chief planning officer said that a lawful start had been made. Some 20 years later it was held that the permission was still extant and a lawful development certificate granted at The Bury, Pavenham (Bedford BC, 8/2/07).

Countryside Rebuilding Critised

Conversion of a barn at Silverhill Lane, Teversal into residential was approved subject to complying with the detailed plans. The appellant then rebuilt three of the walls and the foundations which was not originally contemplated. He argued that this was in keeping with the original building and others nearby but the inspector considered it to be a new building and as it was in the countryside he dismissed the enforcement appeal (Ashfield DC, 6/2/07).

Rebuilding can Remain

Conversion of former hostel to a dwelling at the Ystradfelite, Aberdare was permitted but the majority of the structure was demolished and rebuilt beyond the permission. This was

a new dwelling in the countryside and would not normally be permitted. However the existing wall could remain if demolished. The building was a marked improvement over that existing. As the site had been previously developed this was an added factor leading to the appeal being allowed (Brecon Beacons NPA, 15/2/07).

Controversial Sale of Floors

The appellant claimed that the building at western approach industrial estate, South Shields was used for trade/retail sales plus storage. However the layout was similar to a retail warehouse and as it was outside a defined town centre with no evidence of a sequential approach the appeal was dismissed as there might be other suitable sites on the edge of a shopping centre (S Tyneside MBC, 24/1/07).

No Agreement Harms Church Restoration

It was intended that the profits from 21 flats at Maple Road, Surbiton would refurbish a church. It was also intended to improve the presbyter with a new hall. As a result no affordable housing was offered, but the council argued that only limited restoration should take place at a reduced cost. The appeal failed because there was no agreement linking the financial gain to the improvement which was outside the appeal site. (Kingston upon Thames RBC, 1/2/07).

Design and Transport Issues

108 flats on a conservation area at Waterloo Road, Bristol would not reflect the immediate grain of the area, but there were few buildings of merit closeby and architectural themes for the wider area were acceptable. 53 parking spaces were provided and residents would be restricted by agreement from parking nearby. There would be a car club and pre-paid bus tickets for new occupiers. The council's request for £1,000 contribution per unit to a bus route was not acceptable as this had not been fully costed. Appeal allowed (Bristol CC, 31/1/07).

Councillor as Highway Witness

Despite officers' support for three shops at Treforest, Pontypridd councillors opposed this and one gave evidence about problems at a nearby junction. This was based upon local knowledge and without professional support the appeal was allowed with costs (Rhondda Cynon Taff CBC, 24/1/07).

Controversial Garage Stays

Permission was given for a new house taking away permitted development rights. A new garage was erected to the existing house under permitted development rights and the house then demolished leaving the garage. The new house was then built and an enforcement notice served to remove the garage. The inspector held that the garage had been erected under earlier PD rights and was not governed by the new permission. Also it would be against the appellant's human rights to require its removal and in any event it had a limited impact on the green belt. Notice quashed at Venus Hill, Bovingdon (Dacorum BC, 23/1/07).

Extension Stays in Green Belt

A garage and extension to a house at Fanshawe Lane, Henbury in the green belt were partly

constructed when the appellant found that the contractor had not gained the necessary permissions. Enforcement notices were served but the inspector held that the garage compromised the openness of the area. If the extension were demolished then there would be an impact on the appellant's financial situation, which had worsened following litigation with the contractor. It would be a breach of human rights to require its removal and because it had a limited impact this part of the appeal was allowed (Macclesfield BC, 24/1/07).

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