

# PLANNING NEWSLETTER

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## INTERESTING CASES AND DECISIONS

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## **PLANNING LAW**

### **APPEAL CHALLENGES**

#### **Challenging a Successful Appeal**

Part of an appeal was allowed while part refused. That allowed required another permission for access, but the appellant objected because the permission meant he had to pay money to a third party. The inspector had not been alerted to the problem and had taken a rational planning decision which could not now be overturned. Challenge rejected: *Johnson v Secretary of State* (8/6/07).

#### **Archaeology and Traffic Considered**

Challenging a housing appeal, third party had alleged that there should have been a prior archaeological investigation but a condition requiring this insufficient on the evidence. Although traffic calming was likely in the vicinity there was no need to await this and the residents were opposed to it in any event. Challenge rejected: *Gale v Secretary of State* (23/8/07).

#### **Mast Harm Likely?**

A mobile phone mast was allowed on appeal and the appellant alleged that she had particular health problems which would be affected. However there was no proof about this and general rule that harm would not result as set out in PPG8 applied. Challenge rejected: *Harris v First Secretary* (7/07).

### **PLANNING PERMISSION CHALLENGES**

#### **Nightclub Harm Continues**

Permission was given for flats with noise attenuation measures because of a nearby night club. The measures were not implemented and nuisance from the club arose. The club owners were served with a noise abatement notice, but this was held to be unjustified as other abatement measures had not been properly carried out. If this were done and there was still a nuisance then action could be taken: *Carey Leisure v Coventry CC* (27/7/07, MC).

#### **Omitting an Environmental Impact Assessment**

Permission granted for an extension to an animal waste plant. Contended this should be subject to an EIA but the LPA had not requested this. There was no breach of the “floorspace” limitation in the directive and the fundamental objective of this towards protecting the environment was the principal consideration. Thus the silo had been correctly measured and the judge had not erred on this. All relevant factors taken into account. Challenge rejected: *R(Horner) v Lancashire CC* (30/7/07, CA).

### **CPOS AND COMPENSATION**

#### **Access Change not Compensated**

A roundabout was constructed and access changed to a motorway service area. There might be a claim, but the immediate access was only marginally changed as part of a

general improvement of the highways. Such changes were not normally susceptible to compensation and were considered general traffic management. Temporary closures might be compensatable and matter remitted to Lands Tribunal: *Moto Hospitality v Secretary of State* (26/7/07, CA).

### **Unfit House CPO**

A father died and the son said he occupied the house but had an address elsewhere. The house was in very poor condition and despite several attempts to make him undertake works no progress was made. A CPO was confirmed, but the son continued to object saying that his human rights had been breached. He had made little (or no) efforts to improve the property and the inspector had taken all relevant factors into account. Challenge rejected: *Turner v First Secretary* (14/8/07).

### **CPO Lacks Viability Support**

Construction of a new shopping centre at Colin Campbell Court, Plymouth was supported by a CPO but there were doubts over the financial viability of the scheme and these outweighed the need to counter balance shopping elsewhere. The CPO application was therefore rejected (*Plymouth CC*, 13/6/07).

### **No Fault in CPO**

A housing CPO was challenged effectively on the same grounds as before the inspector. He had recommended approval and there was no flaw in the consideration. It was alleged human rights had been breached, but these had been fully considered. There was no bias although grant had been promised for this pathfinder development. Challenge rejected: *Powell v Secretary of State* (22/8/07).

## **MISCELLANEOUS**

### **Lawful Use Defence**

Enforcement notice served about waste importation. Land partly covered by lawful use certificate and judge found that the certificate did not cover the breach of the enforcement notice. He refused an injunction. On appeal it was held that the certificate did not preclude enforcement as the matter had been dealt with at the appeal. Furthermore, there would be an injunction as there had been a flagrant breach of the notice and the operation should be stopped: *R v Challinor and Staffordshire CC v Challinor* (17/8/07, CA).

### **Gypsy's Special Circumstances**

A child had a life threatening disease and so the parents had settled on a legal site but subsequently there was violence and they left. They found another site which had planning harm and following enforcement proceedings the notice was quashed and permission granted because of their difficulties. The inspector had fully taken into account their circumstances and balanced these against the planning harm and challenge rejected: *S Cambridgeshire v Secretary of State* (18/9/07).

## **PLANNING APPEALS**

### **HOUSING STANDARDS**

#### **Minimal Gardens Acceptable**

An SPG said 80m<sup>2</sup> was the minimum for gardens, but this had been adopted in 1999 before PPS1/3 and therefore did not reflect current national guidance. The gardens were usable and there were also areas at the front of the house in a cul-de-sac which would supplement this. Appeal allowed at Norlands Lane, Widnes (Haltom NBC, 4/7/07).

#### **Density Increase Permitted**

Increasing a permission from 120 to 146 units at Battle Road, Hailsham would be on a site allocated in the emerging local plan. There would be highway improvements and communities would be drawn together by a new pedestrian crossing. Appeal allowed (Wealden DC, 19/7/07).

#### **Housing Meets Community Tests**

123 affordable units and retail space at Southbury Road, Enfield would be a mixed community bearing in mind private homes nearby. There was a need for this type of unit and a high density (413hrh) was ok without overlooking. Appeal allowed (Enfield LBC, 18/7/07).

### **HOUSING LAND SUPPLY**

#### **Critical Lack of 5-Year Supply**

A 5-year housing land supply could not be demonstrated in respect of 323 homes at Norse Road, Bedford within a growth area. Although there would be incroachment into a green wedge the urban area would not be significantly extended. Appeal allowed subject to a minimum density condition (Bedford BC, 8/8/07).

### **HOUSING DESIGN**

#### **School has Community Use?**

Although not used since the 1970s as a school the building could have a community use, particularly for private schools in the area and this had not been explored. Homes would have a cramped appearance and providing affordable houses on a separate site contrary to government policy. Appeal dismissed at Glebe Place, SW3 (Kensington & Chelsea RBC, 17/7/07).

#### **Tall Buildings Clash**

A 12-storey student block in Cavendish Street, Leeds would be near other tall buildings and the wind effect could be noticeable. There would be poor living conditions at lower floor levels due to nearby buildings and the building would dominate pedestrians. Appeal dismissed (Leeds CC, 1/8/07).

#### **Flats in Gardens Accepted**

76 flats at Orchard Grove, Orpington would be on brownfield land in a transitional area

between a supermarket and suburban housing. Adequate amenity space with good design and overlooking surveillance. Appeal allowed (Bromley LBC, 20/7/07).

### **Harm to Area Character**

25 sheltered flats at Sea Road, Barton-on-Sea would replace four dwellings, but have a long façade with a scale and mass which would not fit in with the low-density area. Appeal dismissed (New Forest DC, 16/8/07).

### **Prejudice to Adjoining Development**

Housing, a restaurant and other uses at Gasworks Wharf, Evesham could conflict with development of the remainder of the site as no details for this had yet been submitted. The use for a four storey block would be against the development brief and there would be overshadowing of neighbours with windows directly looking over the adjoining site. Appeal dismissed (Wychavon DC, 10/8/07).

### **Flats Fail Character Test**

52 sheltered flats at Newgate Street, Cottingham would replace a single house. The scale and bulk with fussy detailing would be out of character and the loss of some trees would harm the street scene and the adjoining conservation area. There would be impact on neighbours and appeal dismissed (E Riding of Yorkshire, 24/8/07).

### **Warehouse Retained for its Character**

A dilapidated warehouse at Frankwell Quay, Shrewsbury had a distinctive character and should be retained albeit for residential use. The council's evidence on viability was to be preferred and appeal dismissed for its demolition (Shrewsbury & Atcham BC, 24/8/07).

### **Larger Houses Denied**

One and two bed homes on a sports ground at New Road, Filton with replacement facilities would be acceptable as there was no policy requiring larger units. There was less than a five year supply and the affordable provision mix was okay. Appeal allowed (S Gloucestershire DC, 23/8/07).

## **HOUSING: LOSS OF INDUSTRY**

### **Residential Conflicts with Industrial**

A residential and live-work scheme at the Maltings, Station Road, Newport would mean overlooking between the residential and live-work elements with a shared access so commercial vehicles could conflict with owners' cars. Appeal dismissed (Uttlesford DC, 11/7/07).

### **Housing on Contaminated Site**

1,200 homes plus supporting facilities at Watery Lane, St Helens would meet housing need and not undermine market renewal schemes with 10% affordable given high cost of development. There was much contamination and a condition was imposed limiting the new homes until a full remediation scheme had been agreed. Application approved (St Helens MBC, 18/7/07).

## **Employment Site Lost**

A former colliery site at Doncaster Road, Goldthorpe was allocated for employment and housing. It was alleged housing would erode the industrial land stock and be premature pending a masterplan for the area. Acceptable living conditions could be obtained and there would be no prejudice to market renewal policies. No need to retain for employment and so appeal allowed (Barnsley MBC, 23/8/07).

## **Industrial Loss Halted**

Although it was said that a warehouse at Vale Avenue, Southend-on-Sea was unviable no marketing had taken place and thus the proposed residential redevelopment would be contrary to policy. Some new land had been allocated in accordance with structure plan and regional policies but there was still doubt that the full amount could be found. Appeal dismissed (Southend BC, 31/7/07).

## **Innovative Design Beats Employment**

24, 30 or 32 flats at Station Grove, Wembley would replace employment generating uses. This was acceptable because of the good design, but only the lower number would not impact on residents' amenities and provide satisfactory living for occupants. Appeal allowed (Brent LBC, 31/7/07).

## **Continued Employment Use Unjustified**

12 flats at Pavilion Drive, Leigh-on-Sea would replace a small building used for industrial purposes which did not have maneuvering or parking spaces. If fully used there could be highway difficulties and in a suburban area residential reuse was to be preferred. Appeal allowed (Southend-on-Sea, 6/8/07).

## **Employment Use Unlikely**

Housing at Wickmans Drive, Coventry would be on an employment site which had permission to extend. However despite marketing flaws no purchaser had come forward and it would be costly to remove the buildings and decontaminate. Housing would not undermine the council's strategy and appeal allowed (Coventry CC, 16/8/07).

## **Poor Design Sinks Housing**

Conversion of a listed former workhouse to residential and 79 units in the grounds had elements of poor design. The layout was dominated by roads with few pedestrian links to existing areas. There were no details about the conversion and although this was acceptable in principle the appeal was dismissed at Darlingscote Road, Shipston on Stour (Stratford-upon-Avon, 6/8/07).

## **Regeneration Sinks Policies**

A mixed-use development of 630 homes, a multiplex and shopping on a car park at Winwick Street, Warrington would be contrary to policy in that there was no housing need, no identified requirement for extra shopping (but no harm to existing) and the tower was not first class design. However the regeneration benefit outweighed this. On a second site in active shopping use the design was acceptable. Contrary to housing policies restraining existing supply and replacing existing use. This appeal failed (Warrington BC, 5/7/07).

## **HOUSING POLICY**

### **Local Plan Out-of-Date**

Housing at Redhills Road, Milton had been allocated for 14 years in the local plan, but this had now been over taken by regional planning guidance with emphasis on inner city regeneration. This was a peripheral site and it would be wrong to allow suburban development in the light of changing planning circumstances. Appeal dismissed (Stoke-on-Trent BC, 6/7/07).

### **Car Park Extension Thwarted**

Up to 35 dwellings on the Station Yard, Christ's Hospital would accord with a residential allocation, but not regarding more recent policy on a sustainable development as this was an isolated site. No housing need and harm not outweighed by extended public car park. Appeal dismissed (Horsham DC, 19/7/07).

### **Allocated Site Not Released**

For many years a site at David Drive, Skegness had been allocated for housing as part of a wider allocation. However the latest plan did not reflect the plan monitor and manage approach and this would be an isolated phase poorly related to the settlement. Appeal dismissed (E Lindsey DC, 23/8/07).

### **Staged Housing Allowed**

142 homes at Cherry Blossom Close, NI3 would be part of a larger site where an issues and options paper requested that it be developed as a whole. There was no reason why the larger part could not go ahead, particularly as access to the smaller was retained. Appeal allowed (Enfield LBC, 25/8/07).

### **Planning Strategy Undermined**

12 homes in a village conservation area would not harm this, with replacement trees, no harm to wildlife or hazard at access. Strategy for new housing in main towns would be harmed and appeal dismissed at Silver Street, Wrington (N Somerset DC, 14/9/07).

## **HOUSING: SUSTAINABILITY**

### **Remote Housing Site**

Up to 140 homes on a factory site at Crowborough Road, Five Ash Down would remediate the site with a village green on the sports ground. Although the site was somewhat remote there was good access to nearby towns and appeal allowed (Wealden DC, 30/7/07).

### **Public Transport Detriment**

Use of the former bus station at Cromer for flats would enhance the character and appearance of the conservation area and the setting of a nearby listed building, but loss of the facility would cause congestion and harm to public transport. Appeal dismissed (Norfolk DC, 23/8/07).

## **More Homes Unsustainable**

16 dwellings on a former school site at Black Horse Drove, Littleport would replace permission for five homes in a settlement for infilling only. Despite affordable housing, funding for community hall and contribution towards education etc this did not outweigh unsustainable nature of settlement. Appeal dismissed (E Cambridgeshire DC, 24/8/07).

## **AFFORDABLE HOUSING**

### **Affordable Split Sanctioned**

Redevelopment of a wood yard at Stockwell Road, SW9 with 30 flats in a four-storey building would have an acceptable design and not impinge on the daylight of nearby buildings. Policy required 50% of habitable rooms to be affordable, with 70% for renting and 30% for sale. Proposal for 40% social rented and 60% shared ownership which the inspector thought satisfactory. Appeal allowed (Lambeth LBC, 27/7/07).

### **Stand and Housing Meet Design Guidelines**

A new football stand at Peterborough FC with adjacent housing were in outline but supported by a 36 page design and access statement. This gave sufficient detail and the council's fear that there would be prejudice to the wider area was unfounded. There would be much needed new housing and appeal allowed (Peterborough BC, 23/8/07).

## **HOUSING: HABITAT LOSS**

### **No Harm to Habitat Protection**

12 flats at St George's Lane, Ascot would replace a single house and it was argued would impact unduly on a special protection area by disturbing birds. A legal agreement prohibited predatory animals and this could be easily monitored in the block said the inspector. Appeal allowed (Windsor & Maidenhead RBC, 3/8/07).

## **SERVICES**

### **IMPACT ON HIGH STREET**

#### **Singing Allowed at Pub**

A condition banned any amplified noise at Arklay Street, Dundee but a reporter agreed that this could be relaxed for karaoke provided a noise assessment was submitted. Other nearby pubs had this facility and it should be allowed here if at all possible. Appeal allowed (Dundee DC, 7/8/07).

#### **Outside Seating v Residents' Amenities**

Use of the pavement for seating at Hoskins Walk, Oxted would be acceptable and not harm amenity as there was already considerable pedestrian activity to a supermarket. No complaints about the use had been received. Appeal allowed (Tandridge DC, 9/8/07).

#### **Coffee Shop Breaches Barrier**

A Café Nero in High Street, Epping was a mixed A1/A3 use and thus outside the pure retail

category. The council's frontage length and unit number policy had been breached and it would give the wrong signal if the use were retained. Enforcement notice upheld (Epping Forest, 6/8/07).

### **Amusement Centre Compromises Shop**

An amusement centre at the rear of a shop reached by a corridor would still be the predominant use at High Street, Stockton-on-Tees and thus breach the council's policy. Further, the small shop unit might be difficult to let further undermining viability. Appeal dismissed (Stockton-on-Tees BC, 23/8/07).

### **Retail Protection Policy**

A building society at Haymarket, Norwich would erode the council's policy of 85% retail. This was not advisory and although there would be little harm breach of this was fatal leading to dismissal of the appeal (Norwich CC, 21/8/07).

## **HOTELS**

### **Motel Harms Openness**

Replacement of a redundant PFS at London Road, Great Missenden would improve the visual attractiveness of the site although reducing the openness of the AONB and green belt harming the surrounding landscape. While there was a need for a motel the unsustainability of this site told against it as well. Appeal dismissed (Chiltern DC, 29/6/07).

### **Tourism Feel Kept**

Conversion of a hotel at Youngs Park Road, Paignton into flats would erode the tourism feel of the area with other hotels nearby which functioned satisfactorily. This one could be improved and appeal dismissed (Torbay BC, 10/7/07).

## **BOATING FACILITIES**

### **Marina Gets Go Ahead**

Permission granted in 1982 for a 150 boat marina and car park at Romney Lock, Windsor. Car park commenced before expiration in 1987. This was confirmed by the planning officer in 1988 and again in 1999. Aerial photographs showed this and the council's evidence to the contrary was misplaced. Lawful certificate granted (Windsor & Maidenhead RBC, 10/7/07).

### **Canal Development Opportunity Retained**

Although a boat shed was of recent origin and had been fire damaged, the use of the canal-side facility should be retained rather than allowing flats. This was the last opportunity to retain a canal-side use and although this might not be wholly viable interest had been shown at Castle Wharf, Berkhamstead. Appeal dismissed (Dacorum DC, 8/8/07).

## **HEALTH FACILITIES**

### **Countryside Healthcare Facilities**

Doctors had been looking for many years for a new surgery as theirs was overcrowded.

No sites had come forward in the urban area and one at St Richards Road, Deal was in the countryside and would be prominent. However the need for the facility outweighed harm and appeal allowed (Dover DC, 7/8/07).

### **Vets Generate Employment**

The use of an office/warehouse for a veterinary referral centre with 30-40 jobs would equate to its permitted use. It had been long vacant with difficulties of letting because of its layout. Appeal allowed at Church Lane, Chalfont St Peter (Chiltern DC, 8/8/07).

### **Nursery on Industrial Estate**

A children's nursery at Denby Way, Hellaby would be in an industrial building, but providing more employment. It would not undermine industrial land supply and while it might better suited elsewhere this was a reasonable location. Appeal allowed (Rotherham MBC, 29/6/07).

## **COUNTRYSIDE**

### **AGRICULTURAL USE**

#### **Large Polytunnel Harms Green Belt**

The use of this for displaying plants at a garden centre Chester High Road, Wirral required planning permission and because of its effect on openness this was rejected. Whilst PPG2 allowed recreation facilities and PPS7 promoted leisure in the countryside, at this was a retail activity and did not fall in this category. Appeal dismissed (Wirral MBC, 23/8/07).

#### **Green Belt Housing Stinks**

Demolition of a house and building within the curtilage at Birchen Hills, Ossett would remove sheds which had given rise to nuisance because of manure storage. The council were taking action against this and it would be disproportionate to allow housing on such an area. Appeal dismissed (Wakefield MBC, 1/8/07).

## **INDUSTRY AND STORAGE**

### **Industrial Policy Conflict**

Despite being zoned in the local plan for employment and containing 23,000m<sup>2</sup> of floorspace, expansion by 18,900m<sup>2</sup> at Weston Road, Honeybourne would significantly enlarge the built area in the countryside. The buildings would be higher than the existing hangers and be seen from an AONB. There was encouragement for rural employment, but this was small-scale and there was no warrant for larger buildings. Appeal dismissed (Wychavon DC, 1/8/07).

### **Temporary Permissions Leads to Permanent**

Previously a nursery and a builder's yard the site at Teat Lane, Pulborough had been the subject of temporary permissions for manufacturing since 1989. It had little impact on the countryside except for a poor access which was not much used because of the low-key nature of the operation. Appeal for permanent use allowed (Horsham DC, 31/7/07).

## **Green Belt Storage**

A travelling showman had placed fairground equipment on various unauthorised sites. He now wished to establish winter quarters on a former nursery in the green belt at Verwood Road, Wimbourne. Because of existing structures the use would not adversely affect the openness of the area and with the need for settled accommodation in the adjoining bungalow for his children's education the appeal was allowed (E Dorset DC, 1/8/07).

## **Large Machinery Intensifiers Use**

Storage of builder's materials and plant had occurred at Penny Lane, Burton Fleming for many years and this was a mixed residential/storage use. However a new access which allowed heavy plant to be stored materially affected the character of the mixed use because of visual intrusion and noise. This was susceptible to enforcement action which was upheld (E Riding of Yorkshire DC, 31/8/07).

## **COUNTRYSIDE HOUSING**

### **Outstanding House Foiled**

An innovative outstanding design with locally sourced materials and exceptionally adapted to its setting at Burley Hill, would still diminish the intrinsic character and scenic beauty of the national park by virtue of residential occupation. Appeal dismissed (New Forest DC, 2/8/07).

### **Cheap Holiday Homes Blasted**

65 units at Laity Lane, Carbis Bay would be on the edge of the settlement and have an open footprint. However there were few details about the type of unit to be provided and there were fears that this could be wooden land sold-off at the cheaper end of the market. This would cause harm to the settlement. Appeal dismissed (Penwith DC, 24/8/07).

### **Care Home Extension in Green Belt**

The extension at Turnshaws Road, Kirkburton would be for those suffering from dementia where there was a pressing need for accommodation with lack of suitable sites. The wooded surroundings meant would be little visual impact and openness would not be eroded in the green belt. Application approved against inspector's advice (Kirklees MBC, 24/7/07).

## **SPORT**

### **Golf Range Stays Put**

66 dwellings at Bullockstone Road, Herne Bay would erode the area's character. Even with discounting there was a five year housing land supply and structure plan targets were being met. Appeal dismissed (Canterbury CC, 6/8/07).

## MISCELLANEOUS

### DEFINING USES

#### Abandoning Industrial Use

Manufacturing at Hunter Street, Rugby stopped in the 1980s and because of the building's physical condition, length of non-use, intervening uses and the owner's intentions, the use had been abandoned. Thus permission was required to return to it and lawful development certificate refused (Rugby BC, 27/7/07).

#### Airport Parking not Storage

Parking for Stansted Airport took place off-site at Anchor Lane, Abbess Roding in the green belt. This was not part of the authorised storage use as the cars belonged to others and the movements to and from the airport were unsustainable. Appeal dismissed (Epping Forest DC, 20/8/07).

#### Storage Use not Limited to Farm

An enforcement notice alleged storage of construction and landscaping materials at Laurels Farm, Milton. This was in a barn erected following 2003 permission for a storage building. Although the application stated this to be for farming purposes, the permission did not have such a limitation and was therefore for general storage said the inspector. Appeal allowed (Bassetlaw DC, 25/8/07).

### IMMUNITY PERIOD

#### Conflicting Residential Evidence

A garage at Orsett Road, Horndon-on-the-Hill was used for residential purposes and enforcement notice served. There was contradictory evidence about the length of this use with the appellant asserting it had been for 20 years, while stating in his appeal grounds that it was eight years. Evidence showed storage in 2003 and a four year period could not be demonstrated. Notice upheld (Thurrock BC, 7/8/07).

#### Dispute on Dwelling's Completion

A caravan had been enclosed with boarding at Restless Hill, Lunga and it was claimed that this had occurred more than four years ago. However there was evidence that changes had occurred subsequently and it was doubted whether there had been substantial completion and so enforcement notice upheld with removal period extended to five years because of development in the area. (Argyll & Bute DC, 16/8/07).

#### Agricultural Breach – 4 or 10 Years?

A farm worker's cottage had been occupied by others in breach of the condition. The inspector ruled that it was already a dwelling and thus the 10 year rule applied. It had been empty for 16 and 48 days and the latter could not be considered de-minimis and thus there had been a break severing the ten years and the lawful development certificate failed at Bedford Road, Wilington (Bedford BC, 28/8/07).

## PLANNING CONDITIONS

### Lawful Completion Denied

1987 permission for flats required prior approval of materials and details of a retaining wall. It was alleged oral agreement had been reached but there was no documentary evidence of this. These conditions should be fulfilled before commencement and appeal at Torwood Road, Torquay dismissed (Torbay BC, 22/8/07).

### Failure to Comply with Conditions

A 1996 agricultural worker's permission at Sparrow Greave, Wincle had not complied with minor conditions but these could be waived and did not affect the validity of the permission. Enforcement notice quashed (Peak District NPA, 25/8/07).

For more information please speak to your usual contact at **CgMs** or **Tony Bowhill** on 01702 551148 or [tony.bowhill@cgms.co.uk](mailto:tony.bowhill@cgms.co.uk).

The views expressed in this news letter although given in good faith must not be treated as a definitive statement of the law or practice. CgMs cannot hold themselves liable for any action taken on such general advice and recommend that specific advice is taken on any particular problem.

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