

PLANNING NEWSLETTER

Issue 8 August 2005

LATEST NEWS

LATEST UPDATE ON NEW PLANNING LAW

The following provisions of the Planning and Compulsory Purchase Act 2004 take effect from 24th August 2005:

- a) Major Infrastructure Projects – this new measure will seek to speed up the inquiry process by enabling concurrent sessions to be held. In addition, the measure provides that an economic impact report should accompany an application for a major development of national or regional importance. This is intended to provide better and earlier information – with the expected benefit of a reduction in inquiry time on such schemes.
- b) Duration of Permission and Consent – reduced to 3 years – this amends the default period for the life of a planning permission and consent from five to three years and removes the current ability to extend that time limit. In recognition that some developers may need a period of time to come to terms with a new regime that no longer permits extension of the time limit, extension on existing planning permissions will be permitted for a further 12 months after commencement (i.e. until 23rd August 2005).
- c) Power to Decline to Determine Applications – extends the existing power for local planning authorities to decline to determine repeat applications where they are submitted with the intention of wearing down opposition to undesirable developments.
- d) Duty to Respond to Consultation – introduces a duty for statutory consultees on planning applications to respond within 21 days and report to the Secretary of State on their performance in doing so.
- e) Regional Planning Bodies as Statutory Consultees – introduces a requirement for local planning authorities to consult these bodies where a planning application may impact on the implementation of the Regional Spatial Strategy.
- f) Isles of Scilly – a technical measure allowing the Isles of Scilly to carry out the functions and responsibilities of a local planning authority under the PCPA.

For further information please contact Malcolm Honour at malcolm.honour@cgms.co.uk or Erica Mortimer at erica.mortimer@cgms.co.uk

LONDON OFFICE

Morley House
26 Holborn Viaduct
London
EC1A 2AT

Tel: 020 7583 6767
Fax: 020 7583 2231

CHELTENHAM OFFICE

Burlington House
Lypiatt Road
Cheltenham
GL50 2SY

Tel: 01242 259290
Fax: 01242 259299

KETTERING OFFICE

Ragsdale
1 Church Lane
Great Cransley
Kettering NN14 1PX

Tel: 01536 790447
Fax: 01536 799378

PLANNING OBLIGATIONS

A new Circular, 5/05, has been published. It comprises two annexes: A – which sets out the statutory framework for planning obligations, including the arrangements for discharge or modification; B – which explains the policies of the Secretary of State and provides guidance on their use.

The Circular supersedes Circular 1/97 and is the Government's definitive guidance on planning obligations. However, it does not fundamentally alter the system as envisaged by the Planning and Compulsory Act, which in this regard, has yet to come into force. Neither does it deal with the question of a Planning-gain Supplement as recommended by Kate Barker. There are strong hints that this "land tax" will become part of the Government's programme and an announcement is expected towards the end of the year.

For further information please contact Erica Mortimer at erica.mortimer@cgms.co.uk or Malcolm Honour at malcolm.honour@cgms.co.uk

AFFORDABLE HOUSING THROUGH S106 AGREEMENTS

The Government has published university research on the delivery of affordable housing through the planning system.

The research confirms the importance of S106 agreements in delivering such housing and its contribution to Government's objective of mixed communities. However, many factors influence affordable housing provision, including availability of land, policy on mixed communities, brownfield targets, increased densities, other calls on S106 and the availability of public subsidy grant regime.

The research looks at the number of affordable units provided in the past and the range of tenure. Costs and funding of affordable housing are examined while off-site and on-site provision are mentioned.

This is a useful piece of research and will obviously influence the Government in its preparation of revised PPS3: Housing, a consultation draft which is expected in the autumn. Doubtless there will pressure on lowering thresholds for providing affordable housing.

For further information please contact Richard Tilley at richard.tilley@cgms.co.uk or Kevin Goodwin at kevin.goodwin@cgms.co.uk

GREEN BELT DEPARTURES

The Government is concerned about inappropriate development in the green belt. They are proposing to revamp the Direction which requires planning authorities to refer such applications to them.

Three options are identified. Option one would require all planning applications, where the local authority are proposing to grant consent for inappropriate development, to be referred to the Secretary of State for a decision on whether to call-in the application.

Option two would require applications which would significantly prejudice the implementation of green belt policies to be referred to the Secretary of State.

Option three would introduce a threshold above which referrals would need to be made

if the authority was minded to grant permission. The Government prefer this option and are requesting views on the proposals.

In option three the size threshold would be where total new floorspace exceeds 1,000 m². This is the same as for London authorities being required to consult with the Mayor.

Consultation responses should be submitted by 14th October 2005.

For further information please contact Erica Mortimer at erica.mortimer@cgms.co.uk

MEZZANINE FLOORS-RETAIL WAREHOUSES-UPDATE

The ODPM has confirmed that the new Development Order which will regulate retail extensions over 200sqm will not now come into force until November 2005. Originally the Order was planned for September. This reprieve allows a further period to put in place measures to protect any existing rights to install mezzanine floors without the need for planning permission. After the new Order comes into effect an application for permission for any retail floor space over 200sqm will be required. Although the floor space figure has yet to be confirmed following the consultation period, given the publication of PPS6 after the consultation paper on mezzanines, and the reference in the former document to 200sqm, it would appear inconsistent if this figure was not confirmed in the Development Order. Further clarification is however required on whether the floor space limit will include storage areas. Although the consultation paper raises concerns about storage areas at mezzanine levels freeing up sales areas at ground floor level, this seems to ignore the compelling sustainability arguments for having on site storage and avoiding unnecessary vehicular trips between warehouses and retail units.

For further information please contact John Stockdale at john.stockdale@cgms.co.uk

HOUSING

The Government's high degree of consultation dropped during the General Election period but has now restarted with a vengeance. Following the Barker Review of Housing Supply the Government has become very concerned about the amount of new housing and its affordability.

They have now published a consultation paper, Planning for Housing Provision, to help ensure housing in growth areas and that the planning system is able to respond to demand by making appropriate land available more swiftly for building new homes. The objective is to make planning authorities work together to be more flexible and responsive to the local housing market.

The new approach has two elements:

- Assessments of need and demand, and development of plan policies, on the basis of a robust evidence base, which looks at housing markets and is developed working in partnership with stakeholders
- A proactive approach, using positive planning to deliver appropriate housing land, key provision under review, and maintain a rolling 5-year supply of housing land within a 15-year time horizon

The proposal is to work through sub-regional housing markets rather than simply administrative boundaries. Such markets could be designated for high levels of new

homes (eg, the Thames Gateway), for managed growth, for low levels of new homes, or for managed reductions in housing. The process will then allocate housing numbers to sub-regional housing market areas and to local authorities within them.

If this consultation succeeds it remains to be seen how far local authorities will collaborate. The objective is to speed-up the release of housing land, but this is likely to be highly contentious not only with councils but with local residents. In any event the new system will take some time to come into effect and is unlikely to guarantee the numbers of houses which ministers feel are required in the short to medium term.

For further information please contact Richard Tilley at richard.tilley@cgms.co.uk or Kevin Goodwin at kevin.goodwin@cgms.co.uk

CASINOS

The Consultation Paper on 'Possible Changes to the Use Classes Order - Casinos' was published in July.

Casinos are currently classified within Use Class D2: Amenity and Leisure. This means a D2 use (i.e. cinema, bingo hall, dance hall, swimming baths) could convert to a casino use without the need for planning permission.

The introduction of the Gambling Bill has raised concerns that changes to the licensing arrangements could result in a proliferation of casinos. The Government is therefore seeking to tighten the rules so that local planning authorities maintain development control over casinos.

The Paper suggests three possible options: 1) no change, 2) casinos to be a sui generis use with no permitted development rights, and 3) casinos to be a sui generis use with permitted development rights to revert to a D2 use (not vice versa). In order to counter the expected casino proliferation, enable the management of adverse impacts associated with casinos, enable the capturing of regeneration benefits for all casinos and account for the uniqueness of casinos and dispel uncertainty, the third option is the Government's preferred option.

Consultation on the Paper closes on 21 October 2005.

For further information please contact Sarah Stevens at sarah.stevens@cgms.co.uk

LONDON - SUB REGIONAL FRAMEWORK

The Mayor has now published for consultation a set of Sub Regional Frameworks covering the East, West, South, North and Central London Areas. Responses on the East London area document are invited by 30 September with responses on the four other areas by 28 October 2005.

The Sub Regional Framework will provide a stepping-stone between the broad policies in the London Plan and the local implementation of these policies through LDF's and Action Area Plans.

The Frameworks contain differing aspirations to reflect the different nature of the five sub regions and the location of the Opportunity Areas and Areas for Intensification. The Frameworks also presents an opportunity to identify policy areas that may need to be

considered in the first review of the London Plan.

For further information please contact Kevin Goodwin at kevin.goodwin@cgms.co.uk

PPS10 : PLANNING FOR SUSTAINABLE WASTE MANAGEMENT

The new PPS10 on waste management has been published replacing PPG10. The statement incorporates the role of the regional planning bodies in imposing an overall strategy for waste management looking forward for a fifteen to twenty year period.

There is surprisingly no reference to “Best Practice Environmental Options”, “regional self-sufficiency” or the “proximity principle”, which were key principles of the previous guidance, although similar principles do still apply in the new statement.

Particular emphasis is given to the need to deliver ‘sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option’. The statement also stresses the importance of data collection, maintenance and review.

For further information contact Valerie Scott at valerie.scott@cgms.co.uk

 [View CgMs Briefing Note on PPS10 \(91k\) >>](#)

CONTENTS OF THE REST OF THE NEWSLETTER	
p.6	PLANNING LAW
p.6	Challenging Decisions
p.7	Environmental Impact Assessment
p.7	General Law
p.8	APPEALS UPDATE
p.8	Housing Density
p.8	Housing: Employment Land
p.9	Housing Land Supply
p.9	Shopping
p.10	Community Uses
p.10	Miscellaneous
p.11	CGMS NEWS

PLANNING LAW

CHALLENGING DECISIONS

Single Permission for Several Quarries

It was contended that two quarries were not dormant as said by the county council. Permission for these was contained in a single document along with other quarries and they should be treated together said the claimant. However they instituted their action several years after the list of dormant quarries was published.

It was an abuse of process to seek to challenge the planning status of such a quarry, not by a prompt action for judicial review of the relevant planning permission, but in an ordinary action for a declaration brought after a substantial period of delay: Stancliffe Stone Co v Peak District NPA (Times 14/7/05, CA).

Overlooking Key Issue?

Although the council did not raise this as an issue at an appeal local residents did. The inspector saw the matter on his site visit and decided that this was a key issue and dismissed the appeal on this basis. It was argued that he should have adjourned the inquiry for the appellants to call more evidence. Held-the issue was debated at the inquiry and the company could not reopen this to bring fresh evidence: Tatham Homes v First Secretary (16/6/05).

Height of Telecommunications Tower

Part 24 of the GPDO permits telecoms apparatus (excluding any antenna) not exceeding 15m. A tower was erected above this height and it was argued that the excess was an antenna. On appeal the inspector ruled that antenna was confined to a passive electronic component that transmitted and received signals. This construction was too narrow and wrong in law. However prior erection of the mast meant that the GPDO rights did not exist and appeal dismissed: R (Airwave) v First Secretary (30/6/05).

Evaluating Competing Sites

Two sites were before the planning committee competing for the stated local housing need. The council preferred one site and refused to compare this with the other. This was the wrong approach and a comparison of the two sites in this case would inevitably be a material consideration. Decision quashed: R (Chelmsford Car) v Chelmsford BC (6/7/05).

Building Can Be Demolished

A house was on the local list and a development plan policy prohibited demolition of such properties. An appeal for a block of flats was allowed on the basis that such a property could be demolished without the need for permission.

A third-party argued that the council would have made an Article 4 direction prohibiting development but this was not advanced at the enquiry nor was it in the council's case. Decision upheld: Magauran v First Secretary (12/7/05).

Replacement Football Club Rejected

An appeal refused housing on a football club's ground because relocation had not been satisfactorily explained. It was contended that a condition covering this could be imposed but the court agreed that this would not be sensible: *Orchard Holdings v First Secretary* (1/7/05).

Change in Employment Criticised

A local plan inspector recommended 2ha for employment but the council decided this should be 2.7ha taking in adjoining land. This would compromise a policy for a bulky goods proposal. It was argued there should have been further representations on the proposed change. The offending policy was struck out: *Ikea v Broxtowe BC* (23/6/05).

ENVIRONMENTAL IMPACT ASSESSMENT

EIA Challenged

A leisure development was permitted on a business park. Outline permission for this had already been granted and at that stage the council determined that an environmental assessment was not required. They also made a similar ruling at the reserved matters stage. They had properly exercised their judgement and this could not be challenged at this stage: *R (Noble Organisation) v Thanet DC* (28/6/05).

Phased EIA Required

Phase one of a 67ha mixed-use scheme was for a spine road. It was argued this required an EIA but the council declined to require one. They were entitled to do this although one might be required for the overall scheme when this came forward: *R (Candlish) v Hastings BC* (14/7/05).

No EIA Required

A scheme for refurbishing the Barbican Centre and building 240 flats was close to York historic city walls. The impact of this should be fully assessed said a local resident but the council's screening opinion was properly issued. Challenge rejected: *R (Anderson) v York CC* (13/6/05).

GENERAL LAW

Injunction Halts Activists

A biotech company has been granted an injunction preventing animal rights protesters from harassing the staff of any business connected to it. The company, which previously obtained an injunction for its own staff, has had the ruling extended to include suppliers, contractors, sub-contractors and shareholders.

The Government has now introduced tough new laws to crackdown on animal rights protesters. As a result it is now a criminal offence to disrupt the functioning of an organisation holding an animal research licence, through illegal acts such as vandalism, trespassing, blackmail etc. The maximum penalty is five years in prison and an unlimited fine.

Intrusive Extractor Fan

This protruded above the appellant's land discharging from an adjoining take-away. The County Court dismissed the action but it has been held that this did constitute a trespass as it was only 4m above ground level. Whether there should be an injunction or damages was a matter for the County Court: *Laiqat v Majid* (22/6/05,CA).

Adopting Somebody Else's Reasoning

A councillor's conduct was criticised and the matter referred to the Standards Board for adjudication. They merely adopted the standards officer's reasoning and did not set out an independent judgement on the issues. Decision quashed: *Adami v Standards Board for England* (28/6/05).

Enhanced Compensation Available

A small strip of land was acquired to give access to a new housing estate. The sum of £13,600 was offered. However, the owner contended that a much larger sum representing one-third of the developmental value of the estate should be paid. The landowner has now obtained compensation of £7.7m just before the Lands Tribunal was due to hear the claim; *Souter v Berkshire CC*.

APPEALS UPDATE

HOUSING DENSITY

Better Mix of Dwellings

Redevelopment of a former council depot for 16 homes St Mary's Lane Ticehurst has been permitted. The site was scheduled for employment but the high costs of development and the wider dwelling mix rather than that dismissed at appeal last year meant this was now acceptable. No affordable housing because of high costs (*Rother DC*, 18/5/05).

Impact on Canal

A mixture of employment and residential uses on a site at Bow Wharf, East London next to the Grand Union Canal would have an unacceptable impact on this. The height of the building would be about 8m and would have an overbearing effect on the setting of a nearby listed building. The project would detract from the low-key ambience of the canal towpath. Appeal dismissed (*Tower Hamlets LBC*, 31/5/05).

High Quality Impact

A mixed-use development of 4 stories rising to 17 would accommodate 43 flats at Salamanca Place, Albert Embankment, SW1. There would be some over looking of neighbours and impact on their sunlight and daylight. However this was off set by mitigating train noise and the high quality of design was also a plus factor. Appeal allowed (*Lambeth LBC*, 23/5/05).

HOUSING: EMPLOYMENT LAND

Employment Land for Housing

A large building on part of an industrial estate at Wrexham Road, Mold was over 50 years

old and in poor condition although partly occupied. Its loss to housing would not be significant particularly as there was less than a 5-year land supply. Release would be in accordance with Government advice and would not prejudice the UDP as this would not be adopted until 2008 at the earliest. Appeal allowed (Flintshire CC, 10/6/05).

Employment Harm Loss

Redevelopment for housing of a vacant industrial building at Scobell Street, Tottington would not exacerbate oversupply of housing land nor harm regeneration elsewhere. However, loss of employment albeit in residential area would be harmful. Appeal dismissed (Bury MBC, 21/6/05).

Employment Loss Sanctioned

91 dwellings on a 0.9ha employment site at East Road, Harlow would not harm employment supply as there had been adequate marketing. With 32% affordable provision the site would not undermine housing supply in a sustainable location with a good design. Appeal allowed (Harlow DC 21/6/05).

HOUSING LAND SUPPLY

Housing Oversupply

In Greater Manchester redevelopment of a house for 5 flats at Pownall Avenue, Bramhall would be acceptable on design grounds but was rejected because of the oversupply of housing land. To allow this would create a precedent. Appeal dismissed (Stockport MBC, 23/5/05).

Critical New Housing

72 flats and 20 houses at Woolton Road, Allerton would support urban renaissance in this housing location. Although not in a pathfinder area where new residential was to be concentrated there was an undersupply of housing land and thus the scheme would contribute towards new development. Appeal allowed (Liverpool CC 15/6/05).

Immediate Shortfall Thwarted

187 dwellings at Southgate Wood, Morpeth would not in reality be available to meet the housing land shortfall up to 2006. They would be built in the next period during which time allocated sites and others with valid permissions would come forward. Appeal dismissed (Castle Morpeth BC, 16/6/05).

SHOPPING

Relocated Tesco's

It was proposed to relocate this from a town centre at Clough Street, Hanley to an out-of-centre site. There were no alternative sites in the town centre except one for a comparison goods store. Although this was not an edge of centre site it was well served by public transport and application approved (Stoke on Trent CC, 19/5/05).

Lack of Integration

A large superstore close to the town centre at Portobello High Street would be an appropriate location but it was difficult to see how this could be integrated with existing shops and there was also a possible traffic impact. Appeal dismissed (Edinburgh CC, 25/5/05).

Design and Vitality Hit

An Aldi store at Eridge Road, Tunbridge Wells would harm the character and appearance of the conservation area due to poor design and also impact on the shopping centre thus failing the sequential test. Appeal dismissed (Tunbridge Wells BC, 21/6/05).

High Value Development

Affordable housing and B1/B2 use plus a retail warehouse at Harrogate Road, Ripon would be on an employment site. The high cost of developing this because of contamination, and the need for housing plus passing the sequential test with no harm to the vitality or viability of the town centre meant allowing the appeal (Harrogate BC, 20/6/05).

Retail Ousts Employment

Erection of a non-food retail store and office block at Mellor Street, Rochdale within an employment area would not harm the supply of this because there was between 15.8 and 22.8 years supply of such land. Take rates were poor and the appeal was allowed (Rochdale MBC, 25/5/05).

COMMUNITY USES

Church Retained for Community

Conversion of a redundant church to 3 flats at The Terrace, Ascot has been rejected because the property was still capable of accommodating community uses. Anyway no proof about its future had been proffered and thus it failed the policy test (Windsor & Maidenhead RBC, 18/5/05).

Off Centre Leisure

A hotel/casino/bingo hall on an employment site Houghton Road, Darlington would not harm job prospects. It was outside the town centre and beyond the ring road. There was no easy walking to the town centre. There was no reason why the three elements could not be broken up although town centre sites did not easily exist. Appeal dismissed (Darlington BC, 24/5/05).

MISCELLANEOUS

Helicopter Flight Ban

At a house in Launceston, Cornwall the garden was being used for helicopter flights. It was acclaimed that these were less than 28 days per year but the inspector said there was a potential for more. Also the hanger was not permitted development although it was within the curtilage of a dwelling house. It had previously been part of a field and had not been in garden use for more than 10 years. Appeal dismissed (N Cornwall DC, 13/6/05).

Residential Use Abandoned

At Watling Street, Lichfield the property had not being occupied for 34 years and the external walls had all but vanished. On this basis the residential use had been abandoned and a lawful development certificate appeal was dismissed (Lichfield DC, 14/6/05).

Rudimentary Dwelling

This had been separately occupied as part of office an building at Tadema Road, SW10 since 1993. Although it only had a wash basin and toilet it was explained that the owner did not need a shower. There was only poor provision for food preparation but it was held it was a dwelling and immune from enforcement action (Kensington & Chelsea RBC, 15/6/05).

Waste Transfer Station

This use Jute Lane, Enfield on a B1/B2/B8 industrial estate would be unacceptable as it would be noisy and dirty. There was an existing waste transfer station on an adjoining site that was untidy and gave rise to intrusive activity. Appeal dismissed (Enfield LBC, 20/4/05).

Special Sporting Circumstances

A sports hall on the edge of a residential area in the green belt at Stoke Poges Lane, Slough would cause significant loss of openness and be inappropriate in the green belt. However, there was an agreed need for sporting facilities for the Sikh community and lack of alternative sites. These amounted to very special circumstances. Application approved (Slough BC, 22/6/05).

For more information please speak to your usual contact at **CgMs** or **Tony Bowhill** at tony.bowhill@cgms.co.uk

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

CgMs NEWS

PLANNING

Olympic Bid Victory

July saw London's successful win of the Olympic Bid. The Capital will host the 2012 London Olympics and Paralympic Games, with events being held at existing and new venues across the U.K. The main focus of development will be in East London, ostensibly within the Lower Lea Valley, focused around Stratford International Station. The regeneration benefits of the bid were the key to its success. New development is crucial not only to the success of the Games - it also facilitates the delivery of an Olympic Legacy to ensure buildings and sites can be actively used in the future.

We welcome the opportunity to utilise the skills of our Planning, Archaeological and Historic Building professionals in our involvement in Olympic related development.

For further information please contact Erica Mortimer at erica.mortimer@cgms.co.uk or Joanne Upton at joanne.upton@cgms.co.uk

Grange Farm, Kesgrave

CgMs have been successful in obtaining planning permission for a revised scheme for land being developed by David Wilson Homes at Grange Farm, Kesgrave.

The Council had previously advised David Wilson Homes that they required a mix of housing which indicated a high element of 2-bed houses. This was to meet the Council's housing needs requirements for this area as identified in their Housing Needs Survey.

CgMs noted that the Council had not included a reference to the mix of dwelling house types as part of the reserved matters condition of the original outline consent and considered that the Council's insistence on a certain type of mix was unlawful and outside the scope of the reserved matters condition. CgMs sought an Opinion from Leading Counsel on this legal point.

Mr Anthony Porten QC agreed with the legal argument raised by CgMs and a copy of his legal Opinion was submitted with the refused scheme.

Kesgrave District Council have now granted approval for the revised scheme which David Wilson Homes consider provides a more viable scheme providing the type of houses that their customers want.

For further information contact Valerie Scott at valerie.scott@cgms.co.uk