

# PLANNING NEWSLETTER

Issue 3 January 2005

## REGIONAL STRATEGIES RUSH ON

Now that The Planning and Compulsory Act 2004 is on the statute book regional planning bodies are forging ahead with their strategies. However population/household/dwelling increases are causing much concern particularly in relation to infrastructure provision.

In the South East the revised consultation range is now 25,500-32,000 new homes from 2006-2026 instead of the previous suggestion of 29,500-36000.

In the East of England the proposal is for 478,000 new homes and 421,000 jobs between 2001 and 2021. In the M11 corridor the assembly have rejected an ODPM proposal for a further 18,000 homes.

It is important to comment on regional special strategies and we can assist. Please contact a planning director.

## EMPLOYMENT LAND REVIEW

Pressure on local authorities to release industrial sites for housing and other purposes has been raised with the publication of a new report on employment land. The guide forces authorities to justify refusing change of use, rather than asking developers to prove that a site is no longer required for manufacturing. This is an interim guide pending publication of PPG3: Housing.

## PLANNING & POLLUTION CONTROL

PPS 23 advises that:

- any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to impacts on health, is capable of being a material planning consideration;
- the planning system has a key role in determining the location of development which may give rise to pollution;
- the controls under the planning and pollution control regimes should complement rather than duplicate each other;

The PPS outlines the core principle of sustainable development, the precautionary principle

---

### LONDON OFFICE

Morley House  
26 Holborn Viaduct  
London  
EC1A 2AT

Tel: 020 7583 6767  
Fax: 020 7583 2231

### CHELTENHAM OFFICE

Burlington House  
Lypiatt Road  
Cheltenham  
GL50 2SY

Tel: 01242 259290  
Fax: 01242 259299

### NORTHAMPTON OFFICE

Wykes Farm  
Allens Hill  
Bozeat  
Northampton NN29 7LW

Tel: 01933 666391  
Fax: 01933 664861

and general Government policies on planning and pollution control. There is a particular section on contaminated land and the role of development plans and development control in dealing with this.

## SUSTAINABLE WASTE MANAGEMENT

Draft PPS10 aims for a better match between the waste communities generate and the facilities needed to manage this waste. The waste hierarchy is at the heart of the new policy and there is greater emphasis on waste as a resource.

PPS10 also underlines the need to cater adequately for disposal. The PPS requires clear policies regionally and locally, and decides to be identified in local plans, so as to increase certainty for both local communities and industry. Supporting practice guidance will be produced to help speed up delivery.

## TEMPORARY STOP NOTICES

A consultation is underway regarding regulations for temporary stop notices. These can be served immediately and last for 28 days before an enforcement or stop notice has to be served. It is likely that the new regulations will come into force around April this year.

The new regulations will enable local authorities to take swift action against gypsies and others who enter land and then erect hardstandings and infrastructure without permission. An immediate notice can be served prohibiting the work and it will be a criminal offence to proceed in the face of this.

## TALL HEDGES

The Anti-Social Behaviour Act 2003 has recently come into effect. If a neighbour feels that the hedge is too high then he can complain to the local authority and ask for them to make a ruling. There is a fee to initiate the procedure and a remedial notice can be served to reduce the height of the hedge.

## PLANNING APPEALS DEADLINE

Early in 2004 the government shortened the time for lodging an appeal to three months. This only had the effect of bunching up appeals and giving too little time to consider the efficacy of such an appeal. Consequently they have now reverted for refusals after 14/1/05 (subject to Parliamentary approval) to the original 6 months period.

Hopefully this will reduce somewhat the considerable backlog of appeals which the Planning Inspectorate now have. It is taking up to one year for an appeal to be decided by written representations and much a longer for hearings/inquiries. This is clearly unacceptable and we are doing all we can on our client's behalf to reduce such delays.

## HOUSING ACT 2004

The new act has several important provisions:

- replacement of the housing fitness regime by a new framework called the Housing Health and Safety Rating System.
- an increase in control over houses in multiple occupation.
- a power to alter the statutory definition of overcrowding.

- provision of Home Information Packs which sellers of houses will have to provide.
- restrictions on the right to buy.
- direct grants to developers for social housing.

The grants to developers for social housing rather than through a housing association have led to some housebuilders setting out their own associations so as to meet the requirement for affordable housing in particular planning permissions. The working of this new provision will take some time to implement.

## MINERAL PLANNING

Draft Mineral Planning Statement I aims to align key policies for minerals planning in England with sustainable development. It recognises the need to supply an adequate stream of minerals for development while pledging to safeguard designated landscapes such as national parks and areas of outstanding natural beauty. Consultation is opened until 3/3/05.

## ACCESS TO INFORMATION

The Freedom of Information Act 2000 comes fully into force in January 2005. This means that there are extensive rights to access public files either personally or by requesting information from the authority. This will be particularly helpful in ascertaining background information, including consultations, on planning applications and appeals.

## PLANNING LAW

### UNFORTUNATE INVALID APPEAL

An enforcement notice was withdrawn but a new one immediately served. The appellant appealed the first one by mistake and when this was discovered he was out of time for appealing the second. He challenged the Inspectorate's decision not to proceed with his appeal but the mistake could not be rectified: *McKay v First Secretary* (18/11/04).

### DATE FOR APPEAL

A mining application was delivered on 28/2 but further information including an environmental statement was requested and delivered on 20/4. The three-month period for considering the application would then end on 20/7 but before conditions could be issued the applicant appealed. Held - the application was not complete until the environmental statement was submitted and thus the council's contention about the later appeal date was correct: *Wirral BC v Brock* (3/12/04, CA).

### DISAGREEMENT WITH INSPECTOR

Gas storage in an underground salt cavity was allowed against the inspector's recommendation. The Secretary of State was allowed to make his own interpretation of development plan policy as this was reasonable. He had properly taken into account material considerations such as the short time span for the work. Challenge dismissed: *Crangne PC v First Secretary* (9/12/04).

## IS SILAGE CLAMP A BUILDING?

An application to determine this was made. The council said as the concrete base was in place there were two stages to the operation the second being the erection of the walls. Held - this was the wrong approach as the project should be considered in its entirety as proposed by the application. Decision quashed: *R (Dennis) v Sevenoaks DC* (12/11/04).

## WHEELED BUILDING IS NOT BUILDING

A mobile building brought on to a site for residential purposes did not result in “development” or the carrying out of an operation and thus an injunction for its removal was discharged: *Tewkesbury BC v Keeley* (12/11/04).

## PREJUDICE BY TPO

Outline permission was granted for residential development with removal of a tree. A TPO was made to protect this but the new site owner was not consulted leading to quashing of the order: *Persimmon Homes v NW Leicestershire DC* (25/11/04).

## NO PLANS TO REMOVE TREES

A tree preservation order has been quashed as the owner had no intention of removing trees erected in his children’s memory. Also permission existed for a replacement dwelling provided the trees were retained. There was no need for the TPO: *Gilman v Rutland CC* (25/11/04).

## FAILURE TO ASSESS OPEN SPACE

It was proposed to erect a crematorium and cemetery on green belt land used as a sports field. PPG17 required a robust assessment of the need for a playing field and public support for the project. The appellant’s appraisal was not sufficiently robust and no consultation had been carried out. This was fatal and the inspector was not wrong to dismiss the appeal: *Kemnal Manor Memorial Gardens v First Secretary* (16/11/04).

## MAST CANNOT BE FORCED ON SITE

There is no duty on a telecommunications operator, when seeking planning permission for the siting and erection of a mast, to apply to the county court for an order requiring an unwilling landowner to grant the operator the right to place equipment on the landowner’s land.

The existence of the court’s powers does not require a planning authority in every case to conduct an analysis of how a court was likely to react to an application for an order on sites other than the one the subject of the planning application: *St Leger-Davey v First Secretary* (Times 3/12/04, CA)

## MAST’S EFFECT ON SCHOOL

Despite being within the Government’s guidelines on emissions an inspector dismissed an appeal for a telecoms mast near a school because of its alleged effect on pupils. The decision was quashed as it did not give adequate reasons for departing from the guidelines which showed the mast to be safe. This decision has been upheld: *T-Mobile (UK) v First Secretary* (12/11/04, CA)

## AIR MONITORING QUESTIONED

Consideration of a scheme for monitoring airborne particles is not necessarily a prerequisite of an environmental impact assessment before the grant of planning permission for the disposal of waste in deep mine excavations. This could be left for subsequent approval: Kent v First Secretary (Times 6/1/05)

## INJUNCTION DISOBEYED

The court has a vital role in upholding the principle that court orders should be obeyed when balancing competing factors to be taken into account on an application for a final injunction to remove gypsies from agricultural land. They had moved onto their own land and occupied it in breach of planning control and an interim injunction. That overarching consideration far outweighed the factors which favoured suspension of the injunction. The court discharged the suspension order, but granted a four-week stay: Mid Bedfordshire DC v Brown (Times 3/1/05, CA)

## PISTOL AT LOCAL AUTHORITY'S HEAD

Gypsies have been granted an injunction to prevent their removal from a site pending a challenge to enforcement notices. The judge was concerned about their tactics but nevertheless has allowed continued occupation until final determination of the legal challenge: Davies v S Cambridgeshire DC (10/11/04).

## ENVIRONMENT LAW

### DEPRIVING OWNER OF RIGHTS

Statutory amendments which enabled English Nature to control, sometimes severely, the use of sights of special scientific interests without compensation, were not inherently incompatible with the landowner's rights to their property. Thus the failure to renew an agreement for payment of compensation for interference with operations on the land was not wrong: R (Trailer & Marina) v Secretary of State (Times 28/12/03).

### NEWT'S QUERY PERMISSION

It was lawful to restart a query subject to a licence to relocate great crested newts. The license was refused but a challenge allowed although subsequently quashed as the application did not show an "imperative reason of overriding public interest" despite the existence of the planning permission: R(Newsum) v Welsh Assembly (22/11/04, CA)  
UK BREACHES WASTE CONTROL

The general exclusion of agricultural and mining waste from UK legislation on waste control is contrary to EC law. The UK therefore failed its obligations under Council Directives and a declaration was made accordingly: EC v UK (Times 6/1/05)

## NEGLIGENCE

### DEVELOPMENT POTENTIAL OVERLOOKED

When advising on the sale of a property a clawback clause was put in the agreement

but subsequently modified to substantially reduce any payment. The land was sold to a developer who in turn made a very large profit. The surveyors were held negligent because they failed to make inquiries about the planning status of the land and would have found out that a forthcoming draft plan allocated the site for residential: Francis v Barclays Bank (7/12/04).

#### GREEN BELT DAMAGES?

A solicitor failed to appreciate the significance of an inspector's report about the green belt and a property was sold at an alleged undervalue. She should have appreciated the situation but the vendor had conducted all planning matters and would have sold at the agreed price. Thus only nominal damages were awarded: Clarke v Iliffes Booth Bennett (21/7/04)

#### SLIGHT RISK OF NEGLIGENCE.

Of significance to planners and surveyors is a medical case where a client was not warned of a slight risk. Thus there was negligence. The judge found that, although the defendant had not performed the operation negligently, he had failed to warn the claimant of the small risk of partial paralysis inherent in the operation. Such failure meant he was negligent: Chester v Afshar (Times 19/10/04, HL).

### PLANNING APPEALS

#### HOUSING

##### HOUSING OVERSUPPLY

Although a mixed-use village in Cheshire on a 56ha site at Winnington Island for 1,200 dwellings etc would be in a sustainable location and use redundant industrial land it would pre-empt decisions on the local plan where there was already an oversupply of housing land and a forecast reduction in housing requirements to 2016. Application rejected. (Vale Royal, BC 17/11/04)

##### EXTENDED AFFORDABLE SITE

Although a site for 18 dwellings on 0.4ha in Cambridgeshire would be below the affordable housing threshold nevertheless it should be considered with an adjoining site. Despite difficulties of acquiring this a contribution should be made via an off-site provision as per the S106 obligation. Appeal allowed.

##### TALL BLOCK DISMISSED

An inspector dismissed an appeal for a nine-storey student residences in Bloomsbury because of effect on the area. He had made the correct balancing exercise between local harm and the need for additional accommodation. Challenge rejected: UCL v First Secretary (25/11/04).

##### KEY WORKERS FAVOURED

Replacement of The Grove Tavern at Snells Park by 24 starter dwellings would not harm

the character or appearance of the area but with reduced parking would be suitable only for key workers. Appeal allowed (Enfield LBC, 18/10/04).

## **SHOPPING**

### **FLOORSPACE SUBSTANTIALLY INCREASED**

Permission granted in 1999 for a shopping centre at Castlepoint with two vacant areas not currently used for this purpose. A lawful development certificate has been granted for retail use despite a condition limiting the total amount of floorspace which the inspector said had been discharged. (Bournemouth BC, 19/11/04)

### **REGENERATION BENEFITS B&Q**

A retail scheme at Oldbury Ringway would redevelop a factory site where there was a need for retailing. The sequential test was satisfied with no harm to the vitality or viability of nearby centres plus substantial regeneration benefits. Application approved (Sandwell MBC, 24/11/04)

### **RETAIL AIDS DECONTAMINATION**

A DIY store/garden centre/bulky goods retail plus affordable housing would enable decontamination of a site at Harrogate Road, Ripon without harm to the vitality or viability of nearby town centres. Appeal allowed (Harrogate BC, 3/11/04).

### **LOCAL CENTRE FROWNED ON**

At Staplehurst Road Sittingbourne the centre would harm residential amenity because of its design and noise and disturbance from the proposed pub. Appeal dismissed (Swale DC, 2/11/04).

### **HARM TO RESIDENTIAL AMENITY**

92 dwellings plus 7,663m<sup>2</sup> of shops at Union Street, Trowbridge would satisfy all retail tests being adjacent to the town centre but would cause harm to the area and residential amenity due to its layout and design. Application rejected (Wiltshire DC, 9/9/04).

### **NEED FOR ELECTRICAL GOODS AND FURNITURE**

A Courts/Currys on a car showroom at Stratford Road would meet a quantitative need but not a qualitative one. However the sequential test succeeded with no harm to the vitality or viability of nearby centres and in a sustainable location the application was approved (Solihull MBC, 18/10/04).

## **COUNTRYSIDE**

### **HEALTH CENTRE IN GAP**

A two-storey medical centre incorporating a pharmacy and dentist's surgery in a local landscape gap in Hampshire has been allowed because there was a pressing need for the facility. Alternative sites had been explored but this one was central to the settlements.

## FOR ALTERNATIVE SPORTING FACILITIES

Relocating an Essex football club to an edge of town site would mean increased building and paraphernalia on that site which would be unacceptable. Thus use of the existing site for residential purposes should not be permitted as there would be loss of an important recreational facility. Appeal dismissed.

If you require any information about items in this new sheet please contact **Tony Bowhill** in the first incidence, tel: 01702 551148, email: [tony.bowhill@cgms.co.uk](mailto:tony.bowhill@cgms.co.uk) or your usual planning contact.

The views expressed in this new sheet 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 based on such general advice and recommend that specific advice is taken on any particular problem.