

PLANNING NEWSLETTER

Issue 7 July 2005

LATEST NEWS

LICENSING

Last orders for old licensing regulations November 05

- The new licensing system goes live on 24th November 2005
- As of 7th February you have 6 months to apply to convert an existing Liquor Licence and carry across your Grandfather Rights (i.e. the hours for which you currently hold a licence for are automatically transferred to the new licence)
- Liquor licensing has been transferred from the Courts to the Local Authority
- Licensing Authorities must carry out their functions with a view to promoting the licensing objectives and must publish a Statement of Licensing Policy

Premises Licences (granted to a person on a business premises)

- Only a licence that was in effect on 7th February can be converted
- After 2 months of submitting an application to the LA the licence is deemed to have been granted
- Only the police can oppose an application to convert an existing licence
- If you wish to apply to vary an existing licence in terms of hours etc then anyone can make representations
- An application for a variation is deemed to be refused after 2 months of submission
- The applicant, police, residents, planning authority can appeal against the decision of the LA in terms of a variation to a licence

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

Personal Licences

- You have to apply to the area in which you ordinarily live. You may convert it if you have an existing Justices Licence holder
- Only the police may object to an application. Personal licences last 10 years.
- There must be a DPS (designated premises supervisor) at an establishment otherwise it cannot sell alcohol. The DPS must be a holder of a personal licence.

For further information please contact Natalie Morris at natalie.morris@cgms.co.uk

HOUSING INITIATIVES MULTIPLY

John Prescott has agreed to release 800 government sites, including disused railway stations, tracks and sidings, former lunatic asylums, coal yards, nature reserves and goods yards for the development of affordable homes.

This is part of a package designed to improve the supply of homes and make it easier for first-time buyers and essential workers to get on the property ladder. The government expects to create 600,000 new homeowners by this increase over the next few years.

The biggest share, around 300,000, is to come for social housing tenants buying a share in the equity of their homes through the Social Homebuy scheme.

Another 80,000 will come from New Build Homebuy, under which homeowners buy a share in the equity, probably around 50% of market value, in a new home built with public subsidy.

The third scheme, Open Market Homebuy, will allow first-time buyers to buy a share, usually 75%, in the equity of a house bought on the open market - the remaining share will be held by the provider.

ANTI-SOCIAL BEHAVIOUR

Wakefield Council has become the first local authority to use the Anti-Social Behaviour Act to combat illegal travellers' encampments. Under S30 the police will have powers to immediately remove travellers or arrest them if they enter five designated sites where they have been illegally camping.

Travellers have however indicated that they will challenge such orders through the courts. It will be interesting to see how far such orders can extend and whether they can be used to target groups rather than individuals.

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PLANNING LAW

PLANNING PROCEDURES

Scope of S73 Application

The council refused reserved matters and deletion of a condition (S73). At the appeal the details were unsuitable and dismissed. A condition was deleted but the same time limit placed on the new permission thus making it ineffective. While the inspector might have dismissed that appeal he was not wrong in law and challenge rejected: Hill v First Secretary (17/5/05).

Ref: 1

Long-Running Bypass Saga

Part of a bypass at Stoke required replacement open space. That proposed by the council was not considered adequate and an exchange certificate was not granted. The matter was referred to parliament and a certificate stating how the objections could be overcome issued. The council agreed to this. The adequacy of exchange was still challenged on the basis that the First Secretary's decision was irrational as areas suggested by objectors were suitable for housing. Old permission had lapsed and there was a duty to consult the petitioners. There was no substance in these objections and challenge dismissed: Norris v First Secretary (13/5/05).

Ref: 2

Structure and Local Plan Conformity

A structure plan indicated a large area for housing. This was included in the local plan but the county then felt it was not necessary. This was argued at the local plan inquiry but the inspector considered the land should be allocated but safeguarded from development pending further consideration. This did generally conform with the structure plan and this view was upheld. However failure to consider a green belt objection to part of the area meant quashing that part of the plan by the court: *Persimmon Homes v Stevenage BC* (20/5/05).

Ref: 3

Scope of S106 Agreement

A sum was deposited for highway improvements but these were not carried out within the two-year period but much later. The money was claimed back but it was held that there was a trust fund and the council were entitled to draw down money from this. However some of the work was not within the scope of the fund and an enquiry should be held to determine this: *Patel v Brent LBC* (25/5/05, CA).

Ref: 4

Costly Planning Vendetta

An obsessive millionaire who put a former mayor through five years of “living hell” by unleashing an aerial leafletting vendetta was ordered to pay her £22,500 damages. She had opposed an extension to a salvage yard which had infuriated the owner. He had previously carried out a sky banner flight as part of his campaign and a jury awarded £65,000 damages. However he took to the sky to gain with a leaflet campaign leading to the latest award.

Ref: 5

APPEAL CHALLENGES

Relocating Listed Building

This had been demolished because of its poor condition and it was intended to rebuild it some 20 miles away in the green belt. This was refused and it was said that PPS7 had not been followed; the inspector had not explained this. Furthermore, there were very special circumstances and the remaining stones could be sold abroad. There was no substance in these points as the building was not an innovative new design and had no affinity with the locality. The wishes of the appellant were not relevant and no wider search have been undertaken for a site. Challenge rejected: *Stagg v First Secretary* (18/5/05).

Ref: 6

Conflicting Traffic Evidence

Developers argued that a new business park would not generate excessive traffic bearing in mind the site's existing use. However the council's evidence was clear and a rise was likely. Also the scheme would have an adverse impact on the area's character and appearance and this was fatal. Challenge rejected: *Tapecrown v First Secretary* (5/5/05).

Ref: 7

Solicitor's Noise and Nuisance

This use was not permitted to continue. The loss of residential accommodation was paramount and there was nuisance to nearby occupiers. Challenge rejected: Bokhari v First Secretary (27/4/05).

Ref: 8

Long-Term Use Fails

It was alleged that a home car-repair workshop had been in use for over 10 years. However the inspector found that invoices did not support this and dismissed the appeal. The evidence was clear and the inspector had not misdirected himself. Challenge rejected: O'Reilly v First Secretary (9/6/05).

Ref: 9

Grave Injustice of Enforcement

A council served an enforcement notice but withdrew this and served a second one days later. An appeal was made but was held to be out of time. However this was because the Inspectorate said the appeal form was ambiguous and referred to the earlier notice. The court has now held that it was important not to attach too much significance to procedural requirements in the legislation where the consequence would be grave injustice. As a result the appeal can now continue: R (McKay) v First Secretary (9/6/05, CA).

Ref: 10

GYPSIES

Homeless Gypsy Helped

A gypsy failed to comply with an enforcement notice and the subsequent prosecution was dismissed on the basis there were no alternative sites. However this was not a defence as leaving the site would make it the council's responsibility to re-house the family: Wells v Wycombe DC (24/5/05).

Ref: 11

Unauthorised Camping

Gypsies set up camp on Forestry Commission land. A warrant was issued for their eviction. There was no obligation to carry out welfare investigations and possession was obtained: R(Kanssen) v Secretary of State (27/5/05).

Ref: 12

ENVIRONMENT LAW

Large Landfill Proceeds

A landfill site for 3.9m tonnes to be tipped over the next 13 years although below the water table did not breach European legislation. Groundwater could potentially be introduced into the leachate through the lining but this would not add to pollution in the surrounding area. The bond of £227k for the long-term remediation was well within the ambit of the agency's discretion and challenge rejected: R (Lewis) v Environment Agency (12/5/05).

Ref: 13

Risk to the Public

In assessing the appropriate fine for a breach of the health and safety regulations, public service cases will often be treated more seriously than where the breaches are confined within the private sector, even where there is a comparability between the gravity of breach and economic strength of the defendant. However a fine of £400k was too high and one of £275k was substituted: *R v Jarvis Facilities* (Times 6/6/05).

Ref: 14

GENERAL LAW

Full House at Bingo?

Two bingo halls were proposed but the justices preferred the ground floor one as against that at first floor. They said egress would be difficult in an emergency but the fire officer raised no objection. Also they said patrons leaving would crowd the shopping area but this would be at night when it was empty. There was no basis for their conclusions and the decision was quashed and remitted back to them to decide whether one or two operators were required: *R(Tombola Clubs) v Mecca Bingo* (12/5/05).

Ref: 15

Demolishing Huts

The claimant applied for a new tenancy but was refused on the basis that the landlord wished to demolish the structures on the site and redevelop. The huts had in fact been introduced by the claimant and were tenant's fixtures. A ground could not therefore be established requiring their removal when in fact they would have been taken away if the tenant left: *Wessex Reserve Forces v White* (20/5/05).

Ref: 16

Plain Speaking Councillor

The leader of Peterborough Council made ill-tempered remarks about soldiers in Northern Ireland. He was reported to the Standards Board and banned for two years from being a councillor. However he was re-elected as an independent. The tribunal were not made aware of this. He was therefore suspended for one year from being leader as an independent but not a member of the council: *Sanders v Kingston* (7/6/05).

Ref: 17

Assessing Council's Performance

When reporting on the performance of local authorities, the Audit Commission did not unlawfully delegate its decision-making power by its policy of limiting a local authority's overall performance category when that council's score fell below a specified level in a service assessed by another, specialised inspectorate: *R(Ealing LBC) v Audit Commission* (Times 26/5/05, CA).

Ref: 18

Mitigating Congestion Penalty

An adjudicator of the Parking and Traffic Appeals Service had a discretion to direct the cancellation of a penalty charge notice in circumstances where a recipient of that notice

had not established any of the grounds for resisting the charge, but nevertheless there were grounds for mitigating the penalty: R(Walmsley) v Lane (Times 25/5/05).

Ref: 19

APPEALS UPDATE

BROWNFIELD HOUSING

Brownfield or Greenfield?

About 25% of a site at Warth Road, Bury was a scrap yard while the remainder had been stripped of vegetation but was previously overgrown. In the spirit of PPG3 the site was greenfield. Although it had been allocated in the UDP for housing there was a 12 year supply and no pressing need for development in Greater Manchester. Appeal dismissed (Bury MBC, 28/4/05).

Ref: 20

Open Space Deficiency

At Barnham Road, Bognor Regis 18 dwellings in rear gardens would change the character of the area but not be seen from public advantage points. This was acceptable but with only 180m² of public open space against the council's standard of this shortfall was significant leading to dismissal of the appeal (Arun DC, 21/2/05)

Ref: 21.

Alternative Scheme Irrelevant

Redevelopment of a house at Broad Street, Old Portsmouth in a low-density area to form apartments would not harm the character of the area as much tree cover would be retained. A development brief suggested a comprehensive approach to development in the area but as there would be no harm to this the appeal was allowed (Portsmouth CC, 20/4/05).

Ref: 22

Incompatible Residential Development

Replacing 5 houses at Southampton Road, Park Gate with 53 flats in 5 blocks up to four stories would harm the character of the area leading to overlooking of neighbours' gardens. Also the 25% of the dwellings in shared ownership did not satisfy the needs for social renting of the affordable element and appeal dismissed (Southampton CC, 4/5/05).

Ref: 23

Hotel Viability Questioned

Although there were tall buildings nearby a redevelopment up to 10 stories would not fit in with the open spacious conservation area. The hotel was in a prime position between the sea and the town centre at Manor Road, Bournemouth no marketing have been carried out to justify its loss. There were considerable questions about viability, costs etc. and appeal dismissed (Bournemouth BC, 9/5/05).

Ref: 24

LOSS OF EMPLOYMENT

High Priority Employment Site

Redeveloping Eclipse Mill, Feniscowles was rejected for housing as building rates had been higher than structure/local plan policies. This area had a low priority for new housing and to release this ad hoc would undermine the council's housing strategy (Blackburn & Darwen BC, 14/4/05).

Ref: 25

Outline Scheme Inappropriate

21 flats on a factory site in a predominantly residential at Linden Road, Gloucester might be difficult to accommodate given the proximity of neighbours. Although illustrative designs were put forward these did not satisfactorily indicate how development could proceed and appeal dismissed (Gloucester CC, 5/5/05).

Ref: 26

High Cost of Redevelopment

16 dwellings at St Mary's Lane, Ticehurst would redevelop a workshop on edge of village in AONB. Although allocated for 11 dwellings and light industry, industry unlikely to come forward because of high development costs. Not premature to emerging plan and 2 affordable units satisfactory. Appeal allowed (Rother DC, 18/5/05).

Ref: 27

Employment Benefits Paramount

At a distribution depot in West Hallam a building was restricted on night time lorry movements. Only one additional movement per hour was required and although it went past residential properties this would not be so disturbing as to reject the appeal. Also if the restriction was not lifted the company could transfer elsewhere and this was an important factor. Appeal allowed (Erewash BC, 7/6/05).

Ref: 28

COUNTRYSIDE

Single Bedroom Extension

A lack of single bedrooms meant permitting an extension to a green belt nursing home at Bletchingly Road, Merstham because this amounted to a very special circumstances. There would be no noticeable impact on the openness of the green belt/AONB (Tandridge DC, 8/4/05).

Ref: 29

Doctors at Cattle Market

There was an urgent need to build new accommodation as the existing surgery was about one third of the required size. An extensive search have been made for sites but none other was suitable and thus there were very special circumstances warranting the new building at Pinfold Lane, Penkridge (S Staffordshire C, 19/4/05).

Ref: 30

Offices Replace Nursery

An accountant's office in redundant nursery buildings would be appropriate in the countryside in terms of PPS7. Competition from other nurseries had led to closure and this was genuine. Appeal allowed at Poulner Hill Nursery, Hangersley (New Forest DC, 22/3/05).

Ref: 31

Reducing Housing

Although two sites at Low Street, South Milford were shown on the edge of the village for housing in the emerging plan the Secretary of State felt that a shortfall of such land had not been shown and that the spatial strategy required a reduction in building rates. Accordingly he rejected the recommendation to allow the appeal and dismissed this (Selby DC, 14/2/05).

Ref: 32

RETAILING

Shopping too Large

A retail warehouse park at Foldgate Lane, Ludlow on the edge of the town has been refused because it would be too large without a clear quantitative need. No flexibility had been shown in the sequential test and the loss of an employment site added to the problems (Shropshire DC, 29/4/05).

Ref: 33

Retail Expenditure Questioned

6,498m² of retail warehousing at Battlefield Road, Shrewsbury would have insufficient turnover available to justify its presence. There was conflicting evidence on this. A nearby town centre scheme was committed and would trade strongly and another site might be available indicating a lack of flexibility in the sequential test. Although there would be job creation and linked trips to a nearby superstore these did not outweigh the policy objections. Appeal dismissed (Shrewsbury & Atcham BC, 11/5/05).

Ref: 34

Alternative Use Preferred

A 5,109m² retail store would redevelop buildings at New Road, Forfar without harm to the vitality or viability of nearby centres or loss of an industrial site. However its scale would harm the character and appearance of the adjoining conversation area and listed buildings and there would be a loss of a potential housing site. Appeal dismissed (Angus 3/5/05).

Ref: 35

FINANCIAL CONTRIBUTIONS

Disagreement on Agreements

Redevelopment of a house for 6 flats at Bath Road, Maidenhead was acceptable but library

and education contributions not justified while public open space payment reasonable but that for highways excessive. Parking at 1.5 spaces per unit sufficient. Appeal allowed (Windsor and Maidenhead BC, 24/5/05).

Ref: 36

No Open Space Harm

A small distribution warehouse at Oldfield Road, Maidenhead required a public open space contribution to the council. However there was no evidence employees would overburden the facilities, nor would there be an influx from those outside the borough. Appeal allowed (Windsor and Maidenhead BC, 5/5/05).

Ref: 37

For more information please speak to your usual contact at CgMs or Tony Bowhill on 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

173 Whitton Road, Twickenham

CgMs acting on behalf of Mr & Mrs S Chisnell provided planning evidence for a successful Judicial Review challenge of a decision by Richmond-upon-Thames Council to grant planning permission for a two storey side and single storey rear extension to the above premises. The challenge was based on Members having being misled into thinking that they were not able to consider issues relating to residential amenity due to the fact that previous decisions made by officers under delegated powers for a similar scheme had not been refused on these grounds.

A further successful challenge was on the basis of the Council failing to give adequate reasons on their decision notice for the grant of planning permission.

Mr Justice Newman in quashing the decision said that Members were entitled to and indeed must exercise their own judgement in these matters and should not be fettered by decisions made under delegated powers by officers.

The application was reconsidered by the Planning Committee at their meeting on the 2nd June 2005 and this time Members overturned the recommendation of their officers and decided to refuse planning permission on grounds of the harm to the amenity of the adjoining residents due to the overly dominant extension and the harm caused to the appearance and character of the street scene.

In reaching their decision the Vice-Chairman of the Planning Committee commented on the fact that she was pleased that the “chains had been lifted” and that Members were free to reach their own decision on the application. She said that she would have refused permission on the previous occasion if Members had not been advised that they could not consider certain matters.

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

TDG, West Hallam, Derbyshire

TDG (UK) Ltd have been successful in obtaining planning permission on appeal for the removal of a planning condition restricting the hours of operation of a major warehouse development at West Hallam, Derbyshire. CgMs acted as planning consultants and provided the planning evidence at the public inquiry.

Direct Wines Ltd who already occupy three warehouse units at West Hallam wish to move to these proposed larger premises but had indicated that they would only take the premises if they could have unrestricted 24 hour 7 day a week use and deliveries.

If permission had not been granted there was a strong possibility that Direct Wines who are a major employer at the site would have sought premises elsewhere leading to a significant loss of jobs. With the new premises employment levels should grow from 200 to 300 staff.

Of particular concern to local residents was the increase in night-time heavy goods traffic on the surrounding rural roads. Noise evidence prepared by Hepworth Acoustics indicated that the increase on levels of noise was unlikely to be discernible and with the employment benefits offered by the proposal the Inspector decided on balance that the appeal should be allowed.

David Elvin QC acted as advocate instructed by Burges Salmon.

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

Barn Success, Contrary to PPS7

The rural division of CgMs Consulting has secured planning permission for the conversion of a barn to residential uses in Cotswold District on behalf of Console Properties.

The barn complex, known locally as Buchanan’s Barn, is located 800 metres from the nearest road, set in the attractive backdrop of the undulating terrain of the Cotswolds AONB, near to the village of Broad Campden.

Crucially, whilst PPS7 seeks to control the conversion of isolated barns to residential use, CgMs were able to utilise the ‘fall back’ position as a material consideration to support the residential conversion.

For further information please contact Nathan McLoughlin at nathan.mcloughlin@cgms.co.uk

HISTORIC BUILDINGS

Camden Town Underground Station, London – Appeal Decision

CgMs' Historic Buildings Team first became involved with the Camden Town Underground site in April 2003 when engaged by Camden Lock (London) Limited. Our involvement culminated with Jonathan Edis providing expert witness on the historic built environment at a call-in Inquiry. He focused on the impact of the inquiry proposals on the character and appearance of the Camden Town conservation area and the intended demolition of unlisted buildings within the conservation area, several of which have been identified by English Heritage and the LPA as making a positive contribution. CgMs' evidence was taken into account and the Inspector refused Conservation Area Consent and planning permission on the grounds that proposals "would have a devastating impact on the character and appearance on the Conservation Area" and that "detrimental impacts would far outweigh any benefits of the above ground scheme and proposals overall".

For further information on this project please contact Jonathan Edis at jonathan.edis@cgms.co.uk

The Drill Hall, Old Market Street, Bristol

CgMs Planning (Housing) is currently representing Crown View Properties Ltd which has an application for the substantial demolition of a former Drill Hall in Bristol and its conversion to form 1 and 2 bedroom flats/maisonettes. The Drill Hall is a c.1914 structure and an application to spot-list it was submitted to the Department of Culture Media and Sport in early 2005. In response, CgMs Historic Building Team made an assessment of the building and determined that it was not of listable quality and applied for a Certificate of Immunity From Listing. The Secretary of State for Culture Media and Sport has now concluded that the Drill Hall should not be listed under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and has issued a Certificate Of Immunity precluding the building from being listed for a period of five years, therefore enabling the development to proceed.

For further information on this project please contact Sarah O'Connor at sarah.oconnor@cgms.co.uk, Kevin Goodwin at kevin.goodwin@cgms.co.uk or Alun Evans at alun.evans@cgms.co.uk

'Gayfere', South Norwood

Our historic buildings team have recently sought and secured the delisting of a grade II listed building in South Norwood. CgMs were initially involved in providing a Historic Building Assessment for the owner of the listed building which was used to support a listed building and planning application for substantial alterations to the building. Consent was granted for the works and following advice from CgMs an application was made to the Department for Culture Media and Sport (pre April 2005) to de-list the building. CgMs highlighted that in light of the numerous alterations which had been made to the building in the past and following the recent consents which had been granted, the building no longer satisfies the criteria for listing. The English Heritage advisors report (on which DCMS based their decision) stated that "Gayfere has been too altered and extended from its c.1800 origins to qualify for statutory listing and the part of 1850 additions are not of special architectural interest", as identified in CgMs' Historic Building Assessment.

For further information on this project please contact Tina Garratt at tina.garratt@cgms.co.uk

English Heritage “At Risk” Register

English Heritage is to create a new, comprehensive “At Risk” register. The register will include all buildings, monuments and landscapes that are under threat, covering all grades.

English Heritage’s chief executive Simon Thurley claims that the register, which forms part of the government’s drive to transform the image of conservation, is a positive step. “Despite huge strides made over the last few years we (English Heritage) are still often perceived as people against change and against progress” said Thurley.

“The result is a confrontational system where there seems to be a stark choice between conservation and development and where it is harder to get a result that actually enhances and improves this country thereby preserving our heritage and improving people’s quality of life”.

Thurley has called for a new code of constructive conservation within English Heritage, hinged on respect, understanding and consent. “This will be more powerful than one that is perceived as arbitrary and opaque.”

The comprehensive “At Risk” register is just one of EH’s recent campaigns. Numerous reforms in the planning system are being considered, including the unification of consent regimes and a new suite of conservation principles that attempt to guarantee more consistent and explicable decision-making.

CgMs will continue to keep abreast of the latest changes within English Heritage and advise our clients accordingly.

For further information please contact Jonathan Edis at jonathan.edis@cgms.co.uk