

PLANNING NEWSLETTER

Issue 4 March 2005

HOT NEWS

NEW PPG1 – TO BE CALLED PPS1

PPG1 is no more, it is replaced by PPS1. PPS1 is more focused on sustainability and community involvement. The design policies are, in particular, more far reaching.

[Click here to read more about it](#)

UPDATES TO PPG3

Two updates to PPG3 have been published which are to be read with the main PPG3. They cover policies for housing on employment land and rural housing for key workers.

[Click here to read more about it](#)

CHANGES TO THE USE CLASSES ORDER

New Use Classes introduced to split A3 (food and drink) into 3 separate use classes:

- A3 - restaurants and cafes for sale of food and drink for consumption on the premises
- A4 - drinking establishments
- A5 - hot food takeaways

Also internet cafes are now A1. Retail warehouse clubs and night clubs are uses outside the Use Classes Order.

[Click here to read more about it](#)

MEZZANINES – NEW CONSULTATION PAPER & LATEST HIGH COURT DECISION

The Government has just published a consultation paper on a new piece of legislation which will make it more difficult to put mezzanines into existing retail units. The proposal is to remove the permitted development rights and to require a planning application for all new floorspace over 200m². Comments have to be submitted to ODPM by 26th May 2005.

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CgMs will be preparing representations. Please contact John Stockdale for further information. john.stockdale@cgms.co.uk

The previously generally accepted principle that a condition limiting the overall floorspace on a retail park did not bite once the park was built, has been overturned in the High Court. This will affect the installation of mezzanines.

[Click here for further information](#)

LISTING IS CHANGING

From 1st April 2005 the listing system will be transferred from DCMS to English Heritage.

[Click here for further information](#)

PLANNING FEES SOAR

From 1st April 2005 planning fees soar. Maximum fees will rise about five fold.

[Click here for further information](#)

	CONTENTS
p.4	NEW GOVERNMENT POLICY
p.7	PLANNING APPEALS
p.10	PLANNING LAW UPDATE
p.13	ENVIRONMENTAL LAW
p.14	HOUSING ISSUES
p.16	GENERAL LAW

NEW GOVERNMENT POLICY

SUSTAINABLE COMMUNITIES VISION

As part of the UK's presidency of the EU John Prescott has launched a drive to develop a European approach to creating sustainable communities.

At the heart of Mr Prescott's initiative will be the UK's new Academy for Sustainable Communities, to be based in Leeds supported by a network of regional centres. This is intended to be an international centre of excellence for developing new ideas and thinking on sustainable communities.

DELIVERING SUSTAINABLE DEVELOPMENT (PPSI)

The Government has launched its new policy blueprint to deliver sustainable communities through the reformed planning system by unveiling PPSI.

The new PPS focuses on the following principles:

- Social cohesion and inclusion
- Protection and enhancement of the environment
- Prudent use of natural resources
- Sustainable economic development
- Integrating sustainable development in development plans

The PPS makes clear that a spatial planning approach – bringing together and integrating policies for the development and use of land with other policies and programmes that influence the nature of places and how they function – should be at the heart of planning for sustainable development.

Good design, ensuring developments are accessible to all in the community and community involvement in the planning system are other important issues covered by PPSI, within the context of delivering sustainable development.

The policies set out in PPSI need to be taken into account by regional planning bodies in preparation of regional special strategies, by the Mayor of London in relation to the spatial development strategy in London, and by local planning authorities in the preparation of local development documents.

UPDATING PPG3: HOUSING

The Government has announced changes that will remove barriers to delivering desperately needed affordable homes in rural areas, and free-up unused employment land across the country where it is needed for housing. They are also consulting on further changes to PPG3, aimed at ensuring planning authorities and developers work together to deliver the appropriate mix of housing for their community.

The two updates to PPG3 are 'Supporting the Delivery of New Housing' and 'Planning for Sustainable Communities in Rural Areas'. The main provisions are:

- Planning applications for housing or mixed use developments on redundant commercial land should be considered favourably;
- There is a continued rural exception approach whereby authorities can now allocate

small sites for affordable housing to meet the need of key workers and local people.

DESIGN AT A GLANCE

CABE has produced a foldout guide giving quotations from Government policy starting with “Good design is indivisible from good planning” (para 33 PPS1).

This is a useful compendium of policies and will be helpful to developers and planning authorities alike.

USE CLASSES ORDER

From 21/4/05 Class A3 (food and drink) will be subdivided as follows:

- A3 restaurants and cafes – use for a sale of food and drink for consumption on the premises. Permitted change to A1 or A2.
- A4 drinking establishments – use as a public house, wine/bar or other drinking establishment. Permitted change to A1, A2 or A3.
- A5 hot food takeaways – use for the sale of hot food for consumption off the premises. Permitted change to A1, A2 or A3.

This means that some uses such as a restaurant with takeaway will overlap the classes requiring a composite or mixed use permission. This will obviously require careful thought.

In addition the new Order exempts from any use class two groups. First, a retail warehouse club where goods are sold, or displayed for sale, only to persons who are members of that club. Second, a night-club.

An internet café where the primary purpose of the premises is to provide facilities for enabling members of the public to access internet is now included within Class A1 retail.

Ministers have confirmed that there will be a separate use class for all types of casino so in due course the Use Classes Order will need to be amended again.

DEVELOPMENT CONTROL CONSULTATION

A number of the key reforms set out in the Planning and Compulsory Purchase Act 2004 are the subject of consultation. These include:

- Powers to decline repeat applications;
- The possibility of abandoning twin tracking;
- The duration of permissions;
- The duty to respond to consultation;
- Role of regional planning bodies a statutory consultee;
- Economic impact reports for major infrastructure projects;

DEVELOPMENT AND HIGHWAYS

The Government has reviewed development control policy in relation to the Highways Agency. It has decided, that where a developer requests, building can go ahead in parallel

with any road infrastructure improvements under a S278 agreement. In addition, the Highways Agency has agreed to consider the use of “trigger points” so that where there is capacity in an existing network, developers can utilise this for their proposals. This means developers will be allowed to proceed with their development up to an agreed point, where the traffic generation matches the reserve capacity. This point will usually be assessed on a given floor area for an industrial development or a specified number and size of houses on a housing development.

TIGHTER TREE CONTROL

The Government has confirmed plans to tighten up tree protection for ancient trees and to deal with the fact that developers often ignore TPOs, as the fines are no deterrent. This will happen as soon as “Parliamentary time permits.”

PLANNING FEES SOAR

As from 1st April the maximum fee for full applications for major housing and commercial developments will leap from £11,000 to £50,000. The maximum fee for outline housing schemes will be £25,000 and for commercial schemes £50,000. The fee for a home extension will rise from £110 to £135.

It is obviously important to try and beat the deadline and there is likely to be a surge in application because of this.

LISTING IS CHANGING

From 1st April 2005 the listing system will be transferred from DCMS to English Heritage who will for the first time notify owners if an application to list their building is made by another party. It will also consult owners and local authorities on applications to these buildings enabling them to comment.

EH will begin to introduce clear information for owners of listed buildings. This will include a map showing the extent of the listing and a summary of the building’s importance.

GYPSY PROBLEMS CONTINUE

A draft circular has been issued updating the Government’s advice in Circular 1/94, Gypsy Sites and Planning.

The advice covers the procedures to be followed in ensuring that the planning system recognises, protects and facilitates the traditional life style of gypsies and travellers by identifying and making provision in development plans for their land and accommodation requirements.

The definition of gypsies and travellers is updated to reflect that many stop travelling permanently or temporarily because of health reasons or caring responsibilities but still want to maintain their traditional lifestyle.

The Government are also consulting on Temporary Stop Notices which will enable authorities to take immediate action against illegal developments by placing a notice on the site making it criminal offence to continue with any work.

TELECOM HEALTH FEARS

Despite revised planning policies the public continues to fear telecom masts and apparatus. A recent report by Sir William Stewart, chairman of the National Radiological Protection Board argues that public concerns have not abated despite a wealth of planning guidance about the siting and effect of these apparatus. However, he recommends that young children should not have mobile phones or use them extensively.

PLANNING APPEALS

HOUSING

CHANGING PLANNING CIRCUMSTANCES

A site was allocated for housing in 1994 and in a revised plan of 1998 it was still within the built-up area. However an emerging plan indicated an over supply of housing land. The inspector had said it would be premature to allow this site as it would undermine the sequential approach in PPG3. Appeal dismissed.

LIMITED LAND AVAILABLE

48 dwellings in a north Wales village would increase housing by 23%. Although the site was allocated in a draft local plan there were considerable objections and it was primarily uncertain that following a public inquiry its status would remain. Although there was only a 2-3 years supply of housing land the site should be debated at the inquiry and appeal dismissed.

DOUBTS OVER HOUSING SUPPLY

Although it was said there was an oversupply of 1,100 units after 2006 there was currently a shortfall and thus use of a brownfield sustainable haulage site would be appropriate without prejudicing the forthcoming local plan revisions which would probably not yield results until 2008. Appeal allowed.

OVERSUPPLY DEFEATED

Despite a 11.8 year supply of potential housing land 24 new units have been allowed in Greater Manchester because of the environmental problems caused by the site to the surrounding area. The living conditions of local residents would be improved with the reuse of previously developed land in a sustainable location. Appeal allowed.

UNREASONABLE PLANNING BENEFITS

Housing on an industrial site in Staffordshire was acceptable in principle on a 3.5ha site. The appeal was allowed without an education contribution as although the local schools were oversubscribed there were places for out of catchment pupils in other schools; the site was below the threshold for a play area; and £450 per home towards a one-year bus service was not justified as this was a sustainable location.

EMPLOYMENT USE RETAINED

11 flats adjoining the Kent waterside should be reserved for tourism/related industry. Also there had been no archaeological investigation and this should be undertaken before permitting any development. Appeal dismissed.

EMPLOYMENT LAND SAVED

89 flats on a designated employment site have been refused as there was a realistic prospect of office use by 2011. The council's employment study suggested that office land would be used up by 2011 and release now would be premature.

EMPLOYMENT BEATS HOUSING

Mixed development of 150 dwellings plus B1/B2/B8 at Hitchin Street Biggleswade would mean erosion of a key safeguarded employment site with an increase in demand for distribution use. There would be a reduction in HGVs. A significant housing supply shortfall on a sustainable site was not sufficient to outweigh the zoned use. Appeal dismissed (Mid Bedfordshire DC, 20/1/05).

REGENERATION BENEFITS DENIED

A scheme for building additional flats at the rear of a Georgian property in Bristol has been rejected due to the fact that this could be over dominant.

HOUSING OVERCOMES POLLUTION

99 dwellings at Temple Way, Warley would be near a liquid waste tip with possible health risks from contaminated groundwater and flooding from an adjacent canal. However measures could be put in place to overcome the problems and a buffer zoning was not required with fencing adequate. Appeal allowed (Sandwell MBC 20/1/05).

CONTROL OF OCCUPANCY

120 dwellings at Windmill Lane, Stratford E15 with 25% affordable would be acceptable with a planning obligation to control tenure. Appeal allowed (Newham LBC, 16/12/04).

RETAIL AND SERVICES

CHEMIST GETS PRESCRIPTION

Variation of a condition and division of floorspace for a Boots store at Ty Glas Retail Park Llanishen met a quantitative need and succeeded on the sequential test with no harm to the vitality or viability of a nearby centre. Appeal allowed (10/12/04, Cardiff CC).

TRAFFIC SAFETY COMPROMISED

A drive-through restaurant and AI food plus non-food shops at Millfield Depot Rhondda Road, Pontypridd would compromise traffic in the locality where the junction was at capacity. Appeal dismissed (13/1/05, Rhondda Cynon Taff).

LOSS OF OPENNESS

A restaurant at the Aspects Leisure Park Bedford would not affect flooding but through loss of trees would compromise the openness of the area. Appeal dismissed (17/12/04, Bedford BC).

NO CINEMA NEEDED

Redevelopment of a vacant cinema with shops/cafes/dwellings/class D2 would not harm the conservation area or nearby listed buildings and would enhance the vitality/viability of the centre. Failure to provide a cinema would not be harmful. Appeal at Church Road allowed (16/12/04, Tunbridge Wells BC).

UNDERGROUND PUB REJECTED

Relocation of a pub from the ground floor to the basement and use of upper floors, for residential purposes would harm the pub's function in the local community. Space would be reduced and might make the pub unattractive. Appeal dismissed.

AMUSEMENT CENTRE PARASITIC

A former Sainsbury's supermarket at Hemel Hempstead had been vacant for 4 years with permission for a ground floor restaurant. An amusement centre would not attract new trade only those passing by and would not improve the vitality and viability of the town centre. Appeal dismissed.

COUNTRYSIDE

DERELICT LAND STAYS

A self-storage facility in the Surrey green belt has been refused. Although it would replace a garden centre which was now derelict and would meet a need for further storage facilities close to the Heathrow Airport this did not amount to very special circumstances. Alternative sites beyond the 15-minute drive time had not been examined. Appeal dismissed.

REGENERATION OF BENEFITS DENIED

Two large detached houses on a scrapyardsite in Northumberland would replace an eyesore but this did not overcome countryside objections because the site was unsustainable and in any event could not be seen from public vantage points and thus there would be little visual benefit. Appeal dismissed.

GREEN BELT FOILS TEACHING

Re-use of a grade I listed building for university students plus an accommodation block in the grounds has been rejected as the additional development would be inappropriate in the green belt and adversely affect the setting of the building. Maintenance of the listed building was insufficient to outweigh the harm. Appeal dismissed.

HOUSING IN GREEN BELT

Houses and an office in the Cheshire green belt on a transport depot would deliver environmental improvements via a reduction in the built area and being on the edge of the urban area would meet PPG3 sustainability objectives. Reduction in HGV movements would also be of benefit. Application approved.

COSTLY ADVERTISEMENT ERROR

A proposed advertisement on the side of a barn fell within an area of special control where such a sign was not permitted by the regulations. The council failed to draw the appellant's attention to this. The appeal was therefore unnecessary and costs awarded against the council for failing to draw attention to the statutory provisions.

PLANNING LAW UPDATE

EXTENT OF DELEGATED POWERS

An application was made and objected to by an adjoining landowner. The landowner was misled by the council's guidance as to whether he could request that the matter be referred to committee. It was dealt with under delegated powers and a subsequent challenge dismissed as it was clear from the scheme of delegation that an objection could always be referred to the committee. Furthermore the officer had considered all aspects: R (Springhall) v Richmond upon Thames LBC (18/1/05).

IMPROPER APPLICATION PROCEDURE

In considering an application for a dwelling's extension the committee felt bound by a previous refusal which omitted amenity considerations. This was wrong and they should have looked at the matter afresh. Further their failure to give reasons for the permission were also fatal: R (Chisnell) v Richmond upon Thames LBC (27/1/05).

PARAMOUNT ROAD SAFETY

Permission to erect a wall in front of a house should have been judged on the basis of road safety. The council failed to do this and the permission was quashed: R (Bate v Stoke-on-Trent C, 14/1/05).

OVERRIDING ECONOMIC BENEFIT

National park authority granted permission for a large holiday complex against officers' advice on the basis of the benefit it would bring to the local economy where there was much unemployment and deprivation. This overrode local and national policy and the court considered the action justified in the circumstances. Challenge rejected: R (Council for National Parks) v Pembrokeshire Coast NPA (20/12/04).

INTENSIFIED PARACHUTING LAWFUL

A lawful development certificate was granted for additional parachuting from the airfield. This was on the basis that counsel's opinion had not been properly reported. This was not correct. The opinion has set out the correct principles and the decision was upheld: R (Manning) v Lakeland DC (8/2/05).

ENVIRONMENTAL ASSESSMENT MISSING

Further temporary permission for a football stadium at Brighton was questioned on the basis of the council failing to require an environmental impact assessment: R (Catt) v Brighton & Hove BC.

DUTY TO INVESTIGATE FACTS

When dealing with a lawful development certificate an authority is bound to investigate the background to this and not simply approve or disagree with the application. They should apply their mind independently to the facts and make sufficient enquiries in the locality if necessary: *R (Ford) v Lambeth LBC* (13/1/05).

EXPIRATION OF PERMISSION

A 991 retail permission was implemented in 1996 by excavating top soil and pegging out an access road. Normally this would have been sufficient but there had no prior discharge of certain conditions including protection of trees. Therefore the permission had expired: *Darlington BC v Lingfield Properties* (10/12/04).

REMOVAL OF TOPSOIL

The removal of topsoil for a road in connection with a golf course meant that a permission might not have lapsed. The inspector did not give sufficient reasons for saying that no material operation had been carried out. Decision quashed: *Airlink Leisure v First Secretary* (21/12/04).

OUTLINE PERMISSION CONFUSION

Details were submitted pursuant to a 1995 outline permission. This was done at around a time the permission was renewed in 1999. It was concluded that although the application was before this date the permission was afterwards it therefore could be related to the new permission and was therefore valid. Lawful development certificate granted in Lincolnshire.

MEZZANINES

The condition and a subsequent amendment restricted total non-food floorspace to a stated amount. This was exceeded by erection of a mezzanine. It was argued that this did not require permission and the condition only related to approval of reserved matters and did not bite further. Held – the condition although it did not strictly prohibit internal works (not being development) nevertheless affected the overall amount of floorspace and thereby mezzanines could not add additional space to overtop the total: *Northampton BC v First Secretary* (7/2/05).

DEVELOPMENT PLAN OR SPG?

Flats were said to be deficient because they did not have sufficient amenity space. This was governed by an appendix to the development plan but the inspector gave this reduced weight as supplementary planning guidance. He had misunderstood the situation and this was a fatal error: *Wycombe DC v the First Secretary* (9/2/05).

AUTHORITY BREACH HUMAN RIGHTS

A planning authority failed to issue a 56 day determination on a mobile phone mast and permission was deemed to have been granted. The mast was built and they issued an enforcement notice which was subsequently quashed because deemed permission existed. The applicant challenged this decision as she said her human rights were breached. This was only because the authority had failed to adequately deal with the matter and words

could not be read into the appeal that her rights could be exercised at that stage: *Nunn v First Secretary* (8/2/05, CA).

BARN CANNOT BE COMPLETED

A barn was partially completed but as it was not reasonably necessary for agricultural purposes an enforcement notice was served and upheld. The inspector had gone into all the issues and there was no basis on which his decision could be challenged: *Tegan Properties V first Secretary* (7/2/05).

BLIGHTING EFFECT OF RIVAL DEVELOPMENT

The proposal to build a second runway at Gatwick meant that a large housing scheme might not go ahead. The claimants had asked for the proposal to be considered swiftly but this was refused. Held: there was no mechanism to allow a challenge to this administrative decision. Further research might be required but the claimants could carry this out: *R (Persimmon Homes) v Secretary of State* (21/1/05).

ARSENAL STADIUM SAFE

A CPO to acquire land for the regeneration of the stadium took in third party properties. The council supported the scheme but were not to undertake the work. This was permissible regeneration and the claimant's convention rights had been protected: *The Alliance Spring & Co v First Secretary* (18/1/05).

HARMFUL AIRPORT CHANGES

Compensation could be awarded if there were works leading to "a greater number of aircraft" using an airport. Extensive works were carried out but only for larger aircraft to operate without increasing the overall number of flights. Held, this did not give rise to compensation as there was no increase in movements: *Brunt v South Hampton International Airport* (7/2/05, CA).

EXTENT OF ENVIRONMENTAL INFORMATION

An environmental statement was criticised on the basis that it left for further consideration the list of potential polluting material which was dealt with by a permit process. Some overlap between the two regimes was inevitable and the application had been properly handled: *R (Kent) v First Secretary* (3/12/04).

DEFICIENT CONSULTATION OF PROCESS

To prevent through traffic barriers were erected but objections received. A provisional order was made but subsequently the Council consulted on alternative methods of prohibiting traffic not including the barriers. The failure to include the barrier option was fatal and invalidated the consultation: *R (Montpeliers) v Westminster CC* (13/1/05).

STANSTED RUNWAY TO MOVE

It was wrong of the Government to show the position of a proposed runway some one and a half miles from the existing one allowing residents to think that a third runway could be placed in between. It was premature to reveal the alignment of the runway and a new one will now be sought.

INJUNCTION RESTARTED

A Judge allowed suspension of an injunction against gypsies who had moved on to a site in defiance of an interim injunction. Subversion of the law could not be allowed and the injunction was reinstated: *Mid Bedfordshire DC v Brown* (20/12/04).

POOR DEFINITION OF ORDER

An injunction was sought against an owner who was harming protected trees. However the chief planning officer did not have authority to authorise such action. Also the order did not properly set out the action that the land owner should take to restore the situation: *Kirklees MBC v Brook* (7/12/04).

BIRDS' NESTS DESTROYED

A local resident contended that loss of trees for a road scheme should be stopped and an injunction granted. The council said the trees needed to be removed to stop birds nesting and there would be a delay of one year if this were allowed. The court rejected the request for a stay of the tree felling: *Norris v Stoke-on-Trent CC* (24/1/05).

GYPSY STATUS ABANDONED

The appellant's nomadic lifestyle had been abandoned and consequently his gypsy status. The inspector said however that retention of two caravans was permissible because of local associations. However he had not given sufficient reasons for this in the light of clear policies which prohibited such development. Decision quashed: *S Cambridgeshire DC v First Secretary* (15/12/04).

HARMFUL GYPSY TRAFFIC

In an appeal for a gypsy site the inspector felt that the harm of traffic onto the local roads outweighed the need for accommodation and the lack of this in the area. Challenge rejected: *Keet v First Secretary* (9/2/05).

ENVIRONMENTAL LAW

SEWAGE SLUDGE REMAINS WASTE

The Scottish Court of Session has held that fuel made from sewage sludge for use as a coal substitute in power stations remains "waste" in law until it is incinerated: *Petition of Scottish Power Generation* (22/12/04).

COMMERCIAL WILDFOWLING

An appeal for commercial wildfowling at an SSSI on the Somerset Level Moors has been rejected because of the likely disturbance to feeding and roosting birds and harm rare bitterns.

HOUSING ISSUES

DEVELOPERS' GRANT BIDS

Up to 50 organisations have expressed an interest in the Government's £200m pilot programme to pay social housing grants to developers with its likely total at least three times the available amount.

Barratt Homes, Crest Nicholson, Taylor Woodrow and Bellway are all believed to be lining up substantial bids. David Wilson Homes is set to bid for grant for more than 1,000 units with registered social landlord partners, well above the minimum threshold set by the Housing Cooperation at 400 homes.

MORE AFFORDABLE HOMES?

A recent consultation paper urges regional planning bodies and local planning authorities to ensure that their policies on affordable housing are based on up-to-date assessments for the full range of housing demand. Regional bodies will be expected to set out strategies for housing mix and to identify the extent of local housing markets.

Local authorities will need to establish a balance of different household types and their needs together with a balance between affordable and market housing. Local development documents will need to address the requirements of specific groups.

It is proposed to lower the thresholds at which council's can seek a proportion of affordable homes. Instead of 25 units/1ha this would be lowered to 15 units/0.5ha – the current regime for inner London going nationwide. Even lower thresholds would be possible in particular circumstances such as a dearth of larger sites.

HELP ON THE HOME OWNERSHIP LADDER

The Government has announced a five-year programme to help more people on low and middle incomes onto the home ownership ladder. The ODPM's five-year plan includes the following:

- Helping 80,000 people into home ownership by 2010;
- Homebuy – a new scheme for tenants to buy a stake in their home;
- Ensuring the proceeds from Homebuy sales are re-invested in housing; Continue the Right to Buy and Right to Acquire Schemes;
- A competition to build a home for £60,000;
- Changes to the planning system to ensure more affordable housing for key workers and those in rural areas.

AFFORDABLE HOMES: LONDON INITIATIVE

This initiative is intended to deliver 4,000 high quality homes on disused brownfield land; half of which will be affordable homes for key workers and first time buyers. Three development groups have been selected to provide high quality design, modern construction methods, cost efficiencies and speed of delivery.

In addition the Mayor has also announced that he will contribute additional sites to boost the delivery of the First Time Buyers Initiative.

SOUTH EAST HOUSING GROWTH

The Government have set out their plans to deliver an extra 1.1 million new homes by 2016 plus £40m to support other areas which want to pursue growth.

Proposed measures are:

- Extending density regulation to cover areas of high housing demand in the south west and east, including all growth areas;
- New powers protect the green belts;
- Introducing a code to create more sustainable buildings;
- Extending the £1.2bn market renewal programme and to cover other areas suffering from low demand and abundant homes; and
- Action to enable local authorities to allocate rural housing sites to meet the needs of key workers and local people.

GENERAL LAW

EXPERT'S EVIDENCE REJECTED

In a personal injury claim arising out of a road traffic accident, there was no principle of law preventing a Judge from preferring the evidence of the lay claimants, whom he had found to be blameless and honest, over the directly conflicting evidence of a jointly-instructed expert in the field of accident reconstruction, with whose evidence the Judge stated that he could find no fault.

The Judge ruled that there must be some error in the expert evidence even though he could not identify it, and found for the claimants. The trial Judge was fully entitled to weigh all the evidence, as he had done: *Armstrong v First York* (Times 19/1/05, CA).

NEGOTIATING MISTAKE

An agreement for sale contained an overage provision but this did not reflect said the appellant prior discussions. The judge ordered rectification of the agreement on the basis that an honest person would have pointed this out. However, dishonesty was not part of the pleadings and it was therefore wrong to proceed on this basis as the respondent's board had approved the contract as drawn: *George Wimpey VI Construction* (3/2/05, CA).

WHAT IS THE VALUE?

A house was affected by road works and no offers made at the asking price. It was agreed to sell this to the Highways Agency at a lower value. Subsequently the owners claimed that because of a large increase in the value two years later the agents had been negligent. The court held that the agent's duty only extended to drawing attention to any obvious errors in the calculation of the offer, and a lack of special skill did not have a material effect. Furthermore, the increase in value could have been attributed to the rising market: *Reed v Connells Estate Agents* (10/12/04).

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