

PLANNING NEWSLETTER

Issue 6 May/June 2005

LATEST NEWS

GOVERNMENT PLANNING SUPREMOS

Following the election there has been a minor reshuffle in the Office of the Deputy Prime Minister (ODPM) with John Prescott remaining as the Deputy Prime Minister and First Secretary of State. His special advisors are Joan Hammell and Mick Halloran.

David Miliband becomes Minister of Communities and Local Government and Yvette Cooper replaces Tom Hill as Minister of State for Housing and Planning. Phill Woolas is Minister of State for Local Government.

Parliamentary Under-Secretaries of State are Jim Fitzpatrick and Baroness Andrews.

Permanent Secretary is Mavis McDonald.

At the Department of Culture, Media and Sport Tessa Jowell is Secretary of State while David Lammy is Under-Secretary of State responsible for arts, museums, libraries and heritage.

Protected Views In London

The Mayor has recently published draft supplementary planning guidance setting out his vision for the protection of strategic views in London. The following link will direct you to the document, which is subject to a 3 month consultation period, ending 15th July 2005.

www.london.gov.uk/mayor/strategies/sds/spg-views.jsp

The SPG provides guidance on the policies in the **London Plan** with respect to the protection of strategic views and proposes to update the regional guidance in RPG3a (1991). It explains the London View Protection Framework promoted by the London Plan and how designated views and important landmarks within them are to be treated. It promotes a method of assessment that will assist with principles of good design, local urban design policies and the management of these views generally.

Following consultation of this guidance, the Mayor will seek authorisation to replace RPG3a and thus gain control of the Strategic Views Protection regime.

Under the current regime, RPG3a identifies 10 strategic views in London, eight of St Paul's

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: 01933 666391
Fax: 01933 664861

Cathedral and two of the Palace of Westminster. Applications for new development are assessed against the affect they have on the two landmarks and is normally refused where it would exceed the 'development plane'. This is defined by a line between the strategic view point and, in the case of St Paul's Cathedral, the base of the dome.

The London Plan, and subsequent draft SPG identify 26 views and introduces 4 different view categories: London Panorama's, River Prospects, Townscape Views and Linear Views. New views include the view from the Mayor's office at City Hall to Tower Bridge.

The widths of viewing corridors and assessment areas (geometric protection) have been reduced from that in RPG3a. The current 'wider setting consultation area' is to be replaced with 'Linear assessment area', which is no longer, in all cases, directly related symmetrically to the dome of St Paul's Cathedral.

The SPG sets out Assessment Points for a number of 'Viewing Locations' within each view. It is proposed that 'Toolkits' will become available to assist applicants with the creation of the required 'Accurate Visual Representations' (AVR's), which should be produced at the earliest possible development stage.

Clustering of Tall buildings may also be accepted within certain views. New tall buildings of exceptional architectural design quality will be encouraged, where it can be demonstrated positive enhancement of the townscape quality would ensue.

The consultation period ends at 5pm 15 July 2005.

For further information please contact Erica Mortimer (erica.mortimer@cgms.co.uk) or Jo Upton (joanne.upton@cgms.co.uk)

New Flood Control

The government has announced proposals to ensure appropriate development in flood risk areas by giving ministers a new power to call-in schemes. Under the flood risk direction, applications for major development in flood risk areas which local authorities want to approve against Environment Agency advice would be referred to the Secretary of State for possible call-in.

This provision will be inserted in revised guidance on planning for flooding which will go out for consultation later in the year. The new version of PPS25 will "clarify the core sequential test that matches types of development to levels of flood risk".

For further information please contact Malcolm Honour (malcolm.honour@cgms.co.uk)

Social Inclusion Policy

A report published by the government is urging local authorities to use the planning system to support its social policy aims. The advice in the "diversity and equality in planning" best practice guide, appears to contradict a circular advising councils to scale back planning obligations to "necessary works" and affordable housing.

The guide states: "Equality and diversity are not minority or fringe issues. They need to be in the mainstream of planning practice to improve results on the ground. A focus on positive outcomes is likely to help raise the profile of planning as a service that can provide benefits for a wide range of people. Diversity issues are now material considerations in

planning policies and decisions”.

For further information please contact Malcolm Honour (malcolm.honour@cgms.co.uk)

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LEGAL UPDATE

HERITAGE ISSUES

Fine for Listed Building Demolition

An art-deco house was said to be structurally unsound and despite its listed status the owner demolished it. He had applied for retrospective listed building consent and the outcome of his called-in application is awaited.

In the meantime English Heritage instituted a prosecution which has been successful resulting in the highest fine for a single listed building of £15,000 plus £10,000 costs: English Heritage v Beadle (2005).

Demolishing/Relocating a Statue

To enable redevelopment of a town centre to proceed a statue was to be relocated. There was an objection to this but the council and English Heritage considered it reasonable. They had received detailed information about the status of the statue and the effect of its new position; they were aware of the extent of the statue including the surrounding wall; and it did not become a chattel when it was dismantled and the component parts re-erected: *R(Judge) v First Secretary* (28/4/05).

Conservation Area Effect on Telecommunications

The works were certified as permitted and were carried out but with further equipment not included in the consent. Enforcement notice served but then withdrawn when conservation area designated required all equipment to be removed. The council should have sought the consent's revocation as there were rights once this was given and the designation of the area did not alter the situation: *R (Orange) v Islington LBC* (9/5/05).

Hotel Permission Stands

A Grade I listed building had fallen into disrepair and it was proposed to use this as a hotel with enabling development. The council had properly considered the scope of enabling development and although all policy documents on this were not fully set out they were aware of the situation. There was no need for a green travel plan and a unilateral undertaking banning helicopter flights overcame the lack of a condition on this. Challenge rejected: *R (Davey) v Aylesbury Vale DC* (11/3/05).

ENVIRONMENT & COUNTRYSIDE ISSUES

Tyre-Burning Continues

It was claimed that an environmental assessment in 1996 was flawed and therefore permission for the plant not valid. Two expert reports had not been disclosed. However a challenge to a pollution permit was not allowed as this would be "massively and disproportionately prejudicial" to the company as it was no fault of theirs that previous consultation had been unfair because of the Environment Agency's shortcomings on disclosure: *R (Edwards) v Environment Agency* (19/4/05).

Peat Extraction Foiled

Extraction and creation of a wildlife pond would be against the development and minerals plan. The inspector was firm in his conclusion refusing the appeal and the challenge was not a rehearing the issues of the Judge to grant planning permission if he felt differently. There was no legal note basis the challenge which was dismissed: *Sweet v Somerset CC* (17/3/05).

Permission Lapsed?

A mineral permission contained a condition about restoration which provided that before extraction could recommence the work area should be progressively backfilled "to the level shown on the submitted plan or to a level to be agreed". Failure to agree a scheme did not mean the permission had lapsed because the word "or" meant in the context of a 1971 permission that the plan level would have been an acceptable standard: *R (Hart Aggregates) v Hartlepool BC* (26/4/05).

Rights to Access Challenged

A planning permission for a restaurant, shop and flats at an arboretum in the Cotswolds can be challenged on the basis that the access was only over leased land and if the lease was revoked there would be chaos. This had not been considered by the council: *R (Batsford Estates) v Cotswold DC* (22/4/05).

Local Policies Ignored

An inspector allowed a gypsy appeal on the basis of the problem of finding adequate sites, harm to health care and their children's education. However he had failed to take into account strong local policies protecting the natural character of the special landscape area. Decision quashed: *Maidstone BC v First Secretary* (8/4/05).

Agricultural and the Environment

Farmyard manure and calcified seaweed was applied to fields to make them suitable for grazing following several years of disuse. The farmer was convicted of carrying out a project without a screening opinion contrary to the EIA Uncultivated Land Regulations. This was not an intervention for intensive agricultural purposes and the directive was not intended to catch such a project unless the productivity was intensified above the norm: *Secretary of State v Alford* (5/5/05, DC).

EIA Tests

A proposal to extend a harbour would have an effect upon a potential Special Protection Area. It was argued that a strict test should be applied rather than a more flexible one which was the correct approach. The EIA statement was sufficient although it did not include all compensatory measures: *Humber Sea Terminal v Secretary of State* (9/5/05).

Knowledge of Contamination

A company carried out remediation work following receipt of an engineer's report obtained by the previous owner. It was not clear to what extent this was available to the company. The council had relied upon the report in granting permission. The company's liability for carrying out further remedial work was disputed and referred back to the district judge to further consider the extent of their knowledge: *Circular Facilities v Sevenoaks DC* (10/5/05).

Extent of Contamination and Waste

A petrol filling station in Belgium leaked hydrocarbons contaminating the soil and leaking to an adjoining site. These should be classified as waste even though the soil remained in situ and had had not been excavated for the purpose of disposal or treatment.

Noise in a Street

"A loudspeaker in a street shall not be operated... for the purposes of advertising any... business". The loudspeaker was attached to a window and although the magistrate found this was not "in the street" it had the effect of making the window the loudspeaker. The company should therefore be convicted: *Westminster CC v French connection* (29/4/05).

Failure to Appreciate Ground Conditions

In granting permission for a caravan site the council misunderstood the situation regarding soakaways because of lack of rejection from the water authority. They too had been wrongly informed and decision quashed: *Rider v Harrogate BC* (11/3/05).

No Evidence for Second Cottage

The planning officer recommended refusal of a second dwelling at a farm as there was no functional need for this. The council granted permission but failed to give reasons and have now agreed for their decision to be quashed: *R (Jones) v Torridge DC* (24/2/05).

Children's Noise and Disturbance

Nursery extension refused at appeal. Challenged on the basis that inspector failed to consider condition limiting time for use of play area but he had clearly done so; that limit of one hour had been suggested but unfairly rejected – no substance in this point; and inspector entitled to judge issue overall on his experience as well as the evidence. Challenge rejected: *Shinh v First Secretary* (14/3/05).

Agricultural Building and Height of Wall

A building on a farm was erected to house an electricity generator. This was not permitted development as it was not an agricultural building. The height of a new wall adjoining a lane should be measured from the lower level and as a result it also was not permitted development: *Nicholson v First Secretary* (17/3/05).

Agricultural Occupancy Condition Disputed

An appeal was allowed to discharge the condition as the property had not sold with a 30% discount. The council argued it could have been sold to an agricultural worker but as the inspector had rejected this and the property still remained available the appeal had been properly allowed. Challenge rejected: *Epping Forest DC v First Secretary* (8/3/05).

Conservation List Disputed

A Special Area of Conservation over a large area was challenged on the basis that there had not been proper consultation; further all of a golf course had been included when only parts of it were affected by the protected species. The designation had been properly instituted and challenge rejected: *Duke of Westminster v Welsh Assembly* (13/4/05).

Newts Hit Quarry

It was contented that a Special Area of Conservation had been rushed through with little scientific support. However this was not the case. Also that permission to work the quarry would negate the SAC in part but this was not a relevant consideration. Challenge rejected: *R (Newsum) v Welsh Assembly* (11/4/05).

Delay in Registering Village Green

In seeking a registration of common land local residents must show that they are using the site up to the date of registration. The council prohibited access in 2003 after a local campaigner had applied to register it as a green. The court's interpretation of S98 of the Countryside and Rights of Way Act 2000 would allow a landowner to take action to end a

qualifying use, on the basis that an owner should be “given a final opportunity to assert its rights before being deprived of its land”. *Oxfordshire CC v Oxford CC (24/2/05, CA)*.

Antisocial Neighbours

In exceptional circumstances, an antisocial behaviour injunction, with a defined power of arrest, made on a without notice application, might be preferable to an antisocial behaviour order in the context of a neighbourhood dispute: *Moat Housing Group v Harris (16/3/05, CA)*.

RETAIL ISSUES

Floorspace Need Questioned

The Secretary of State disagreed with his inspector that a quantitative need existed for a supermarket extension. The evidence had been rejected despite there being established growth as this was not matched by up-to-date evidence of local spending power. The decision letter adequately explained this and appeal quashed by the High Court restored: *Sainsbury’s v First Secretary (6/5/05, CA)*.

New Town Centre Supported

A new centre was proposed on a brownfield site but challenged by owners of another town centre. Held – the structure plan could be altered to encompass the new centre as it was looking to the future. National policy did not cover such an eventuality and the council’s decision could not be faulted: *Standard Life v Scottish Ministers (30/3/05)*.
Housing

DESIGN ISSUES

Questionable Gap

A single story office linked terraced cottages to four story Georgian houses. Permission was given for a change of use to residential and also a new single story building. Existing building demolished and appeal refused for a two-story replacement. The inspector thought the gap important and was entitled to do so on local policies; he did not have to view the site from adjoining properties and could exercise his judgement; he did not ignore the fallback position and was entitled to deal with the issues on its merits preferring a gap. Challenge rejected: *Trend Properties v First Secretary (4/5/05)*.

Architect’s Design Challenge

A house extension next door to be finished in red brick rather than render was legitimate and consistent with the council’s planning policies and design guide. Challenge rejected: *R (Gonsall) v Rochford DC, 25/2/05*).
PLANNING APPEALS UPDATE

LOCAL PLAN ISSUES

Holding Direction is Reasonable

The council were directed not to approve a local plan pending further consideration by the Government Office. They challenged this but the judge said that this was premature as the plan had not yet been called-in and a final decision made.

He said “All the Secretary of State is doing is ensuring that he has at least an opportunity to

consider whether steps should be taken to ensure a particular outcome is achieved. It cannot be said at this preliminary stage that his decision is unreasonable". R (Forest of Dean DC, 19/4/05) v Secretary of State (19/0/05). to consider whether steps should be taken to ensure a particular outcome is achieved. It cannot be said at this preliminary stage that his decision is unreasonable". R (Forest of Dean DC, 19/4/05) v Secretary of State (19/0/05).

GENERAL LAW

Disability Discrimination Act

Failure to provide a wheelchair except for a fee at an airport meant that there was discrimination when compared to other passengers. An award of £1,336 was made: Ross v Ryanair [2004] EWCA 1751.

A disabled passenger could not cross from one platform to another except by a short taxi ride. The railway company declined to pay this and suggested that he travel 25 miles further to where there was a lift and then come back. This was held to be discrimination: Roads v Central Trains [2004] EWCA 1541.

50 Year Old Covenant

Restrictive covenants dating from 1950 should be interpreted according to the historical meaning of the language used at that time. The lease contained a prohibition against the carrying on the trade "victualler, vintner, tavern keeper, vendor of malt liquor, restaurant or coffee house keeper". The term licensed victualler did not cover a sandwich shop nor a coffee house keeper. Therefore sandwiches could be sold from the premises for consumption elsewhere: Joint London Holdings v Mount Cook (Times 12/5/05).

Damage Must Be Seen

A claim by a building owner against structural and civil engineers for negligent design accrued when physical damage to the building first occurred. The claim is not time-barred if brought within the six-year statutory limitation period: Abbott v Will Gannon and Smith (Times 28/4/05, CA).

Costly Costs Failure

Costs were awarded against a council for failing to substantiate parking and highway objections to a development. The inspector was justified in awarding costs as the council had not adequately supported their case. Challenge rejected with payment of defendant's costs: Waverley DC v First Secretary (25/2/05).

Size of "Original" House

A house extension was larger than that permitted and the council's enforcement notice was upheld requiring its removal. However it was arguable that the inspector had assessed the extension against the original building rather than the permitted extension and the matter should proceed to full trial: Winterhalder v First Secretary (8/3/05).

No Seating for Pret A Manger

The company can take over the lease of a central London premises only if it does not

provide seating for its customers. This is because the company does not fall within the definition of a “victualler” a profession prohibited from using the premises. Likewise the lease prohibited “coffee house keepers” and would therefore ban the company if it was to serve food for consumption on the premises. Thus the company can sell sandwiches etc for consumption elsewhere if they take the premises: *Joint London Holdings v Mount Cook Land* (2/3/05).

The Scope of Members’ Interests

Whether a council member has a personal or a prejudicial interest in a committee matter is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant: *Scrivens v Ethical Standards Office* (11/4/05).

Noise Annoys Residents

The European Court of Human Rights has made an important ruling against Spain to the effect that a claimant’s rights under Article 8 of the European Convention on Human Rights (right to respect for private life and home) had been infringed after suffering noise nuisance from bars and discos near her home over a 25 year period: *Gomez v Spain* (16/11/04). By courtesy of *Burges Salmon* (solicitors).

Second Expert’s Report Admissible

A party who was granted an order of the court to adduce evidence from an unnamed expert witness in the relevant field was entitled to reject his first expert’s report and to instruct another without seeking permission from the court.

However, where the circumstances did require such permission, the imposition of a condition for disclosure of the original report would not breach legal professional privilege: *Hajigeorgiou v Vasiliou* (10/3/05, CA).

Experts’ Evidence Rejected

A judge had two valuation experts before him but could not decide which one to adopt. He chose the lower on the basis that the higher had not been justified by the claimant. This was the wrong approach and he should have worked through the issues possibly finding an intermediate valuation more acceptable: *Stephens v Cannon* (14/3/05, CA).

Dispute Resolution

An engineer deciding a dispute or difference between parties has a duty to act independently, honestly and fairly, but this does not encompass the rules of natural justice.

He is not subject to do the requirement that he should not be a judge in his own cause, since that might be inherent in his position and he is not subject to the same procedural rules as someone acting judicially: *Amec Civil Engineering v Secretary of State* (17/3/05, CA).

Reputation Relevant to Mitigation

A doctor’s professional misconduct case has relevance for surveyors. The unblemished practicing career of a doctor was not appropriate for the professional conduct committee

to consider when hearing an allegation of professional misconduct. The conduct of the practitioner might be evidence of mitigation but was not relevant for the substantive finding: *R (Campbell) v General Medical Council* (11/3/05, CA).

Demonstration in Shopping Mall

A protest group paraded outside Marks and Spencer and a counter demonstration ensued. In order to make space at Christmas the police moved the demonstration elsewhere.

Giving a written direction imposing conditions on a public assembly, the chief officer of police had to identify what he reasonably believed would be the consequences of the demonstration should it proceed unchecked and provide in outline reasons for forming that belief: *R (Brehony) v Chief Constable of Greater Manchester* (23/3/05).

Detention of Demonstrators

Police were justified in holding demonstrators and passers/by within a cordon for seven hours for public order reasons in large May Day demonstration in London: *Austin v Commissioner of Police* (23/3/05).

GYPSIES AND THE LAW

Judges' Mixed Views on Gipsy

A gipsy appeal had been lost and a High Court challenge rejected. The judge had refused leave to go to the Court of Appeal and another judge had endorsed this. The gipsy applied to the Court of Appeal and the two Lords Justices were divided over whether permission should be given and referred the matter to a three man court. The areas of concern centred upon the closeness of sites and potential conflicts between gipsy communities amounting to social engineering, and a trend noted by the inspector of shifting from authorised sites to unauthorised ones and whether it was planning policy to limit gypsies merely to the later: *Smith v First Secretary* (15/3/05).

What are Caravans?

A gipsy had been allowed to remain on a site but a local resident challenged this on the basis that caravans were not involved but building structures. This challenge was successful and the matter remitted to the inspector to reconsider the issue: *Green v First Secretary* (13/4/05).

Defining a Gipsy Caravan

An appeal for retaining a gipsy "home" was allowed. However the structures were not caravans but mobile homes plus other wooden buildings. Objectors specifically referred to these but the inspector did not make a conclusive finding as to whether caravans existed and if not the effect this had on the gypsies' status. Decision quashed: *Green v Secretary of State* (13/4/05).

Absolute Right to Possession

A public authority which owns land can evict gypsies without breaching their human rights in respect of their private and family life. However there were conflicting authorities on the matter and leave given to go to the House of Lords: *Leeds CC v Price* (16/3/05, CA).

Human Rights Hits Adverse Possession

The grazing of horses by a trespasser amounted to adverse possession for more than 12 years. However this was to deprive the owner of a valuable right and as such interfered with his property rights contrary to human rights legislation: *Beaulane Properties v Palmer* (23/3/05).

Gypsies and Local Authorities

The government has confirmed that the local authorities, not Whitehall, must assess the need for gipsy and traveller sites. Regional spatial strategies should consider such housing requirements and develop a strategy on how to meet them. Development plan documents at local level should then allocate land to meet those needs.

Gypsy's Very Special Circumstances

An appeal for a caravan in the green belt was allowed as there were no authorised sites available and a significant shortfall in such sites in any event. Land prices were high; there was no prospect of being allowed on an authorised site; there was a significant shortfall of such authorised sites; the short comings and finance prevented move to a mobile-home park. This justified planning permission and challenge rejected: *Mole Valley DC v First Secretary* (25/4/05).

NEW GOVERNMENT POLICY

Hazardous Planning Consultation

A consultation document has been issued on draft regulations to amend the hazardous substances planning regime.

Two new classes of ammonium nitrate are proposed, as well as two classes of potassium nitrate-based fertiliser, a number of carcinogenic substances, some petroleum products and some explosive substances.

Indicators of Sustainable Development

A new series of indicators which show the progress the country is making towards achieving economic growth while reducing damage to the environment has been published. The new Sustainable Consumption and Production Indicators show that progress is being made in some areas, but more needs to be done in others.

The aim is to break-or decouple-the link between increasing economic growth and environmental damage; the indicators show to what extent this is being achieved. The key messages are:

- We have made good progress in reducing the emissions of air pollutants (such as sulphur dioxide, nitrogen oxides and particulates), in improving river quality and in redeveloping previously developed land
- Further progress is required on reducing household and road transport impacts and there is some way to go before we can be sure that farm land bird populations are increasing from economic growth
- Waste and fish stocks remain issues of concern requiring further monitoring.

Cleaner Neighbourhoods

The Clean Neighbourhoods Act 2005 has now received the Royal Assent and will come progressively into effect. It covers:

- fly-tipped waste
- litter
- nuisance alleys
- fly-posting and graffiti
- abandoned and nuisance vehicles
- dogs
- noise
- nuisance from artificial lighting
- CABE is put on a statutory basis.

For further information on any of these legal issues please contact Tony Bowhill (tony.bowhill@cgms.co.uk) or your usual CgMs contact.

APPEALS UPDATE

HOUSING

Block on Greenfield Site

350 dwellings on a 16.3ha site would be within the urban area where the local plan inspector had recommended release and the council had agreed. However, the Secretary of State felt greater weight should be given to regional planning guidance and policies in the emerging structure plan aiming to control the over-supply of housing land. These were important factors in his decision. Appeal dismissed (Fylde BC, 15/3/05).

Council's Policies Unreasonable

Residential development at a PFS at Manchester Road, Northwich could not be defined as a windfall site contrary to local policies. Such policies were in a state of flux and it was uncertain if there was an adequate supply of housing land. This issue had only been introduced after the council's concern about contamination had been satisfied and this was unreasonable. Appeal allowed with costs (Vale Royal BC, 17/3/05).

Impact of Landmark Tower

A residential tower in South London would be of the highest architectural quality but visible from a large part of Central London particularly the important views of Parliament from Westminster Bridge. The inspector felt that it did not meet planning requirements but the First Secretary disagreed although he required a revision to include more affordable housing and a better mix. Appeal allowed (Lambeth LBC, 31/3/05).

Employment Potential Flouted

An employment building currently used for exhibitions was not suitable for modern industrial use. 45 flats with 58 parking spaces rather than 83 requested by the council would be more acceptable in this location in this riverside location close to the town centre. Appeal allowed (Denbighshire CC, 12/04/05).

Approval in Green Belt

21 new dwellings outside a village edge but not perceived in the countryside at Redford Road, Alvechurch would not result in a loss of green belt openness but promote urban regeneration by improving a mill and restoring the main structure. Appeal allowed (19/4/05, Birmingham CC).

Mixed Result on Prison Hostel

A hostel for prison officers at North Pole Road W10 would be acceptable in terms of housing policy catering for key workers and not offending the need for social renting. However the orientation of the block would impinge on local residents' amenity with increased noise from the adjoining railway line. Appeal dismissed (Hammersmith & Fulham LBC, 22/2/05).

Poor Housing Provision

154 flats at Old Town SW4 would be out of scale with the conservation area but not impinge on neighbours' amenities. However with only 34% affordable housing this was unacceptable and appeal dismissed (Lambeth LBC, 13/1/05).

Closed Windows Acceptable

A 4/5-storey retail and flat building at Wilmslow Road, Rusholme would fit in with this noisy area although it was in category C for noise. Appeal allowed with condition about non-opening windows (Manchester CC, 24/2/05).

Loss of Employment

Housing at a vacant factory site in Folly Road, Devizes would redevelop a 3ha site which had been available for some time. With sufficient marketing there was no harm to loss of this. Appeal allowed (Kennet DC, 4/3/05).

Offices Stay

Residential development on an office site at Cranmore Boulevard, Shirley would use a brownfield site but there was insufficient housing need to outweigh harm to loss of an employment site. Appeal dismissed (Solihull MBC, 9/3/05).

Listed Building Adapted

28 retirement flats in a hotel at Broad Street, Barry would be a better use than that existing keeping the period features and less destructive to floor loads. Appeal allowed (Vale of Glamorgan CBC, 16/3/05).

Flats' Implementation Queried

Five storey flats in northwest London did not conflict with the adjoining symmetry or its listed gatehouse. The existing "cacophony" of incongruous structures on the site did not fit in with the area and the overall design of the building was acceptable. Several alternative schemes were rejected as implementation of any of these would rule out the preferred scheme.

Major Developed Site?

Housing on the built-up area of a 'major developed site' at Warren Lane, Stanmore would be acceptable but going beyond this would be inappropriate in the green belt. Appeal allowed to this extent (Harrow LBC, 3/3/05).

Countryside Falls to Housing

In South Wales housing on the edge of a village intruding into the countryside would be acceptable bearing in mind the shortfall in the five year housing requirement. This would not create an undesirable precedent or prejudice preparation of the UDP. Appeal allowed.

Urban Extension

41 flats/215 houses on 8.4ha agricultural land at Mill Lane Hern would be adjacent to a conservation area and within the urban area prior to PPG3. There would be no harm to housing supply and a drainage scheme could overcome water problems. Appeal allowed (Canterbury BC, 17/2/05).

Scrap Yards Stays Put

Replacement by four houses in the West Midlands green belt would mean a permanent increase in height and while the activities were objectionable the loss of openness would compromise the area. Application rejected despite support from the council and the inspector.

Housing Beats Open Space

Backfilling of a quarry and use for housing was to be preferred rather than the zoned open space use which would be financially difficult to achieve. Although there was a deficiency of open space in the area there was no realistic prospect of its being realised at Lennox Road, Gravesend. Appeal allowed (Gravesend BC, 28/2/05).

Policy Provision Flouted

Two houses in Hampshire completed a development of six. The council claimed that an affordable housing contribution should be calculated on the total rather than just for two as contented by the appellant. This was incorrect as the policy was not retrospective. Appeal allowed and costs awarded against the council as they had been advised by officers that this position was untenable.

HOSTELS

Salvation Army Hostel

This use would be appropriate in a residential area because of the high degree of care from the two resident workers. Inmates would be screened before acceptance. Despite fears on the community the appeal was allowed (Penwith DC 2/3/05).

Protection to Residents

Conversion of a house in a Cambridgeshire village to a residential care home for 12-16 year old males has been allowed despite a lack of local facilities. These also affected local

children and in the case of the home there would be on-site activities carefully supervised. While there might be some disruption this was not sufficient to turn away the appeal (Fenland DC 1/3/05).

Attracting Homeless Persons

Relaxing a condition on a house home for elderly ladies was not justified for housing young people. The council had adequate facilities and the accommodation could attract youngsters from a wider area. Although there were no amenity objections the appeal was dismissed (Blackpool BC, 1/3/05).

Homeless Affect Amenities

An end of terrace house in Fairbrook Close North London was used by homeless persons. An enforcement notice has been upheld as the eight self-contained rooms lead to more noise and disturbance than a normal household. Detrimental to resident's amenities (Enfield LBC, 31/3/05).

No Care at Care Home

In North London a home for patients with mental health difficulties would require planning permission. The carers would not live-in and it was a class C2 use rather than a house in Class C3 although there would not be more than six residents. There would be a loss of residential accommodation which was fatal and also harm to local amenities from vehicle movements. Further residents' fears were a material planning consideration. Appeal dismissed (Enfield BC, 15/4/05).

RETAIL

Factory Outlet Extension

In North Wales it was claimed that this outlet was for tourist purposes but functioned more on a general retailing basis. It sold end-of-line fashions. It was an unusual feature in a rural area and a precedent would not be set. There was a quantitative and qualitative need within an outflow of expenditure. Appeal allowed (Denbighshire CC, 31/3/05).

Unacceptable Retail Design

A B&Q warehouse in Perth would be on a brownfield arterial road site. The large structure would have a box-like appearance and did not offer the high standard of design required by the prominent location. However loss of employment land and impact on other retailing were not significant. Appeal dismissed (Perth & Kinross CC, 5/4/05).

Replacement Retail Stamped On

At Kingston Road, New Malden a retail warehouse was to be used for employment with three additional employment units and a new retail warehouse. This would erode the stock of employment land and prejudice the comprehensive redevelopment of the area. Insufficient flexibility had been shown regarding alternative sites and as the new retail unit was only a replacement it made only a limited contribution to the quantitative need for additional shopping floor space. Appeal refused (Kingston-Upon-Thames RBC, 29/4/05).

Attractive Betting Office

In a prime location Lord Street, Fleetwood only 37% of units in the immediate vicinity would be in shopping use undermining its primary retail function. However in the centre as a whole 75% would be in retail use and it was this factor which led to the appeal being allowed although the inspector stressed that bunching could be important (Wyre DC, 17/3/05).

Crime and Disorder

At Leeming Street, Mansfield a new take-away would add to the concentration in a town centre prone to late night crime and disturbance. The police were concerned about this but the inspector thought that a new unit would provide more outlets for late night revellers and as a result allowed the appeal (Mansfield DC, 31/3/05).

Regeneration Benefits Prevail

Replacement of a library and a new bus station at Market Street, Hemsworth would bring a large store to the town and boost its position in the retail hierarchy. This would not necessarily be detrimental although a nearby town could be hit. The benefits outweighed any detriment and application permitted (Wakefield MDC, 1/3/05).

Difference on Retail Catchment

A B&Q store at Brownhills Road, Tunstall would on an adjusted catchment not be justified quantitatively or qualitatively. However the site was part of a company's rationalisation and jobs could be lost if they relocated overseas. An extent permission (which could be implemented) for a comparison retail park was a material consideration for the appeal being allowed (Stoke-on-Trent CC, 20/1/05).

Storage Restriction Prevails

An extension of 666m² for a district centre Tesco would be expressly for storage purposes and a limit placed on the retail floor space. This would not harm the city centre although the district centre was over trading and performing a wider role. The sequential test was not required for storage space. Appeal allowed.

Critical Loss of Park

A Lidl supermarket at Inshes Retail Park, Inverness met the sequential test and would not harm the city centre but the loss of a public open space and a sporting facility was fatal. Appeal dismissed (Highland CC, 17/2/05).

Food Store Harms Investment

A Lidl store at New Road, Newhaven would harm regeneration being out of centre and hit other shops. No proper sequential test and harm to reuse of employment land. Application rejected (Lewes BC, 22/3/05).

For further information on appeals update please contact Tony Bowhill (tony.bowhill@cgms.co.uk) or your usual CgMs contact.

CgMs NEWS

Cherry Tree Way, Stanmore

The London Borough of Harrow resolved to grant planning permission on the 20th of April 2005 for redevelopment of land at Cherry Tree Way, Stanmore, Harrow. The application, submitted by CgMs on behalf of Laing Homes North Thames, proposed the demolition of three existing dwellings and replacement with a linked two-storey block containing seven apartments. Despite a recommendation for approval by Planning Officer's, an earlier application had been refused planning permission in July 2004.

CgMs recommended that an appeal and duplicate application be submitted for the Council's re-consideration. The application was submitted in February 2005, on the basis that the planning policy framework had progressed significantly such that it gave more support to granting permission for the proposal. Despite strong opposition and a motion to refuse by half of the planning committee, the Chairperson and other members agreed that the planning application warranted approval. Planning permission was granted 4 months before the appeal inquiry was due to open.

For further information please contact Richard Tilley (richard.tilley@cgms.co.uk) or Will Thompson (will.thompson@cgms.co.uk)

Islington Wharf Great Ancoats Street, Manchester

ISIS Waterside Regeneration have just secured permission on 4 planning applications for the redevelopment of a derelict site beside the Ashton Canal in Manchester. CgMs advised ISIS Waterside Regeneration on the archaeological implications of the scheme and provided the archaeological chapter of the supporting Environmental Statement. This work included agreeing the scope of an evaluation and mitigation strategy with the Local Planning Authority's archaeological advisors and successfully negotiating this to be a condition of permission rather than a pre-determination requirement. The evaluation and mitigation (including permanent displays on the industrial heritage of the site) scheme will be implemented shortly.

For further information please contact Rob Bourne (rob.bourne@cgms.co.uk)

2 - 16 Southam Street, W10

On 10th May 1005 the Royal Borough of Kensington & Chelsea resolved to grant planning permission for the demolition of an existing building, comprising 16 Class B1 business units, and the erection of a four storey building comprising 10 residential units and 8 business units, with 10 basement parking spaces and associated amenity space in the form of a roof terrace. The resolution to grant was subject to a legal agreement to secure a financial contribution to the Economic Development Fund, and for the provision of street trees and public art.

The site lies adjacent to a railway line, and the issue of the loss of amenity to potential occupiers was overcome by the proposed business and residential uses being divided horizontally; the former located to the rear facing the railway line to act as a buffer, and the latter facing the street to the front. The contemporarily designed facades also correspond to their respective uses in terms of materials, scale and massing in what is predominantly a residential area.

For further information on this project please contact John Smith (john.smith@cgms.co.uk)

Portishead, Somerset

On 30th March 2005, the Government Office for the South West accepted the recommendation of a Planning Inspector and allowed a non-statutory appeal by the Home Office to create an asylum seeker Screening Unit to be created at the Portishead Office Park, Somerset; a screening unit is a facility where asylum seekers can be interviewed and issued with Application Registration Cards (ARCs), as part of the asylum process. The Home Office does not have such a facility in the South West. As such, asylum seekers in the South West will now not have to travel to Croydon or Solihull to be issued with ARCs and the Home Office will no longer need to use local Police Stations to interview asylum seekers. This proposal will also enable the Home Office's Portishead Office to relocate to modern premises and improve their operations; benefiting it's staff and the asylum seekers based in the South West.

The Crown, in this instance the Home Office, does not require planning permission, but instead consults with local authorities about any proposals that it may have for development and the Council can then object, if it so wishes.. Therefore, North Somerset Council's decision to raise an objection to the Screening Unit proposal on 27th April 2004 was, in effect, the same as refusing to grant planning permission. A non-statutory Inquiry assessed the arguments for and against the proposal on the 4th & 5th January 2005. The Planning Inspector's recommendation to the First Secretary of State was dated 24th January 2005. The Government Office for the South West formally accepted the Inspector's decision on 30th March 2005, allowing the proposal to proceed.

For further information please contact John Brooks (john.brooks@cgms.co.uk)

NEW STAFF

Due to our continued expansion we are pleased to announce that Maura Samonen has joined the Historic Buildings Team as a secretary for the Analysts Section. Teneal Long has also been appointed as a secretary working in the Archaeology Team.

If you require any information about items in this new sheet please contact **Tony Bowhill** in the first instance, tel: 01702 551148, email: 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.

March 2004

The publication of the London Plan on 10th February saw the most comprehensive review to date of the Capital’s land capacity and is the first development strategy for London for nearly three decades. The Mayor’s vision is to set out a new direction for London celebrating the Capital as a ‘World Class’ city, reflecting the dramatic changes that have already taken place and ensuring that its evolution is supported by a strategic planning framework to provide for the most efficient and sustainable use of land.

The Plan will guide the formation of local planning authorities policy within Unitary Development Plans (soon to be replaced by Local Development Frameworks). Policy will generally be required to conform with the Plan. Headline issues running through the Plan include sustainable development; promotion of mixed use development; providing more homes, with a strong emphasis on affordable housing; strategic views; sub-regional strategies and quality of design. We address below changes that have taken place since the publication of the Draft London Plan in June 2002.

| Theme | Issues |
|--------------------|--|
| Increasing Housing | <ul style="list-style-type: none"> • The Plan envisages the population of the capital will grow by around 800,000 to 8.1 million by 2016. Calls for 30,000 new homes (this figure has been increased from the Draft Plan) annually (up to 2006) with a strategic target at half affordable from all sources. Of these 70 per cent should be social housing and the rest intermediate. • A new housing capacity strategy will take place to assess each Borough’s capacity. • The plan utilises a strategic target for London of 50% affordable housing, whereas the Draft plan set targets of 35% or 50% for different Boroughs • The Plan seeks increased densities for residential development particularly in accessible locations.. • A Draft Supplementary Planning Guidance on Affordable Housing is expected in March 2004 |
| | <ul style="list-style-type: none"> • The role of Sub-Regional Development Frameworks is strengthened and expanded. • Growth Areas will be focused on ‘Opportunity Areas for Intensification’ and existing town centres. Development frameworks will be produced for each of the five sub-regions (Central, West, East and Thames Gateway, North and South) • There is a particular focus on the East London Area. The Plan aims to correct the balance between east and west London in terms of wealth and opportunity. |

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|------------------------------------|--|
| Strategic Views | <ul style="list-style-type: none"> • The Plan designates a set of panoramic views, riparian views, townscape views and linear views. • Two additional views - Westminster Pier and Richmond Park. • The relevant sightlines and viewing corridors will need to be taken into consideration when determining planning applications • Supplementary Planning Guidance to be published in due course. |
| Mixed Use/ Employment Land | <ul style="list-style-type: none"> • The Plan predicts that there is a need for 7.4 million sq m of office space over the next 15 years. • Mixed use development involving both commercial and residential provision and utilisation of existing office space is promoted. • UDP policies are required to identify new sources for potential mixed use/housing sites by having regard to unneeded employment/industrial land. This emphasis on the review of land allocations was not apparent in the Draft Plan. |
| Tall Buildings | <ul style="list-style-type: none"> • The Plan backs tall buildings on the proviso that they are of quality design creating attractive landmarks • The Plan includes support for tall buildings and removes Borough wide height restrictions. LPA's will have to justify why tall buildings are not appropriate at particular locations (this was not apparent in the Draft Plan) • Sites have been identified (mainly in the City/Canary Wharf) for approximately 15 tall buildings to be built over the lifetime of the Plan. |
| Supplementary Planning Guidance | <ul style="list-style-type: none"> • The Plan outlines a timetable for the publication of 11 SPG's: • Accessible London (draft published July 2003) • Industrial Capacity (Draft published Sept. 2003) • Housing Provision (Draft due March 2004) • Urban Design Principles (Draft due March 2004) • Affordable Housing (Draft due March 2004) • Sustainable Construction and Design (draft due April 2004) • View Framework Management (Draft due April 2004) • Land for Transport Functions (Draft due April 2004) • Renewable Energy (draft due May 2004) • Meeting Spatial needs of London's Diverse Communities (draft due May 2004) • Retail Needs assessments (Draft due July 2004) |

Clearly there have been some significant changes to the Draft version of the London Plan that will have implications for organisations in the development process. However, the main thrust of the Mayor's vision for the Capital remains substantially the same. It is now important to monitor the progress of forthcoming Supplementary Planning Guidance and observe how Local Planning Authorities incorporate the strategy into new Local Development Frameworks.

Comments can be made

This is a very brief summary of the main implications of the changes. Please contact Erica Mortimer or any member of our planning team to discuss the proposals further.

E-mail: erica.mortimer@cgms.co.uk or phone CgMs on: 020 7583 6767