

PLANNING NEWSLETTER

Issue 9 September 2005

LATEST NEWS

PPS9: BIODIVERSITY CONSERVATION AND GEOLOGICAL CONSERVATION

PPS9 was published in August 2005 and replaces the existing PPG9, which had been in circulation since 1994.

This summary of the document provides an overview on:

- The structural difference between PPG and PPS9
- The Government's Objectives and Principles
- The Statement's requirements on the content of RSSs and LDFs
- What are the sites of Biodiversity or Geological Value
- Species Protection

The structural difference between PPG9 and PPS9

In providing a summary of the PPS, it is necessary to note the key difference between it and the PPG that it replaces. The key difference is length; PPS9 is essentially made up of three documents, firstly, the PPS itself, which provides the wide-ranging planning advice on the role and position of biodiversity and geological issues in the planning process. Secondly, this document is supplemented by a Circular prepared jointly between the ODPM and DEFRA (06/05 and 01/05 respectively) providing detailed advice on the wide range of legislative provisions at the international and national levels that will have impacts on planning decisions in so far as they relate to biodiversity and geological conservation. Thirdly, there will be a Good Practice Guide in relation to planning for biodiversity and geological conservation.

The Government's Objectives and Principles

In terms of the structure of the PPS, it sets out the Government's three objectives for planning in a biodiversity and geological context, these are:

- Promoting sustainable patterns of development through conservation of biological and geological value and also the enhancement of it as an integral part of the development process.
- The need to conserve, enhance and restore the diversity of England's wildlife and geology.

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

- Contribute to rural renewal and urban renaissance by enhancing biodiversity and green spaces in development, recognising that a healthy functional ecosystem can contribute towards a better quality of life.

In terms of how the Government's objectives are put into practice, the Statement requires that RPBs and LPAs should adhere to a series of key principles in order to ensure that the potential impacts of planning decisions on biodiversity and geological concerns are fully considered. These are summarised as follows:

1. Basing development plan policies and planning decisions on up-to-date information about the environmental characteristics of their areas. It also requires LPAs to assess the potential of areas to sustain and enhance those resources.
2. Attaching respective weight to designated sites of international, national and local importance. The Statement sets the aim that Plan policies and development decisions should maintain, and enhance, or restore or add to identified conservation interests.
3. Adopt a strategic approach to conservation, enhancement and restoration in the formulation of development plan policies.
4. Promote the incorporation of conservation interests within the design of development.
5. Permit development proposals where the principle objective is conservation orientated.
6. Where development proposals harm conservation interests, the LPA needs to be satisfied that the development cannot be reasonably located on alternative sites resulting in less harm. In the absence of such sites, appropriate mitigation measures should be secured and if these cannot, appropriate compensatory measures. If appropriate mitigation or compensation cannot be implemented to avoid significant harm, then planning permission should be refused.

The Statement's requirements on content of RSS and LDFs

PPS9 provides guidance on how respective RSSs and LDFs should address the issues of biodiversity and geological conservation.

At the RSS level, the Statement seeks the inclusion of policies on enhancement and conservation, as well as setting out means of addressing regional and sub regional conservation concerns through criteria based policies. It also requires the establishment of targets for restoration and indicators for monitoring biodiversity.

In relation to LDFs, these should identify designated sites at international, national and local levels, making clear distinctions between them. In addition, LDFs should identify sites for habitat restoration/creation in order to meet RSS targets.

What are the sites of biodiversity and geological value?

Like its predecessor, and perhaps in a more succinct form, PPS9 identifies the following designations:

International Sites – These are designated as Ramsars, Special Areas of Conservation (SAC), Special Protection Areas (SPA) and candidate/potential SACs and SPAs. As a result of SACs and SPAs enjoying statutory protection, there is no need for specific policies in LDDs to protect them, they merely need to be identified on the proposals maps. In relation to candidate and

potential SACs, SPAs, and Ramsars, although these are not afforded the statutory protection, their candidacy or potential status, or, in the case of Ramsars their designation, is a consideration in the determination of any planning application.

SSSI – Many are recognised at the international level and are protected accordingly. Those that area not, should be given a high degree of protection, through appropriate policies in plans. Where development proposals within, or outside, a SSSI leads to adverse effects on it, planning permission should not normally be granted.

Regional and Local Sites – At this level, there is a need to distinguish the level of protection offered on these sites in relation to their national and international counterparts. PPS9 advocates the use of criteria based policies for evaluating development proposals affecting such sites.

Ancient Woodlands and other important natural habitats – Those without statutory protection should be protected from development that would result in its loss or deterioration, unless the needs and benefits of the development, in that location, outweigh the loss of woodland habitats.

Networks of Natural Habitats – identified as a valuable resource, the fragmentation of such networks should be avoided and repair should be sought through policies in plans. Where development does take place in such networks, they should be protected and where possible, strengthened or integrated into it.

Previously Developed Land – The re-use of such land to assist in achieving sustainable patterns of development is recognised by the PPS. Where there are significant interests, in conservation terms, LPAs with the developer, should seek to retain this interest, or incorporate it into any development.

Biodiversity within Developments – Development proposals present opportunities for building in beneficial biodiversity or geological features as part of good design. LPAs are required to maximise such opportunities, using planning obligations where appropriate.

Species Protection

Notwithstanding the many species subject to statutory protection, those that are not and are identified by DEFRA are to be protected by the provisions of the PPS from the adverse effects of development. If they cannot be protected, development should be refused, unless the need and benefit of the development outweighs the harm.

Summary

Unlike its predecessor, PPS9 is a more succinct document, not burdened with explaining the statutory obligations relating to various types of designated site or the role of English Nature. This, helpfully, is left to ODPM Circular 06/05. As a result, the PPS becomes a more user-friendly for those whom do not have, or, do not need, detailed knowledge of the various statutory obligations.

Away from the physical difference, it is clear that the Government's enhancement agenda, as seen in PPS1 is also present here. However, it remains to be seen how the issue of enhancement will be realised through the development process. No doubt the anticipated Good Practice Guide will shed some light on this.

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

REVISIONS TO THE CRITERIA FOR LISTING

In July 2005 the Department for Culture, Media and Sport (DCMS) published a consultation document entitled 'Revisions to Principles of Selection for Listing of Buildings: Planning Policy Guidance Note 15' seeking views on revisions to the criteria used to assess a building's suitability for listing. The Government considers that the current criteria are broad and unclear and that the practice used by English Heritage when assessing buildings for listing needs to be clarified.

The proposals have been put forward as part of the Government's wider package of reforms of the heritage protection system, which are being implemented as part of the [Heritage Protection Review](#), published in June 2004, which is promoting a new unified system of designating historic assets. The first change as part of this Review was introduced in April, when the responsibility for processing listing applications was handed over to English Heritage.

Proposals are two fold and include minor revisions to the 'General Principles' set out in PPG15 as well as the production of a comprehensive overview of 20 different building types. In addition to the new Principles, English Heritage intends to publish detailed selection guides for the 20 types which will include thorough and detailed technical information.

The changes will mean that any objections to listing based on the general criteria set out in PPG15 will no longer suffice, and that it will be necessary to submit a more thorough and detailed technical analysis of the building.

Our Historic Building Consultants have a comprehensive knowledge and understanding of submissions for listing or delisting.

The consultation period runs until 17th October 2005 and the revisions will be issued as a Circular once responses have been analysed and published, which is likely to be by the end of this year.

For further information please contact Tina Garratt at tina.garratt@cgms.co.uk or Jonathan Edis at jonathan.edis@cgms.co.uk

WEBLINK:

www.culture.gov.uk/global/publications/archive_2004/review_heritage_protection

GYPSIES AND TRAVELLERS

The Government has established a new Gypsy and Traveller Unit to help local authorities improve the use of new enforcement powers, including powers to tackle anti-social behaviour as well as address the location of sites. The unit will also look at the operation of these powers to see if further action is needed.

As a result of changes to the planning and housing system, local authorities are also now expected to identify more appropriate locations for gypsy and travellers where needed, with funding available to increase sites for rent. Although 75% of gypsy and traveller caravans are on authorised sites, the shortage of sites has grown since the abolition of the duty on local authorities to provide sites in 1994.

CONTENTS OF THE REST OF THE NEWSLETTER	
p.5	PLANNING LAW
p.5	Challenging Decisions
p.6	Challenging planning appeals
p.7	Planning procedures
p.7	Historic buildings
p.7	Environmental law
p.8	Compulsory purchase
p.8	APPEALS UPDATE
p.8	Housing: policy approach
p.9	Housing: design and density
p.9	Housing: loss of industry
p.10	Countryside and Green Belt
p.10	Retail
p.11	Service uses
p.12	Agricultural occupancy conditions
p.12	Defining planning permission
p.13	Storage and industrial
p.14	CGMS NEWS

PLANNING LAW

CHALLENGING PLANNING PERMISSIONS

Serious Flood Risk

Permission has been granted to challenge consent for flats as the accommodation would lie within a flood plain where this had occurred as recently as 2000. The risk to residents would be exacerbated as the development included a lower ground floor, incorporating car-parking and communal facilities for residents: R (Environment Agency) v Tonbridge & Malling BC (4/7/05)

Benefits to Local Economy

A holiday village was granted permission in a national park. Local policy only allowed this if there was an overriding national need. However local benefits would be significant. This

approach did not ignore the development plan but allowed material considerations to be paramount. The committee had properly weighed the proposal against its effect on the natural heritage interest: R (Council for National Parks) v Pembrokeshire Coast NPA (20/7/05, CA)

Inadequate Officers' Reports?

A stadium plus enabling development of office, residential and retail warehouses was permitted. Local residents challenged on the basis of inadequate officers' reports including failure to fully outline all relevant policies. While this was the case, the committee had given independent thought to the proposals and the material in the reports, their local knowledge and site visits meant that they had independently reached their decision: R (Hampson) v Wigan MBC (27/7/05)

CHALLENGING PLANNING APPEALS

Fall Back Position Flawed

A house in the green belt was given permission to extend but was built much larger than permitted. The council served an enforcement notice. It was argued that to make it similar to that permitted certain works could be undertaken without permission (the fall back position). The inspector rejected the appeal but it was successfully argued that he did not properly give sufficient reasons why he rejected the fall back position: Winterhalder v First Secretary (11/7/05)

Judge does not Decide Merits

Seeking leave to appeal a High Court decision it was emphasised that judges do not look at the planning merits of a case but whether a legal error has occurred in the inspector's decision. Thus it was not permissible to allege that an area was not properly designated an SSSI or that there was no management agreement before designation. The question of whether the site was within the Peat Production Zone was a factual one not for the Court. Leave to appeal was refused: Sweet v First Secretary (18/7/05, CA)

Best Use of Waste

It was proposed to construct a golf course using significant amounts of screened inert waste for mounding. The council contended that this should go to ex mineral sites for backfilling. The inspector on appeal agreed and a challenge has been rejected as he was aware of the waste hierarchy and that it was better for such waste to go to former mineral sites: Golf Operations v First Secretary (19/7/05)

Gypsies Win Through

An unauthorised site had 27 plots. An enforcement notice had been upheld but the inspector suggested a smaller site might be possible. An application was made for this and rejected by the authority and at appeal. The court quashed the inspector's decision as there was a little evidence to support his findings about crime; that this permission would undermine Government policy directing caravans to authorised sites; and had erred in relying upon the evidence of a gypsy liaison officer as to the risk of undue competition for local work and potential conflicts between gypsy communities, without better understanding its meaning and implications: Smith v First Secretary (21/7/05, CA)

PLANNING PROCEDURES

Effect of Withdrawing Appeal

Upon advice from the Planning Inspectorate a developer withdrew his appeal but his subsequent application for reserved matters approval was not dealt with in time by the council. He applied for the appeal to be reinstated but the court held that once withdrawn he had no right to do this and should have taken independent legal advice on his position: *R (Corbett) v First Secretary* (18/7/05)

Permission's Context Vital

Permission was granted for a replacement pig food cooking plant. Although no particular use was specified it was in fact used for industrial rendering and the council applied for an injunction to stop this. The court held that the context of the permission should be examined and it was clear that an agricultural and not an industrial use was intended. The industrial use now underway was not similar and an injunction to prevent this was warranted: *Mid Suffolk DC v Clarke* (5/7/05, CA)

HISTORIC BUILDINGS

Listed Pub

A contractor has been fined £16,500 for demolishing a Grade II listed pub in Warrington. A number of buildings were demolished on a housing site but inadvertently the listed building was included demolished and a fine ensued.

Modern Listed Building

Likewise at Wentworth golf course in Surrey demolition of Greenside, a Grade II building dating from 1937 was subject to a fine of £1,500 plus £10,000 costs. Following this a new dwelling has been rejected as it did not adequately replace that lost and constituted inappropriate development in the green belt.

The decision letter stated: "In demolishing the building without consent, the applicant has by his own actions returned the site to open land in circumstances where he could not be said to have had any legitimate expectation that a new and different building could be erected on the site. In this way, the applicant has himself brought about a state of affairs where there is no building on the land which the proposed new dwelling could properly be said to replace".

ENVIRONMENTAL LAW

Post Office Noise Annoys

A rural post office had sorting facilities which commenced at 4:30 am. This disturbed neighbours who claimed it breached a covenant that their property should not be devalued. The judge sympathised with the post office and there was criticism of this, but the noise was not sufficient to amount to a breach of covenant and the delivery vans in the courtyard were not covered by the covenant: *Hughes v Riley* (4/7/05, CA)

Smouldering Fire Nuisance

Families whose lives were blighted by a smouldering sulphurous coal tip near their homes have won a six-year legal battle to hold the Coal Authority liable for damaging their quality of

life. The tip at the closed Brynlliw Colliery, near Swansea, caught fire in 1996 and burnt for more than three years. Mr Justice Pitchford ruled at the High Court, Swansea that the fire was a “foreseeable risk”.

COMPULSORY PURCHASE

Highway Payments Denied

Although Developers funded construction of a bypass. However, the indemnity in respect of the cost did not extend to the payments made by householders whose land was devalued by the highway: *Wiltshire CC v Crest Estates* (8/8/05, CA).

VAT Repayment?

A sports hall was acquired compulsorily from a charity and the question arose as to whether VAT should be paid as part of the compensation. Customs & Excise advised they would not reclaim VAT and the Lands Tribunal was entitled to take this into account when assessing compensation: *Scout Association v Secretary of State* (28/7/05, CA)

Top-up Denied

An agreement for the sale of land included a provision for additional monies if consents were granted. However there was set-off of the considerable preparatory costs to be borne. The developer went into liquidation and the owner claimed an additional £3m but this was before the preparatory costs could be fully itemised. It would be against “business commonsense” allow a claim for payment without ascertaining the preparatory costs which could not be done for sometime. It was clear that these would be significant and could exceed the claim made. Action dismissed: *Hughes v Groveholt* (18/7/05, CA)

APPEALS UPDATE

HOUSING: POLICY APPROACH

Greenfield Housing

An Extensive housing on a greenfield site at Hoo Street, Werburgh would accord with its allocation following an analysis of alternative locations. It would meet an identified need for new housing and be in a sustainable location delivering much needed affordable housing. Application approved (*Medway C*, 14/7/05).

Housing Oversupply

One hundred houses at Wheatfield Street, Lancaster would exacerbate the housing land supply situation the subject of supplementary planning guidance. The 20 affordable units was the bare minimum and did not of itself justify release. Although there was sufficient separation distance from adjoining houses the appeal was dismissed (*Lancaster CC*, 18/7/05).

Restraint Policy Reigns

Residential units on a cleared factory site at Craven Road, Altrincham would breach a policy moratorium designed to restrict housing over supply. As this was outside a regeneration area the SPG should be followed and appeal dismissed (*Trafford BC*, 22/7/05).

New Settlement Growth

Proposals for increasing housing at Cambourne, Cambridgeshire by 1,559 units would be contrary to regional and structure planning guidance although this was a growth area. Other sites should be examined on a comparative basis to assess their suitability. While transport and education were satisfactory, the proposal was premature pending the local plan review. Appeal dismissed (S Cambridgeshire DC, 29/6/05).

HOUSING: DESIGN AND DENSITY

Urban Design Acceptable

53 flats in 3/4 storey blocks at Wilmslow Road, Withington would not be out of character with the two storey villas on this major radial route into the city taking into account that there was approval for a 48 unit scheme. Parking at 1.3 spaces per flat was acceptable as this was inaccessible location. Appeal allowed (Manchester CC, 21/3/05).

Higher Densities Unacceptable

At Grange Farm, Chigwell permission already existed for 28 dwellings in the green belt but 60 or 180 would be excessive. This was not a major development site and the balance between the landscape and environmental improvements would not be achieved with this number of units. Appeal dismissed (Epping Forest DC, 15/6/05).

Devastating Urban Impact

Redevelopment of Camden Town Underground Station, NW1 would bring much needed flats, offices, retail and leisure facilities to the area. However the bulk, height and design of the new building completely ignored the fine grain of the immediate townscape. There would be some loss of stalls from the market which was a major tourist attraction. Application rejected (Camden LBC, 20/6/05).

Contamination Stops Housing

At Ten Acres Lane, Newton Heath there was a residential permission which required decontamination works but these were not permitted as there was no information regarding the type of remediation trial and adequate risk assessment that remediation scheme would protect human health and the environment. Appeal dismissed (Manchester CC, 7/7/05).

HOUSING: LOSS OF INDUSTRY

Weed v Industry

Encroachment of Japanese knotweed on a factory site at Scobell Street, Tottington would be expensive to remove and only housing, it was claimed, would achieve this. The buildings needed considerable upgrading as well. These costs would not however deter a future industrial user from occupying the land and the appeal was dismissed (Bury MBC, 21/6/05).

Housing Hits Employment

91 dwellings at Prospect Royal, East Road would be on land partly allocated for employment purposes. There did not appear to be a district shortage of such land and over the past 15 years there had been genuine attempts to secure development. This had not come forward. Recently published advice in PPG3 said such sites could be released if, as in this case, they did

not conflict with future employment requirements. This was a sustainable site and appeal allowed (Harlow DC, 21/6/05).

Employment Use Retained

Loss of employment land at Timbermill Way, Clapham, SW4 to student housing would be unacceptable in a borough where there was a tight supply of such land. There was no identified need for such accommodation. Appeal dismissed (Lambeth LBC, 29/6/05).

Noisy Housing Site Sanctioned

Use of an allocated industrial site at Hadrian Road, Wallsend for housing would not unduly reduce the amount of such land. It was claimed that this site was suitable for off-shore fabrication work but extensive marketing had brought little interest. While there were other industrial uses nearby the adjoining metal fabrication plant was being dismantled and would be costly to reinstate. The appeal was allowed with a suitable noise condition (N Tyneside MBC, 7/7/05).

Redevelopment of an Ordnance Supply

Site at Midhurst Road, Liphook for housing but with inadequate marketing would result in the loss of an employment site. Appeal dismissed (E Hampshire DC).

COUNTRYSIDE AND GREEN BELT

Countryside Care Home

This home for elderly persons suffering from dementia at Lode Hill, Downton was said by the council to be affordable housing, although its policies said that rest and nursing homes in countryside locations would not be permitted. This was a wrong interpretation as the proposal did not form affordable housing and it would not have a significant impact on the area despite being close to an existing building. Application rejected (Salisbury DC, 25/6/05).

Hotel Sinks Cancer Research

The Institute of Cancer Research at Nightingale Lane, Little Chalfont had expanded on its green belt site over the years. They now proposed an additional 130m² including a 30 room lodge because there were no suitable hotels in the vicinity for visiting staff etc. Whilst the new space was acceptable the lodge was different as it was not directly associated with the company's activities. Appeal dismissed (Chiltern DC, 5/7/05).

Enabling Development Harmful

Redevelopment of a young epileptics centre in the green belt at St Piers Lane, Lingfield would require enabling development of 230 residential units. This would harm the green belt although not the setting of listed buildings and would be inappropriate especially as there was an over supply of housing land. Insufficient affordable housing and poor mix plus low density in an unsustainable location meant dismissing the appeal (Tandridge DC, 2/8/05).

RETAIL

Longer Frontage Frowned On

A supermarket with 15 flats above at Eridge Road, Tunbridge Wells would elongate the primary

shopping area already 1,500m long. This would make it less cohesive thereby eroding its vitality and viability. Additional expenditure in the area could be absorbed by existing shops and there was no clear quantitative need for additional floorspace. Discount goods could be found elsewhere. Appeal dismissed (Tunbridge Wells BC, 21/6/05).

Asda Extension

A 1,493m² extension to Asda Creechbarrow Road, Taunton would be out of centre but accessible by a range of transport with a quantitative and qualitative need established. It passed the sequential test with no harm to the vitality of the centre and benefited employment creation. Appeal allowed (Taunton Deane BC, 3/8/05).

SERVICE USES

Fast Food Aids Revellers

The use of property at Leeming Street, Mansfield for a takeaway would not exacerbate levels of crime and violence in the area associated with the large number of pubs and bars. The new premises would relieve pressure on existing A3 premises and would thereby reduce customer competition for limited facilities. Appeal allowed (Mansfield DC, 31/3/05).

Extended Hours Cause Disturbance

Longer opening hours from 12.30 am to 2.30 am would not allow customers to leave over a period of time but extend partying until unacceptable hours and also attract others from restaurants closing earlier. Appeal at Shepherd's Bush Green dismissed (Hammersmith & Fulham, 21/6/05).

Excessive Food and Drink?

Caffe Nero at Morningside Road, Edinburgh created considerable pedestrian activity. Although 36% of units were non-retail use as against a plan policy of 20% there were only 6.5% of food and drink uses. Thus the proposal would complement the range already found within the district centre. Appeal allowed (Edinburgh CC, 5/4/05).

Late Night Crime

Extending opening hours at a kebab shop in Station Road, Burgess Hill from 11.00 pm to 1.00 am would add to crime levels and anti-social behaviour which would undermine the quality of life and amenity of local residents. With a police objection the appeal was dismissed (Mid Sussex DC, 7/7/05).

Increasing Crime Levels

The erection of two public houses and a restaurant at Dumbarton Road, Stirling would have a potential capacity of over 2,200 people which was far in excess of those using other public houses in the area. The police felt that the proposal would dissipate their resources with a significant risk in terms of crime increase or at least the fear of crime. In addition the design and materials failed to reflect the character of the conservation area. Appeal dismissed (Stirling C, 14/7/05).

Odour Release Criticised

At Elmfield Court, Liphook Road a takeaway would not conflict with residential amenity but

odour venting from the enclosed yard would harm local people (E Hampshire DC, 7/7/05).

Cluster of Non-Retail Uses

At High Street, Kidderminster the change from a shop to a building society was unacceptable due to the fact that there were a number of non-retail uses in the vicinity. Whilst this would not be “dead” frontage the proposal would undermine the vitality of the centre. Appeal dismissed (Wyre Forest DC, 6/7/05).

AGRICULTURAL OCCUPANCY CONDITIONS

Hobby or for Real?

The purchasers’ farm in 1994 had bought a few sheep and cows to produce lambs and calves. Their main source of income was from another business and they claimed the animals were kept as a hobby. However evidence showed that they had a pedigree cattle herd and although several were slaughtered following the BSE crisis this shows that the agricultural occupancy condition had not been breached. The condition should not be discharged as insufficient marketing had taken place, only in a local paper. Appeal dismissed at Grithill Farm, Tenbury (Malvern Hills DC, 16/3/05).

Breeding is Agriculture

At Rough Hill Farm Cottages, East Hanningfield it was claimed that three cottages were free from the agriculture tie because the farm was used for hatching chicks which were not for food production. This use, it was said, did not fall within the definition as it did not involve the “breeding” or “keeping” of livestock. The inspector thought otherwise as the eggs were already fertilised when brought to the premises with the intention to breed further chickens. Appeal dismissed (30/3/05, Chelmsford BC).

DEFINING PLANNING PERMISSION

Fast Food Aids Revellers

The use of property at Leeming Street, Mansfield for a takeaway would not exacerbate levels of crime and violence in the area associated with the large number of pubs and bars. The new premises would relieve pressure on existing A3 premises and would thereby reduce customer competition for limited facilities. Appeal allowed (Mansfield DC, 31/3/05).

Late Details Allowed

A greenfield housing site identified in a 1993 local plan had been partially implemented. It was proposed to extend the period required for submitting reserved matters at Mossgate Park, Heysham. There was a need to ensure that economic growth was not constrained by lack of new housing. This meant allowing the application (Lancaster CC, 21/6/05).

Siting Fixed or Not?

An application for industrial use at Glade Lane, Southall did not specify siting for approval. Several plans were submitted but for illustrative purposes only. The subsequent application sought approval of siting and the council claimed that this had already been fixed. However, a detailed examination of the application’s history revealed that this was not the case and the subsequent application to fix this was approved (Ealing LBC, 23/6/05).

Upgrading Bus Stop

A condition on a 90-bed care home at Kennedy Avenue, Macclesfield required one of the bus stops outside the site to be upgraded to include a bus shelter and raised kerbs. This would make public transport more attractive and not cost very much. Appeal to remove condition dismissed (Macclesfield BC, 21/6/05).

Parking Prohibition Breached

Four basement car parking spaces at Beaumont Street, WI had been occupied by outside users in breach of a condition limiting the spaces to occupiers of the building. These 4 spaces were therefore outside control but the remainder covered by the same condition were still subject to its provisions. (Westminster CC, 29/6/05)

STORAGE AND INDUSTRIAL

London Gateway Port

Ministers have indicated that they are minded to approve the planning application for a new London Gateway container port at Shellhaven, Thurrock. Approval is subject to satisfaction on a number of issues, in particular the provision of additional highway capacity in the area.

In commenting on the announcement the DTI recognised the nation's and industry's needs for additional container port capacity in order to meet future economic demand. However any new development, particularly on this large scale, must be sustainable in a manner consistent with Government policy.

It remains to be seen how the discussions on highway capacity will proceed and whether an agreement can be reached between the developers and the various highway authorities.

Vacancy Halts Immunity

A house at Preston Road, Gosmore was in the green belt. An annexe had been separately occupied since 12/98. However one letting had not materialised and the annex was vacant during this period. This stopped the period of immunity and thus the 4-year rule did not apply. To allow this sub-division would exacerbate activities on the plot so appeal dismissed (N Hertfordshire DC, 21/6/05).

Commencing Unlawful Development

At Milton Place, Gravesend flats had been granted permission and work had started without approval of landscaping and materials. These went to the heart of the permission and thus the start was unlawful. Lawful development certificate refused (Gravesham BC, 7/7/05).

For more information please speak to your usual contact at **CgMs** or **Tony Bowhill** on 01702 551148 or 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

25,000sq ft of New Retail Mezzanines, Commerce Centre Retail Park. Poole

Acting on behalf of the owners Land Securities, CgMs have obtained planning permission from the Council for the installation of 25,000sqft of mezzanines in a redevelopment scheme on part of the Park. That redevelopment, also granted by the Council, had already increased the size of retail floorspace from 52,000sqft to 69,400sqft. The permission allows for retail use of the mezzanines and was granted contrary to the advise of the Council's Retail Planning Consultants. The determining factor was the qualitative improvement (new landscape, signage and elevations) that the overall scheme would bring to the Park.

For further information please contact Chris Hicks at chris.hicks@cgms.co.uk

Scottish Planning Policy 8: Town Centres Consultation Draft - August 2005

A Consultation Draft SPP8 has been published inviting written responses by 11 November 2005. When finalised SPP8 will replace NPPG8: Town Centres and Retailing.

Statements of Scottish Executive policy contained in SPPs and Circulars are material considerations to be taken into account in development plan preparation and development management.

 [View CgMs Briefing Note on SPP8 \(91k\) >>](#)

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

HISTORIC BUILDINGS

Jon Lowe, supported by CgMs colleagues, has been asked to tutor the Historic Building Recording Module of the Birkbeck College MA in Archaeology course. Jon, together with Ignus Froneman and Karl Hulka, provided a week long practical course at the historic Headstone Manor site in March 2005 and have now been booked in for a weekend and week long course for the 2005/6 academic year.

For further information please contact Jon Lowe at jon.lowe@cgms.co.uk