

# planning newsknight

Anyone who at the present time can accurately predict which way the various property markets are going could probably have their powers better employed elsewhere! We can only hope that we do not see adverse effects from the attempts to reduce the government's deficits.

This issue is deliberately forward looking, concentrating on the work of our expanding planning unit.

Please get in touch if we can be of any help on any aspect of property or planning.

IAN WHITE  
head of real estate department



## Road to Nowhere!

**Tile Wise Ltd ("Tile Wise") operated commercial vehicles in its normal course of business, for the regular transport of goods and personnel between its business locations, and for the delivery of goods to customers.**

When a particular vehicle was not used for its main functions of transporting goods and personnel, Tile Wise sometimes placed an advertisement on the rear of the vehicle and parked it near the company's tile showroom.

A dispute arose between Tile Wise and South Somerset District Council ("the Council") regarding the lawfulness or otherwise of the advertisement display.

Tile Wise was convicted in the Magistrates' Court of an offence contrary to the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 ("the Regulations"). Tile Wise appealed to the Crown Court against conviction, and the appeal was dismissed. Tile Wise then appealed against the Crown Court decision by way of case stated.

The scheme for control of advertisements is by Regulation 4 of the Regulations, to give

deemed consent for some advertisements and to require planning consent for others. Advertisements that have deemed consent are defined by Regulation 6 and schedule 3 of the Regulations. Advertisements that are exempt from planning control are defined by Regulation 1, paragraph 3, and schedule 1 of the Regulations. Any advertisement which does not have deemed consent and which is not exempt requires planning permission.

It is an offence contrary to Section 224(3) of the Town & Country Planning Act 1990 to display an advertisement in contravention of the Regulations.

The issue before the Crown Court and the High Court was whether the advertisements displayed by Tile Wise were exempt from planning control.

Class B column 1 of Schedule 1 to the Regulations states that "an advertisement displayed on or in a vehicle normally employed as a moving vehicle" is exempt from planning control, subject to the qualification in Class B column 2 of Schedule 1 to the Regulations that "the vehicle is not used principally for the display of advertisements".

The High Court decided that the exemption in column 1 must refer to the use being made of the vehicle at the time of the alleged breach; otherwise the appellant could avoid planning control by swapping vehicles, thereby enabling the advertisement to remain in place permanently. While the appellant used the vehicles for their primary purpose for some of the time, the advertising hoardings were only used when the vehicles were stationary, and this did not come within the exemption in the Regulations.

The advertising hoardings therefore did not come within the exemption and the appeal was dismissed. The Council was awarded part of its costs.

This is an interesting case in which the Court has applied a common sense approach to the interpretation of the exemption and defeated the Company's attempts to avoid planning control by a literal application of the wording.

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# Energy in crisis

The United Kingdom has signed up to the EU Renewable Energy Directive which includes a UK target of 15% of energy from renewables by 2020.

In a video address made to the Renewable UK Offshore Wind Conference on 30th June 2010, Chris Huhne, the new Secretary of State for Energy and Climate Change stated that the Government would be the greenest Government ever which would build a low carbon economy to tackle the challenges of climate change and energy security.

Fine words indeed but the challenge facing this country was brought into sharp focus in a report published the day before by the Green Investment Bank Commission. The report entitled, "Unlocking Investment to Deliver Britain's Low Carbon Future" indicates that investment of up to £1 trillion is required to replace, upgrade and decarbonise Britain's infrastructure. This equates to an annual requirement of between £40 to £50 billion pounds which is on a scale not seen since the reconstruction works which took place after the Second World War.

In infrastructure terms alone the energy sector will require a dramatic increase in investment in a variety of renewable energy sources with investment required to be at a level which is more than double the rate of investment that has taken place over the previous five years.

Investment will need to take place at two levels with an both an increase in large scale renewable generation capacity including on and off shore wind, as well as industrial and large scale combined heat and power plants at one level and at a lower level an increase (from almost zero today to 12% of the total UK energy mix by 2050) of residential and commercial low carbon and renewable "on site" energy generation. This will not doubt be met in a variety of ways including the use of solar power, wind power and anaerobic digestion.

Interestingly the Government has recently announced a full review of waste policy in England which acknowledges that there is an economic and environmental urgency to developing the right waste strategy; a waste strategy which in part recognises waste as a resource which has the potential through bio-waste and energy from waste initiatives to play an important part in energy generation and the promotion of green growth.

Hand in hand with a new Unit within the Planning Inspectorate to fast track major projects such as offshore wind farms and nuclear power stations, the Government



intends to issue National Policy Statements which will provide the framework and policy justification to help drive through the decisions which will need to be made. It is anticipated that "in order to have the strongest democratic legitimacy" the policy documents will be subject to public consultation, scrutiny and "appropriate" local and community engagement and ratified by Parliament before designation.

All of this suggests that a lengthy process will need to be followed which may well involve a balancing exercise being carried out particularly if certain themes, which the Coalition Government has already made clear are high up on its agenda, are to be factored in including "localism" and involving the community to a greater extent in planning decisions.

At a lower level, planning decisions will continue to be made by Local Planning Authority's in respect of applications relating to residential and commercial low carbon and renewable "on site" energy generation proposals. The question must be asked whether the relevant policies are in place at both a local and national level in order to support and deliver in a timely and efficient manner the scale of development which will be required.

The current Planning Policy Statement on Renewable Energy was published in 2004. It contains policies to be taken into account by Local Planning Authorities when producing

their development plan as well as in connection with individual planning applications. It encourages policies at a local level which are designed to support rather than restrict the development of renewable energy resources and yet in March 2006 the Government reviewed 121 emerging development plans and found that 44% which could have been expected to contain such policies did not do so.

The Government needs to urgently re-assess its position in relation to not only the promotion of all forms of renewable energy but how in a practical and common sense way Local Planning Authorities can be encouraged to drive forward a programme of renewable energy development.

The amount of investment required in order to enable the UK to meet its obligations and move towards a carbon free economy represents a unique challenge which is perhaps unprecedented in terms of scale and urgency.

It is clear that without massively scaled up Government intervention across a whole range of areas, including planning, the challenges which exist are unlikely to be met and overcome.

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# Wind set Fair?

Clearly noise as an issue will have to be reassessed and a judgement made based upon expert evidence as well as concerns raised by local residents. Whether or not noise is a factor which leads to another refusal of planning permission is questionable because it would seem that the visual impact of the proposed development would itself provide the basis for a refusal in this case.

On a wider point of course the case illustrates the fact that in relation to issues of concern, such as noise, which are capable of being measured and assessed, it is always important for a decision maker, whether local planning authority or Inspector to carefully consider expert evidence and not simply rely upon the views of local residents however persuasive they may be.

On 9th July 2010 in the case of Rebecca and Brian Barnes (1) and Secretary of State for Communities and Local Government (2) and South Lakeland District Council and H J Banks & Co Ltd a farming couple lost their challenge to prevent plans for a wind farm comprising six turbines going ahead.

On behalf of the claimants' it was suggested that given the proximity of their property to the turbines and the fact that they will be working and their children would be playing in the fields within 105m of one turbine, the planning permission was unlawful because the environmental statement did not include information on safety. Mention was made of dangers such as the turbine shedding blades or even ice.

The court was unable to accept this submission even though it did accept that the issue of safety was not raised at the inquiry by any party other than in relation to horses on a nearby bridleway. The requirement within an Environmental Impact Statement it said was to provide a description of the likely significant effects of the development. There was nothing in this case to suggest that physical hazards to those in nearby fields was a likely significant effect or that information on safety was reasonably required.

The Judge refused Mr and Mrs Barnes permission to appeal against his ruling and ordered them to pay £12,500 towards the Secretary of States legal costs and £2,500 towards the developers costs (H J Banks). They were represented in court by a barrister and had appointed their own solicitors. As a result their overall costs are likely to be significantly in excess of £15,000.

Wind turbines generate a great deal of public debate particularly amongst those living nearby who are often going to be susceptible to the greatest impacts. The risks associated with litigation, particularly in the High Court, are not such as to be discounted lightly no matter how passionately a disgruntled third party may feel about a planning decision. Even grounds of challenge which on their face seem reasonable and appropriate in law do not always mean that the case will be successful.

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Accordingly the court quashed the Inspectors decision and concluded that he had erred in law in that he had failed to provide adequate reasons for his conclusion that the noise impact of the proposed development was unacceptable.

# Penfold Review - final report published

The Penfold Review examined how to streamline the system of non-planning consents obtained alongside or after planning permission, including compulsory purchase orders, highway consents, and listed building consents.

The Penfold Review's final report was published on 8 July 2010. It makes 12 key recommendations, which broadly fall into two camps: improving the management and delivery of the planning service within planning authorities and proposals to reduce the burden of the planning and non-planning consents regimes. The latter recommendations include:

## Simplifying the landscape

The number of non-planning consents that apply to business development should be reduced by considering whether those which have not been reviewed for 10 years or more are still needed, and whether the protection they offer could be achieved by other means.

Conservation area consent and planning permission should be merged. Listed building consent and scheduled monument consent should be combined into a single historic assets consent to be determined by LPAs.

The Government should consider whether groups of related consents, including highways orders, creation, diversion or extinguishment of public rights of way, can be reformed using the approach adopted by the Environmental Permitting Programme.

## Improving proportionality

The Government should consider substantially increasing the number of small-scale, commercial developments and other minor non-residential developments that are treated as de minimis ie falling below designated thresholds.

The Government should review planning inquiry and appeal processes, with a view to standardizing and simplifying them.

## Clarifying the boundary between planning and non-planning consents

LPAs should have robust local development plans in place to inform businesses and consenting bodies about the types of proposals that are likely to be acceptable in specific locations. Pre-application discussions should be promoted to identify and resolve areas of potential controversy and to stop inappropriate applications going forward.

## Changes to specific regimes

The Government should remove duplication and reduce the need for detailed design work by reviewing the operation of registration of town and village greens; by ensuring that the impact of a planning application on rights of way is considered as part of the planning process; by exploring the options for merging highway consents with planning permission.

## Facilitating integration of planning and non-planning consents

LPAs should be encouraged to offer an integrated planning and non-planning consents service by promoting the adoption of existing good practice and by enabling LPAs to determine what are currently non-planning consents as part of the planning process.

## Extending unification of planning and non-planning consents

The use of Development Consent Orders should be extended to appropriate LPAs. (Development Consent Orders enable developers to apply for most of the required development consents relating to major infrastructure projects in a single application.)

## Providing oversight of the planning and non-planning consents landscape

A mechanism should be put in place to oversee the planning and non-planning landscape, to ensure that individual and related regimes operate effectively.

The Government will publish a formal response to the Penfold Review in the autumn. The final recommendation of the Penfold Review is that the Government should develop an Action Plan to drive implementation of the Penfold Review's recommendations!

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## DATES FOR YOUR DIARY

The Planning Team have a busy Autumn ahead of them in terms of speaking engagements. Following the recent success of the seminar on current developments in planning ("2010: A year for Change? Or will we just be "hanging around"?") the following events are planned:

### 22 September 2010

Rob Pattinson/Andrea Bruce are guest speakers at the proposed Staffordshire Rural Forum Conference, "We lack a compelling view of the future of our countryside". The event is to identify and challenge key issues facing rural Staffordshire in the context of the Planning System and its impact on the countryside.

### 28 September 2010

Knights' Newcastle-under-Lyme office will be hosting a morning seminar for the RTPi West Midlands. Topic and speakers to be confirmed.

### 7 October 2010

Andrea Bruce is a guest speaker at the RICS South West's Environment Minerals & Waste Autumn Conference in Bristol. Together with Stewart Lenton of SLR Consulting Andrea will be presenting on "Minerals Planning: The Operator's Perspective".

### 9 December 2010

Together with No 5 Chambers (London, Birmingham, Bristol) the Planning Team will be presenting a morning seminar in Cheltenham. Topic and speakers to be confirmed.

For further information about any of these events please email:  
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# Revolution... or simply confusion?

**“The revolution starts here”. Eric Pickles, the Secretary of State for Communities and Local Government, 10 June 2010**

The Coalition Government’s emphasis on decentralisation and the move from “Big Government” to “Big Society” is a key theme which pervades policy at all levels. But what of the planning system? What have we seen to date in terms of change and what can we anticipate?

Amendments to PPS3 on Housing to signal an apparent change of approach at national level to garden grabbing and housing densities, and the creation of a Specialist Infrastructure Planning Unit within the Planning Inspectorate to report to the Secretary of State on nationally significant infrastructure projects, injecting democratic accountability into the procedure for determining consent which was lacking in the Infrastructure Planning Commission, in practice will not often touch the day-to-day practice of many of those involved in the planning system.

What then is the agent of the revolution? The answer is found in the buzz word of “localism”.

Paramount to achieving localism is the removal of the regional tier of planning. The “rapid abolition” of regional spatial strategies (RSS) heralded in the Coalition Government’s early announcements got off to a somewhat faltering start when Eric Pickles issued a letter to members and Chief Planning Officers stating that planning decision makers should take into account the Government’s stated intention to rapidly abolish regional spatial strategies as a material consideration. The letter was probably one of the briefest Secretary of State announcements ever and referred to decisions on housing supply (including provision of travellers sites) resting with Local Planning Authorities but was silent on the other issues covered by

RSS. The letter met with reported doubts as to its efficacy and criticism of the vacuum that was to be left pending replacement of RSS policy with a cogent alternative. We had, of course, been referred to the Conservative’s pre-election Green Paper, “Open Source Planning” in Government announcements and this was a recurrent theme in replies to parliamentary questions. The statutory duty on local planning and other authorities to co-operate with each other on issues of infrastructure that was contained in the Green Paper has now been confirmed as a duty to co-operate on those parts of policies which cross borders and boundaries. The duty is to be included in the Decentralisation and Localism Bill to be introduced in Parliament in the Autumn.

We also now have the “questions and answer” advice issued by DCLG on 6 July 2010, at the time when the RSS were revoked pursuant to the Local Democracy Economic Development and Construction Act 2009. Abolition of the system of regional planning will still need to form part of the Decentralisation and Localism Bill. The advice contained guidance on the following policy areas formerly covered by RSS: housing supply; travellers sites; minerals and aggregates supplies; waste management; town centres; natural environment; flooding and coastal change; renewable and low carbon energy; transport and Green Belt.

In respect of housing, LPA’s are to be responsible for establishing the right level of local housing and identifying a long term supply. There is a stated expectation that those authorities who wish to review their housing targets in the revoked RSS will quickly signal their intention to do so. There is confirmation that LPAs may base revised housing targets on the level of provision they submitted to the original RSS examination, but supplemented by more recent information as appropriate. LPA’s are advised to use their plans to identify sufficient sites and broad areas for development to deliver their housing ambitions for at least 15 years from the date the plan is adopted and to have a 5 year land supply of deliverable sites.

Mineral planning authorities now have the responsibility to plan for a steady and adequate supply of aggregate minerals and are advised to do so within the longstanding arrangements for minerals planning, including the Regional Aggregate Working Parties’ current work in sub-apportioning the national guidelines for 2005-2020 to planning authority level and in the South-East, the apportionment in the Secretary of States’ Proposed Changes to the aggregate mineral policy in the then RSS.

Whilst the question and answer advice fills in some of the gaps there are many references to further reviewing matters in due course. The planning and development industry remains unsure of the extent to which the ideas in Open Source Planning – for example, “new” local plans; appeals by third parties; collaborative planning, will become embodied in the system. Collaborative planning, or more community involvement, does, from other ministerial statements, seem certain, but it’s precise form is unknown. We will have to wait and see if George Bernard Shaw’s words will have a ring of truth when considered in the context of the Coalition Government’s planning regime: “Revolutions have never lightened the burden of tyranny. They have only ever shifted it to another shoulder”.

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# Home in the Country



**A warning recently issued by the National Housing Federation (12th July 2010) will undoubtedly strike a chord with many people living and working in rural areas.**

The NHF which represents 1,200 housing associations in England has said that farmers face being priced out of the countryside by a chronic shortage of affordable housing.

Over the last few years the rural community has become increasingly concerned about the loss of local shops and services as well as the lack of available and affordable housing for local people who wish to remain in rural areas.

The call for action made by the NHF which highlights the scale of the problem and makes the case for new rural affordable housing is supported by the NFU. Despite the fall in house prices the average house price in rural England has more than doubled over the last decade and now stands at £256,698 which is 6.8 times the average rural household income. Such a disparity means that most rural workers have virtually no prospect of ever being able to afford to buy a home in their local area.

Hand in hand with this is a reduction in key local services like village shops, post offices and pubs. This time last year the Federation of Small Businesses called for urgent help for village shops and pubs at risk of closure commenting that the village shop network was losing between 300 and 500 shops each year and 13 rural pubs were lost each week.

The NHF has estimated that around 100,000 new affordable homes are required in England alone to meet rural housing need

over the next 10 years. They argue that Local Authorities should assess how many affordable homes are needed in each rural ward and draw up action plans to get those homes delivered.

Some take the view that the rural areas should be preserved and protected from any new development. Indeed many local plan documents published by local authorities positively discourage any new housing in rural areas unless there is a proven agricultural need. In practise this often acts as a bar to any new development.

The countryside is often constrained by landscape designations which severely restrict development opportunities and while this is perhaps understandable within National Parks it is now time for a common sense and realistic approach to be taken which recognises that a rural area is not a museum but an area in which people live and work and where responsible and necessary development needs to be encouraged.

During a visit to Essendon in Hatfield on 23rd July 2010, Housing Minister Grant Shapps discussed the “Community Right to Build” initiative. He said that, “the countryside must be a vibrant place to live and cannot be allowed to become a museum. I want to give communities the power to preserve their villages which are currently struggling to survive because of a shortage of affordable homes.” It would seem that the new Government is beginning to respond.

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## Knights’ Case Study

**A local authority completely misinterprets the law relating to the imposition of planning conditions attached to a planning permission.**

Planning permission was granted on 8th March 2010 to “T” for the extension of a dwelling situated in the green belt. The permission contained a number of conditions including one which removed permitted development rights. Permitted development rights are rights enjoyed by all occupiers of residential property which mean that they can carry out certain works (i.e. the construction of a garage or other outbuildings, the installation of a shed or greenhouse etc) without needing to apply for planning permission from a local authority.

In this case, the Council “C” wrote to T contending that Permitted Development rights had been removed from the date of the planning permission. In the letter the Council stated that if T wished to exercise permitted development rights then he should either submit a planning application or to seek to apply to have the condition removed.

T was advised by Knights that C had fundamentally misunderstood the law in relation to planning conditions. All that a planning permission does is authorise the undertaking of development, conditionally or unconditionally. It is not a general means by which the use of land can be regulated irrespective of whether or not the permission is ever begun.

Further advice was sought from a leading barrister on the point who confirmed that C had incorrectly applied the law. The barrister commented that, “Were the matter to ever be litigated then it is my view that a Court would have no hesitation in considering that the interpretation being argued for by the Council is simply wrong.”

Town and Country Planning legislation does not provide a power to impose conditions which take effect prior to the commencement of development so as to restrict permitted development rights.

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