

INSTITUTE OF LEGAL EXECUTIVES

UNIT 11– PLANNING LAW

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply to the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**.

SECTION A
(Answer at least one question from this section)

1. With reference to the provisions of the Town and Country Planning Act 1990 and any relevant regulations, explain the powers conferred on local planning authorities for the preservation of trees and woodlands, and describe any relevant procedural requirements applicable to the exercise of such powers.

(25 marks)

2. Discuss the role and significance of the following in planning law, explaining any relevant procedures:

(a) "Community Infrastructure Levy" (CIL);

(15 marks)

(b) "Strategic Environmental Assessment" (SEA).

(10 marks)

(Total: 25 marks)

3. With reference to relevant case law, explain and evaluate the effect of the Human Rights Act 1998 and the European Convention on Human Rights on planning law.

(25 marks)

4. (a) Explain the circumstances in which a person may apply for a "Certificate of Lawfulness of Existing Use or Development" (CLEUD) under s.191 of the Town and Country Planning Act 1990, describing the procedures involved and the benefits of obtaining a CLEUD.

(15 marks)

- (b) Discuss the circumstances in which a local planning authority may make a "Discontinuance Order" under s.102 of the Town and Country Planning Act 1990 and describe the procedures involved.

(10 marks)

(Total: 25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

With reference to authority, consider whether each of the following proposals, **(a) – (c)**, constitutes “development” as defined by the Town and Country Planning Act 1990:

- (a) James owns and operates a garage and petrol filling station. He proposes to install a vending machine dispensing DVDs for hire on the forecourt of his garage. The machine will be in operation and available to customers at all hours. It will stand on steel brackets bolted into the ground and will be 2 metres in height and 3 metres in width.

(8 marks)

- (b) Sam has recently retired and intends to write books on one of his hobbies. For this purpose he intends to put a desk-top computer and a large photocopying machine in the living room of his small flat. With the aid of this equipment he intends to write, publish and distribute the books from the flat.

(6 marks)

- (c) Helen owns and resides at a small hotel in a seaside resort. At the start of a business recession five years ago, trade slumped dramatically and she decided to close the hotel but continues to live there. The premises have not been put to any other use. The holiday trade has now recovered and she plans to re-open the hotel. Helen has no use, however, for an extension that was built on to the hotel 10 years ago. She proposes to demolish it to provide additional parking spaces.

(11 marks)

(Total: 25 marks)

Turn over

Question 2

In 2000 Giles, a farmer, placed five caravans in the field adjacent to his farmhouse. Since that time he has let the caravans to holidaymakers, although in 2005 he permitted Harold, a farm labourer, to reside in one of the caravans with his family. Harold and his family have lived there ever since.

In 2006, Giles commenced extracting minerals for profit on a part of his farmland. This activity has continued until the present day.

No planning permission was obtained for any of the above activities.

In late 2006 Giles obtained planning permission to construct a barn on his land ("the barn") subject to a condition that the building was to be used only for agriculture. When the building was completed, despite its external appearance as a barn, it was fitted out as a dwellinghouse with full residential amenities. In May 2007 Giles, who had always intended to use the barn as a dwelling, moved there from the original farmhouse and has lived there since that time.

The local planning authority have issued an enforcement notice and served a copy on Giles, but not Harold or the holidaymakers. The enforcement notice, the content of which otherwise meets the formal requirements of the law, requires:

- (i) the cessation of the use of the caravans for both holiday and permanent residential accommodation;
- (ii) the cessation of the use of the barn for residential use and its restoration to agricultural use by the removal of residential amenities; and
- (iii) the termination of mineral extraction and restoration of the area from which minerals have been extracted.

Giles does not wish to comply with the enforcement notice. Advise Giles as to:

- (a) the legal validity of the enforcement notice and any grounds he may have in order to challenge the requirements of the notice;

(17 marks)

- (b) any steps Giles may take in order to resist carrying out the requirements of the notice, outlining any procedures relevant to those steps.

(8 marks)

(Total: 25 marks)

Question 3

Grantley Construction plc ("GC"), a development company, has acquired a site on which there is a disused nineteenth century watermill. The watermill is situated adjacent to the River Dribble and is connected by a wooden footbridge over the river to a storehouse on the other side of the river. The storehouse was built at the same time as the watermill. The watermill was listed as a building of special architectural or historic interest in 1985 but neither the footbridge nor the storehouse have been listed in their own right.

The structure of the watermill is in some disrepair and the wooden footbridge is in an unsafe condition. The original waterwheel which powered the mill was removed in 1950. The milling machinery inside the mill is virtually intact and is physically attached to the floor of the building.

It has come to the notice of the local planning authority that GC proposes to demolish the storehouse and dismantle the wooden footbridge; and to remove and sell the milling machinery to a museum. The work is to be carried out by an independent contractor, Max. In the hope that planning permission might eventually be granted for redevelopment, GC has no intention of carrying out any repairs and intends to allow the watermill to become derelict.

The local planning authority would like to prevent these proposals from being carried out. They would also like to have the mill put into repair and, if possible, restored to a fully working watermill.

Advise the local planning authority of the powers available to them and the procedural steps they may take, if any, to achieve their objectives and consider the legal liability, where relevant, of both GC and Max.

(25 marks)

Turn over

Question 4

Skimpy plc, a firm of builders, recently submitted two planning applications to the local planning authority, application (1); and application (2).

Application (1) was for the proposed redevelopment of a recreation ground of five hectares for housing. Application (2) was for the proposed conversion of a warehouse for the storage of goods into a cash and carry business. The application (2) site is in close proximity to residential accommodation and a school. Traffic management surveys have indicated that the proposed redevelopment of application site (2) would not lead to an unacceptable increase in traffic in the area.

The planning applications have now been determined by the local planning authority and Skimpy plc has been notified of the respective decisions. The decision notices received from the local planning authority state:

Application (1)

"Planning permission is granted subject to the following conditions:

- (i) An area of one hectare of the development site shall be laid out by Skimpy plc for recreational purposes in accordance with a scheme to be approved by the local planning authority and the land shall be dedicated to the public as open space. All expenses of the said scheme shall be borne by Skimpy plc.
- (ii) The houses, when built, shall not be sold or rented without first being offered to the local authority as accommodation for persons on the local authority's social housing waiting list."

Application (2)

"Planning permission is refused. The reasons for the decision are as follows:

- (i) If planning permission were granted, a precedent would be established which would make it difficult to refuse further such applications in the locality. A proliferation of such development in the area would be detrimental to existing shopping centres.
- (ii) The local planning authority must have regard to the fears expressed by local residents that the traffic generated by the development would compromise their safety and that of their children."

Advise Skimpy plc as to the legality of the decisions of the local planning authority on both applications and also advise them as to the options available to them to challenge the local planning authority's decisions.

(Total: 25 marks)

End of Examination Paper

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