

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 with 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. The Planning Act 2008 has been described as introducing a “fundamental and radical change” in the planning system in regard to nationally significant infrastructure proposals.

(a) Explain the provisions of the Planning Act 2008 which relate to nationally significant infrastructure proposals.

(17 marks)

(b) Assess the likely impact on the nationally significant infrastructure planning regime of the provisions which were contained in the Localism Bill (2010-11).

(8 marks)

(Total: 25 marks)

2. The Planning Acts have been described as a “relatively self-contained system”.

Analyse the validity of this statement, omitting any consideration of delegated or subordinate legislation.

(25 marks)

3. (a) Explain what is meant by the term “breach of planning control” in the Town and Country Planning Act 1990?

(9 marks)

(b) Analyse the extent to which legislation enacted after 1990 overcame the problems experienced by local planning authorities before 1991 in taking enforcement action.

(16 marks)

(Total: 25 marks)

4. Compare and contrast the special controls which the Planning Acts prescribe in regard to Listed Buildings and unlisted buildings in Conservation Areas.

(25 marks)

StudentBounty.com

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

Question 1

In 2004 Giles bought a farm amounting to 30 hectares of pasture situated in the Metropolitan Green Belt of Hertfordshire. The farmhouse was a small, two bedroomed cottage. Giles and his wife realised that they would need a bigger house if they were to move to the farm and raise a family. He started to keep cattle on the farm and in 2005 applied to the Cornbrash District Council ("the District Council") as local planning authority ("the LPA") for permission to construct a large hay barn. Permission was granted in early 2005. Giles started work on the building and the shell was completed by the end of the year. Externally, the walls consisted of metal sheeting, a roller shutter door, two smaller doors and eight roof lights.

However, by the end of 2006 the structure had all the characteristics internally of a dwelling house, with full domestic facilities including garage, entrance hall, study, lounge, living room, toilet, storeroom, gymnasium and three bedrooms *en suite*. The building was connected to mains electricity, water, drainage and telephone. At that point, December 2006, Giles and his wife moved in.

In March 2011 Giles applied to the LPA for a certificate of lawfulness of existing use or development of the building as a dwelling house, arguing that there had been a change of use from hay barn to a single dwelling house and that the unauthorised development had become immune from enforcement action after four years. This was the first the LPA knew about the development. The LPA refused to grant a certificate, maintaining that the relevant period was ten years. The officers believed that Giles deceived them deliberately and also denied that the building is a dwelling.

Giles appealed to the Secretary of State and the Secretary of State's Inspector upheld his appeal, taking the view that there had been a change of use to use as a single dwelling house. In his report he said that any benefit available under the Planning Acts could not be withheld on public policy grounds, such as deceit.

Cornbrash District Council disagrees with that decision and now wishes to appeal to the High Court.

Advise the Council on:

- (a) the factors you consider will weigh with the High Court;
- (b) the likely outcome of the appeal.

(17 marks)

(8 marks)

(Total: 25 marks)

Turn over

Question 2

Bill is the owner of a building business, Aedifix Housebuilders ("Aedifix"), and develops land for housing. One year ago he bought 24 hectares of land ("the Site") in the Parish of Cornbrash. The Site is roughly square and is bounded to the north by the River Trickle, to the west by a Site of Special Scientific Interest ("the SSSI"), to the east by a water skiing lake and to the south by a trunk road. The SSSI was designated because of the presence there of rare orchids. The land covered by the SSSI is owned by Cornbrash Parish Council and is open to the public. Aedifix owns the waterskiing lake and associated clubhouse.

Bill has submitted a planning application to develop the Site for executive housing. The Local Planning Authority ("the LPA") advertised the application and, in response, the Parish Council informed the LPA that rare orchids had spread from the SSSI designated area into part of the Site known as "the Dell", covering one hectare of the Site. The LPA informed Natural England which has served a notice on Aedifix notifying it that the SSSI is to be extended to cover the Dell.

The LPA has now granted permission subject to the following conditions (in summary):

1. Aedifix will dedicate the Dell as public open space;
2. Aedifix will maintain at its own expense the whole of the enlarged SSSI in accordance with a management scheme to be approved by Natural England;
3. Aedifix will relocate the waterskiing lake to remove from the new residential area the noise pollution it generates;
4. The houses on the Site are not to be occupied until Condition 3 has been implemented;
5. Permitted development rights under Part 1 of Schedule 2, (development within the curtilage of a dwellinghouse) to the General Permitted Development Order 1995 are to be withdrawn in respect of the properties to be built on the Site.

Bill considers that the conditions imposed by the LPA are unreasonable. In particular, he claims he has no land on which to relocate the waterskiing operation. He also considers that the action of Natural England is premature as the information supplied by the Parish Council is anecdotal and unconfirmed.

Advise Bill whether he has any grounds on which he could challenge the conditions attached to the grant of planning permission and the means by which any such challenge could be made.

(25 marks)

Question 3

Fred is the owner of two hectares of tidal foreshore in the Ria Estuarine Site (Site”), from which he operates a marina providing over 100 moorings for boats. His premises consist of two separate buildings, of which one is a workshop and the other a showroom. The showroom is used for the display of a few new and used boats and outboard motors.

Fred proposes to demolish the showroom and use the space vacated as an open area for the sale of approximately 100 used boats and marine equipment, trading as “Fred’s Bargain Boat Jumble”.

Fred also intends to install a “Wash Down While You Wait” boat scrub at the side of the workshop for removing barnacles and algae from the bottom of boats. This will be an electronically operated device three metres in height and 18 metres in length. The scrubbing will take place over a shallow well so that the residue is disposed of environmentally. The device will have four wheels so that it can retrieve boats from the sea and bring them ashore to scrub down. The device can be dismantled and reassembled.

Fred plans to position a replica galleon on the Site forecourt adjoining the road, emblazoned with the name of his business on the hull in brightly coloured lettering. He also wants to display his business logo on a balloon in the shape of a dolphin 100 metres above ground level where it will be tethered by a cable.

Fred’s wife Joan plans to equip part of the foreshore outside the workshop with picnic tables and intends to sell light refreshments and drinks to the public in the summer months.

Advise Fred and Joan whether any of their proposals will require consent from the Local Planning Authority.

(25 marks)

Turn over

Question 4

Mary owns 3000 hectares within the administrative area of the Wildfell District Council ("the Council") where she keeps sheep. It is designated as an Area of Outstanding Natural Beauty ("the AONB"). The Council's administrative area has some coastline but most of it is hilly upland. Mary's farm is located around the highest point in the area, Wildfell Pike, which overlooks four counties. As subsidies for hill farming have gradually been withdrawn, Mary finds it increasingly hard to make ends meet. She has approached a firm, Boreas plc, ("Boreas") which manufactures and installs wind turbines. Boreas has offered to construct a wind farm of eight turbines on Mary's land near Wildfell Pike and Mary has agreed. The rental payable to her by Boreas will amount to £40,000 per annum.

Accordingly, Boreas applied to the Council as Local Planning Authority ("the LPA") for permission to construct the wind farm. The application was accompanied by a statement explaining the siting and design of the turbines. The LPA has treated this as an environmental impact statement ("EIA"). The submitted statement claims that because of their environmentally friendly design the wind turbines would not have an adverse effect on the scenic value of the AONB. The LPA advertised the statement as an EIA and has generated many letters of objection, particularly from the Wildfell AONB Residents Association ("the Residents' Association").

The LPA's core strategy plan for the AONB provides that wind farms should generally be sited offshore or, if on land, near the coastline. On this basis and also taking into account the strength of local opposition, the LPA refused to grant permission for the wind farm.

Boreas appealed and, on appeal, the Secretary of State's Inspector permitted the application. The reasons she gave for her decision were the urgent national need for low carbon renewable energy as outlined in a (fictitious) Planning Policy Statement ("the PPS") issued by the Secretary of State and also Mary's need for income.

The Council now wishes to appeal to the High Court as does the Residents' Association, which argues that the EIA was inadequate.

Analyse how the High Court is likely to determine the appeal in regard to:

- (a) the way in which the LPA handled the planning application; **(15 marks)**
 - (b) the Inspector's decision on appeal. **(10 marks)**
- (Total: 25 marks)**

End of Examination Paper

© 2012 Institute of Legal Executives

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com