



THE CHARTERED 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 CILEx 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 CILEx 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. Explain the aims of the *National Planning Policy Framework* (March 2012) and analyse the effects on the existing planning regime.

(25 marks)

2. Explain the law of "abandonment" in regard to planning permissions and uses of land.

(25 marks)

3. (a) Explain, with reference to examples, what is meant by the expression "permitted development" rights, and consider how such rights can be conferred;

(10 marks)

- (b) Analyse the circumstances in which a local planning authority is empowered to withdraw "permitted development" rights.

(15 marks)

(Total: 25 marks)

4. (a) Explain the extent of the powers available to a local planning authority under Section 226 of the Town and Country Planning Act 1990 ("Section 226 powers") for the compulsory purchase of land for planning purposes;

(10 marks)

- (b) Analyse the differences between the procedures available for acquisition of title to land in the event that the Section 226 powers are invoked successfully and highlight their respective advantages and disadvantages.

(15 marks)

(Total: 25 marks)

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

Question 1

Building Developments Ltd ("BDL") is a development company which has acquired 50 acres of land ("the Site") on the fringe of the built-up area of Cornbrash. The Site fronts a busy highway, Rycorn Street. BDL has applied to Cornbrash District Council as local planning authority ("the Council") for planning permission to develop the site for housing.

Public gardens belonging to the Council adjoin the Site. The focal point of the gardens is a Victorian mansion called Bleak House which is used as a café but which is in urgent need of repair. Also adjacent to the Site is a go-kart racing track operated by Racing Developments Ltd ("RDL"), a subsidiary company of BDL.

The Council has granted BDL permission to develop the Site subject to the following conditions:

- "(i) To safeguard the amenity of the proposed houses, they shall not be occupied when complete until the use of the adjoining land for go-kart racing has been discontinued.
- (ii) To relieve traffic congestion on Rycorn Street, BDL shall construct an access road to run along the frontage of the Site at BDL's expense. When completed BDL shall dedicate the access road as public highway.
- (iii) To enhance the facilities available to the residents of the proposed houses BDL shall restore Bleak House and maintain the public gardens at its own expense in accordance with a scheme to be approved by the Council.
- (iv) In order to maintain the character of the area around the Site permitted development rights subsisting under Part 1 of the General Development Order 1995 ("Development within the curtilage of a Dwelling house") are hereby revoked in respect of the houses to be built on the Site".

In order to obtain planning permission BDL entered into a planning obligation with the Council under Section 106 of the Town and Country Planning Act 1990 which obliged it to contribute the sum of £500,000 towards the construction of a new leisure centre in the centre of Cornbrash, two miles from the Site.

BDL considers that the conditions imposed on the grant of planning permission and the terms of the Section 106 agreement are unduly onerous and wishes to appeal to the Secretary of State.

Advise BDL on its chances of success on appeal and explain what other remedies might be available to the company.

(25 marks)

Turn over

Question 2

Arthur owns a disused brewery ('the brewery building'), a large building site in the centre of the town of Cornbrash. It adjoins a dwelling house in which the brewer lived ('the brewer's house') when the brewery was a going concern. The brewery building is unsafe as a consequence of subsidence and substantial physical support has had to be provided for it.

Arthur wants to demolish the brewery building and develop the site for housing. He has consulted Cornbrash District Council as local planning authority ('the LPA'). The LPA advised him that the proposed demolition requires its prior approval as such demolition is not "permitted" because the brewery building adjoins a dwelling house.

Arthur disagrees and believes he does not require permission for the proposed demolition.

(a) Advise Arthur whether the LPA's advice is correct.

(10 marks)

(b) Would your answer be different if the brewery building did not adjoin the brewer's house?

(15 marks)

(Total: 25 marks)

Question 3

Consider each of the following two short scenarios, which are un

- (a) Mon Repos Properties Ltd ("MRPL") owns a former corn exchange ("Exchange") situated on 0.2 of a hectare of land ("the Site") in the town of Cornbrash. The Cornbrash District Council as local planning authority ("the LPA") refused to list it in 2000. In 2006, the LPA had considered a proposal by its officers to designate the Site and four adjacent buildings as a conservation area, but decided against it.

In early September last year the officers re-considered the proposal to designate the area. They prepared a report for the November meeting of the LPA's Planning Committee which argued that the area had a special interest that ought to be preserved; that the Exchange contributed to that special interest; and that its loss would harm the character and appearance of the area. The report did not mention that the area had previously been rejected for designation or that the LPA had refused to list the Exchange. The report suggested that English Heritage might support designation and laid stress on the fact that it was important to protect the natural environment of the area.

At the end of October last year, MRPL gave notice to the LPA of its intention to demolish the Exchange after the expiry of six weeks from the date of the notice.

The Chairman of the Planning Committee decided that urgent consideration should be given to designating the Exchange and adjacent buildings as a conservation area. Because of the urgency the Chairman decided not to consult MRPL, English Heritage or any of the other building owners affected despite the fact that a planning performance agreement between MRPL and the Council stipulated that such prior consultation would take place. Two weeks later the Site and the adjacent buildings were designated by the Council as the Cornbrash Conservation Area.

Advise MRPL on any legal action available to it in regard to its proposed demolition of the Exchange.

(15 marks)

- (b) In the town of Cornbrash-on-Avon there stands a terrace of mill workers' cottages ("the Cottages"). They are linked by a bridge to a water mill ("the Mill") which was listed Grade II in 1991 when the Mill ceased to operate commercially and was sold to Cornbrash District Council ("the Council").

The former Miller, Amos, has for some years let the Cottages to retirement pensioners at low rent. He has been in poor health and recently sold the Cottages to the Council. He told the Council's Chief Executive that he hoped the Council would continue to let them to "the poor of the Parish". The Council now wishes to demolish the Cottages, which are in bad repair, in order to provide a reception centre with a car park for the Mill which it wishes to operate as a heritage project. It has notified the Parish Council of its intentions but has undertaken no other publicity. The local Residents' Association ("the Residents' Association") has raised a fighting fund to resist the demolition proposal.

Advise the Residents' Association whether it has any legal basis for challenging the lawfulness of the Council's proposal to demolish the Cottages.

(10 marks)

(Total: 25 marks)

Turn over

Question 4

In 1997 Miriam bought 100 hectares of farmland ("the farmland"). A year later she obtained planning permission, subject to conditions, to develop part of the land as stables and another part as a cross-country course. There was a related agreement with the Cornbrash District Council as local planning authority ("the LPA") under s106 of the Town and Country Planning Act 1990 ("the TCPA 1990") which required the stables and cross-country course to be constructed within specific periods. Construction was completed two years ago and Miriam has been managing these equestrian facilities.

In 1999 Miriam built a large farmhouse on the farmland without planning permission. The LPA served an enforcement notice on her in 2000 but in January 2001 granted her retrospective planning permission, subject to conditions. Condition 2 stipulated that the house should be "occupied only by persons working at or enjoying the facilities of the proposed stables and cross-country course on the farmland." This was one of the few exceptions to the policy in the LPA's local plan prohibiting residential development in the open countryside. Miriam immediately let the farmhouse to John, who commutes to London in connection with his work in the financial services industry.

In December 2011, Miriam applied for a certificate of lawfulness of use ("CLEUD") on the ground that condition 2 had not been complied with for the preceding ten years. In January 2012 the LPA refused the application and issued a Breach of Condition Notice ("BCN") which requires occupation of the house to cease other than in accordance with the terms of Condition 2.

Miriam appealed against the refusal of the CLEUD. Last month a planning inspector dismissed the appeal on the grounds that Miriam had not been in breach of Condition 2 for the ten years preceding the breach of condition notice as Condition 2 could not come into effect until the completion of the equestrian facilities two years ago. As yet the LPA has not prosecuted Miriam for failure to comply with the BCN.

Advise Miriam as to the legal remedies, if any, which may be available to her.

(25 marks)

End of Examination Paper

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