



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. Analyse the legal requirements which govern the imposition of conditions by a local planning authority when it decides to grant a conditional planning permission.

(25 marks)

2. (a) Explain what is meant by the term "planning obligation";

(10 marks)

(b) Analyse how planning obligations take effect and how they are enforced, modified and discharged.

(15 marks)
(Total: 25 marks)

3. (a) Explain the requirements for the submission of a valid application for planning permission;

(15 marks)

(b) Analyse the procedures a local planning authority must follow in dealing with an application for planning permission.

(10 marks)
(Total: 25 marks)

4. Explain how the current system of development plans has evolved since the enactment of the Planning and Compulsory Purchase Act 2004.

(25 marks)

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

Question 1

John owns and occupies a house, "Daisybank", which is a listed building in an historic urban location. His neighbour, Ann, owns and occupies "Treetops", which is also a listed building. The properties are separated by a paddock ("the Paddock") amounting to 0.1 hectare. Both properties lie within the Cornbrash Conservation Area. Four years ago Ann bought the Paddock and erected a fence along its boundary with Daisybank.

Last year Ann removed the fence and erected in its place a wall 125 metres in length and one metre high and constructed a new rear entrance to her property with formal wrought iron gates. She then applied to the Cornbrash District Council as local planning authority ("the LPA") for a certificate of lawfulness of existing use or development. The letter which accompanied her application referred to "the expanded garden" of Treetops and stated that the development comprised "the formation of a new means of enclosure to part of the western boundary of Treetops". Ann also stated that the development would not surround Treetops and that the Paddock was separate from the original garden which had been cultivated as such since the 1840s. She added that the Paddock did not provide amenity space for the enjoyment of the occupier of Treetops or serve any functional purpose. It was visually separated from the original garden and enclosed by shrubs and trees.

On 17 January this year the LPA issued a certificate of lawfulness pursuant to s192 of the Town and Country Planning Act 1990 ("the TCPA 1990"), but gave no reasons. John had no idea that the certificate had been issued until workmen began to excavate footings for the wall on 5 June when he immediately sought an interim injunction which was granted. Ann argues that John's claim was made out of time.

Ann has also applied to the LPA to demolish a derelict dovecote on the Paddock where the Paddock boundary meets the boundary of the original garden of Treetops and replace it with a modern equivalent. The Council has informed Ann that the proposed demolition is lawful as it does not constitute development.

Advise John, who wishes to challenge the LPA's certificate and the LPA's decision in regard to the dovecote, whether there is any legal basis for such a challenge.

(25 marks)

Turn over

Question 2

Truckers plc, a road haulage company ("the Company"), owns two sites in the administrative area of Cornbrash District Council, the local planning authority ("the LPA").

In 2006 the Company bought two hectares of derelict agricultural land ("Site A"). The Company immediately used Site A as a haulage depot and surfaced it with tarmac in 2007. A year ago it applied retrospectively to the LPA for planning permission to use the site as a haulage depot. The LPA refused permission and the Company recently appealed, unsuccessfully, to the Secretary of State. The Company considers that the site is now incapable of reasonably beneficial use.

Previously, in early 2003 the Company had bought a further five acres of derelict land ("Site B") elsewhere. The Company immediately used it to park their lorries. The Company also renovated a disused workshop on the site to maintain its own lorries and the lorries of other hauliers operating in the vicinity. This business was transferred temporarily to a different site for three months in the winter of 2007 to 2008.

In 2008 the Company wanted to build offices on Site B but the LPA indicated that it would not grant planning permission. However, later in that year the Company constructed and occupied a one storey office building on the site. From 2008 to 2012 the new building was entirely obscured from view by a shield of old containers. The containers were removed last year and the Company considers the offices to be lawful development. The LPA has served an enforcement notice requiring (a) the termination of the use of Site B for parking lorries; (b) the termination of the workshop use; and (c) the demolition of the new office building.

Advise the Company:

- (a) what action, if any, it can take in regard to Site A following the dismissal of its appeal to the Secretary of State; and

10 marks

- (b) on the validity of the enforcement notice relating to Site B and any steps it could take should it decide to challenge the requirements of the notice.

15 marks

(Total: 25 marks)

Question 3

A bowls club ("the Club") owns a site of 0.7 of a hectare ("the Site") in the town of Southpool-on-Sea. The Club's outdoor bowling green was first laid out in 1890. The associated outbuildings including a small clubhouse and a store for machinery are in need of major repair. Earlier this year the Club decided to redevelop the Site as a new outdoor bowling green with a block of 41 flats comprising three storeys, associated car parking, landscaping and new access.

The Club submitted its planning application to Southpool Borough Council as local planning authority ("the LPA"). At the same time the Club requested the LPA to adopt a screening opinion as to whether or not an Environmental Impact Assessment ("EIA") was required. The LPA adopted a screening opinion to the effect that an EIA was required. The Club disagreed with that decision and applied to the Secretary of State for a direction ("the Direction"). The Secretary of State's Direction stated that the proposed development was not likely to have "significant effects on the environment" and accordingly no EIA was required before planning permission was granted.

Mary owns a cottage in a street parallel to the street onto which the Site fronts and within 100 metres of the nearest part of the Site. She claims that the proposed development will overlook the garden and rear windows of her cottage and that it will have an adverse effect on her amenity. The LPA at no stage notified her personally of the planning application. Mary believes that an EIA was required and now claims that the Secretary of State misdirected herself in issuing the Direction.

Mary now wishes to apply for judicial review. She has been advised that "a significant environmental effect" is one that has a real prospect of influencing the outcome of the application for planning permission.

Advise Mary whether she has sufficient grounds to apply for leave for judicial review and whether, if the court grants her leave to apply, she is likely to succeed on the trial of the substantive issue.

(25 marks)

Turn over

Question 4

A disused riverside wharf of 0.5 of a hectare ("the Wharf") was last operated in 1989 and became overgrown with trees, shrubs, scrub and saplings. Can Development plc ("the Company") acquired the site ("the Site") in 2011 and recently reopened the Wharf. The Local Planning Authority ("the LPA") served an enforcement notice on the Company requiring it to cease the use of the Wharf within 28 days. Officers of the LPA advised the Company that: (a) they considered use of the site as a wharf had been abandoned; (b) planning permission would be needed to resume the abandoned use; and (c) the LPA would refuse planning permission as the resumed use would be contrary to the provisions of the recently approved development plan (2011) which designated the Site as "amenity open space".

The LPA then made a Tree Preservation Order ("the TPO") covering the whole of the Site. The Company responded by submitting an application for consent under the TPO to remove all saplings, shrubs and scrub on the Wharf to facilitate a proper survey of the Site. The LPA refused consent.

The reasons for refusal were:

- (a) The use of machinery would cause harm to the woodland, thus reducing its amenity.
- (b) Vegetation which could ordinarily be described as "trees" could not be considered in isolation from the surrounding scrub, shrubs and saplings.
- (c) It was not necessary to clear the area to the extent proposed in order to carry out a survey.
- (d) The application, if approved, would cause irreversible harm to the potential amenity of the woodland, as described in the development plan.

The Company argues:

- (i) The works were a "one off" exercise and that the remaining trees would provide for regeneration. If that was in doubt, suitable planning conditions (e.g. for replanting) could be imposed to achieve the same result;
- (ii) Consent was required only for trees and not for shrubs, scrub or saplings below a certain size and the TPO did not protect trees which took root and grew after the TPO was made; and
- (iii) The LPA should have concerned itself solely with the scope of the TPO and not the amenity potential of the woodland.

Advise the Company as to:

- (a) Whether it has grounds for challenging the enforcement notice on the basis that the use had not been abandoned.

(10 marks)

- (b) The likely outcome of any appeal it submits in respect of refusal of TPO consent.

(15 marks)

(Total: 25 marks)

End of Examination Paper

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