



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 ballpoint 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 system of neighbourhood planning introduced in 2011-12 and analyse its significance for development control and local planning.

(25 marks)

2. (a) Analyse the legal provisions which require local planning authorities to give reasons when determining planning applications.

(14 marks)

- (b) What purposes are served by these provisions?

(11 marks)

(Total: 25 marks)

3. (a) What action is open to a local planning authority if the owner or occupier of a listed building carries out unauthorised works of demolition, extension or alteration without consent?

(14 marks)

- (b) What remedial powers are available to a local planning authority which considers that a listed building has been neglected?

(11 marks)

(Total: 25 marks)

4. Summarise the means by which a local planning authority's determination of a planning application may be challenged.

(25 marks)

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

Question 1

Tom owns and operates a retail packaging business on 0.5 hectare of land with a frontage of 30 metres to a trunk road. In 1997, he erected on his land an advertisement hoarding, visible from the road, in order to advertise his business. He did not seek consent for the display of any of the advertisements he posted on the hoarding. The structure consists of a framework of vertical wooden posts supporting a plywood face 13 metres in length and two metres high. The advertisements he has posted on the hoarding have changed from time to time and, occasionally, he has removed them at the request of Cornbrash District Council as local planning authority ('the LPA'), only to reinstate them a few weeks later.

In February 2013, Tom applied to the LPA for a Certificate of Lawfulness of Existing Use or Development ('CLEUD'). The LPA refused to grant the Certificate on the basis that there had been a cessation of the use when Tom temporarily removed the advertisements at its request.

Tom now wishes to appeal to the Secretary of State. He claims he has the benefit of deemed consent as he has displayed the advertisement for over ten years; that the hoarding does not cease to be an advertisement when advertising material is removed temporarily; and that the LPA has failed to consider the provisions for deemed consent under Class 13 of Part I to Schedule 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the 2007 Regulations').

Advise Tom on his chances of success if he decides to make an appeal.

(25 marks)

Turn over

Question 2

Rosebury Supermarkets plc ('Roseburys') owns 80 per cent of a semi-derelict site ('Site A') in the town of Cornbrash ('the Town'). Formerly, Site A was occupied by railway sidings. Roseburys' competitor, Fresco plc ('Frescos'), owns 20 per cent of Site A. Both Roseburys and Frescos wish to develop Site A for a supermarket and both have been granted outline planning permission to do so by Cornbrash District Council ('the Council') as local planning authority. As neither Roseburys nor Frescos will sell its interest to the other, a compulsory purchase order ('CPO') is needed for one or the other to proceed with its respective development plans.

Recently, the Council resolved in principle to make a CPO of Roseburys' interest in Site A to enable Frescos to develop it for a supermarket. The resolution records that the reason for this decision is Frescos' undertaking to the Council to regenerate another derelict site ('Site B') containing a listed building, situated elsewhere in the Town, in accordance with the terms of a section 106 agreement and a scheme approved by the Council. That scheme is such that it would not be profitable for a private developer to undertake without cross-subsidy from a separate, more profitable development such as that proposed for Site A.

Roseburys considers that in taking into consideration the regeneration by Frescos of Site B the Council's resolution was unlawful and wishes to challenge the resolution in the High Court.

Advise Roseburys on the likely outcome should they decide to challenge the Council's resolution to make the CPO.

(25 marks)

Question 3

A bus operator, Diligance Transport Solutions plc ('Diligance plc'), applied to Cornbrash District Council as local planning authority ('LPA') for planning permission to construct a busway (a bus track on rails) on five miles of disused and thickly overgrown railway track ('the Site'). The Site is a habitat for six species of European bat protected under the European Union's Habitats Directive 92/43/EEC ('the Directive').

Article 12 of the Directive requires Member States to take measures to avoid disturbance of protected species. Article 16 provides for derogation from the directive 'For imperative reasons of overriding public interest, including those of a social or economic nature ... but only where such derogation is not detrimental to the maintenance of the populations of the species concerned...'

The UK's (fictitious) Habitat Regulations 2012 ('the Habitat Regulations') give effect to the Directive and stipulate that local planning authorities shall ensure that no grants of planning permission shall conflict with the provisions of the Directive. The 2012 Regulations further provide that in the event of a conflict with the Directive any derogation is by way of licence issued by Natural England which must be consulted on any planning application for development likely to disturb protected species.

The LPA conducted a Bat Survey ('The Survey') of the Site as Diligance plc's Environmental Statement submitted with the application for planning permission was insufficient. The Survey found that the proposal would have a 'moderate adverse impact at local level on foraging bats for some nine years' but that no bat roosts would be affected.

The officers' report to the Planning Committee contained a summary of the Survey with a statement that Natural England had withdrawn its opposition having considered the Survey. The report also contained a screening opinion stating that an Environmental Impact Assessment ('EIA') was not necessary. The Planning Committee resolved by a majority to grant permission.

Bridget is secretary of the Cornbrash Naturalist Society ('the Society') and considers that the LPA wrongly failed to inform Members of the LPA's Planning Committee of the likely disturbance to the six species of bat or to require Diligance plc to submit an Environmental Impact Assessment ('EIA'). The LPA maintains it was entitled to rely on the response of Natural England in regard to the Directive and that there was no basis for requiring an EIA.

Bridget has been authorised by the Society to apply for judicial review of the Council's decision to approve the planning application.

Advise Bridget whether an application is likely to succeed, in whole or in part.

(25 marks)

Turn over

Question 4

Jane is the principal shareholder and managing director of a family disposal company called Detritus plc ('Detritus'). Detritus owns a scrap yard extending to one hectare ('the Site'). Detritus has an unrestricted and unregulated planning permission for use of the Site as a scrapyard and has operated on that basis since the early 1970s. However, the throughput of scrap at the Site has increased substantially over the last two years and there has been an increase in noise and dust.

In 2008, Jane started to upgrade the plant at the Site and replaced an old fragmenter with a new one, to deal with compacting scrap metal more effectively. At the same time, she extended some industrial warehouse buildings on the Site near the fragmenter.

Following complaints from nearby residents, the Cornbrash District Council as local planning authority ('LPA') has served Jane with two enforcement notices. The first ('Notice A') alleges that there has been a material change of use of the Site by virtue of the increase in the throughput of scrap material from 121,000 tonnes to 231,000 tonnes with consequential adverse environmental effects. Notice A states further that the increase constitutes a new use 'having a different nature and character from the former use'. Jane is required by the notice to limit the throughput to the level which obtained in January 2012.

The second notice ('Notice B') alleges that Jane has installed a new fragmenter on the site and erected various buildings without planning permission. The notice requires her to remove the fragmenter and to demolish the extensions to the warehouse buildings.

Jane maintains that the installation of the new fragmenter is permitted development and that the newly built extensions should be granted planning permission. She also argues that there has been no material intensification of the use of the Site.

Jane now wishes to appeal to the Secretary of State. Advise Jane on the likely outcome of her appeal in regard to:

a) Notice A

(13 marks)

b) Notice B

(12 marks)

(Total: 25 marks)

End of Examination Paper

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