

ANGLIA RUSKIN UNIVERSITY

**CONSISTENCY IN PLANNING DECISIONS FOR
HOUSING PROPOSALS IN ENGLAND**

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**A Thesis in partial fulfilment of the
requirements of Anglia Ruskin University
for the Professional Doctorate**

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VOLUME 1

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ANGLIA RUSKIN UNIVERSITY
ABSTRACT
FACULTY OF SCIENCE AND TECHNOLOGY

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Consistency in Planning Decisions for Housing Proposals in England
By Robert Wickham
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The purpose was to consider whether residential planning decisions for similar schemes are made in a consistent way, and to evolve a model to better predict outcomes. The project had theoretical and practice based purposes. The former included the application of Schön's epistemology of professional practice. An important purpose was to assess the value of a methodology using 'Repertoire' research and better predict outcomes of applications and appeals. Currently of some twenty thousand planning appeals decided every year, the average annual success rate is about one third, with heavy costs in the private and public sectors.

Three different types of residential development were investigated: Country Houses, dwellings in the Green Belt, and Parsonage Houses for the Church of England. The subjects were chosen because of the availability of information, the relevance to practice and the contrasting policy background (the last subject having no policy background). The project was investigated through case files from the practice and local authority records. For each subject area conclusions were then reviewed in the context of a larger number of decisions. Replication of the approach was reviewed and the relationship of development control decisions and planning theories examined.

Little consistency was found in the decisions on Country House proposals, although key factors were isolated informing the approach to such cases. Outcomes for Parsonage Houses were more predictable. Initially it was considered that Green Belt cases would be consistent, but the application of policy varied.

The conclusions for practice endorse the value of Repertoire or case study research leading to a practice model and desirable changes to the drafting of national policy reducing abortive costs. There are legal implications relating to the concept of material considerations and the contrasting paradigms inherent in the search for consistency and the determination of every case on 'its individual merits'.

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SECTION 1
CHAPTER 1
OUTLINE OF THESIS

1.1 Introduction

The thesis considers the concept of consistency in the determination of applications and appeals for certain types of residential developments. The issue of consistency has historical and legal aspects. The subject has been chosen because it is very relevant to professional practice. Not only is it relevant to practice but the testing of planning decisions is expensive for both the public and private sectors for example the average cost of a one day Hearing can be between five and ten thousand pounds. This is based on recent practice information. If the issues are complex it can be more. The thesis aims to evolve a model to better predict decisions particularly at the appeal stage.

Planning applications are initially submitted to the Local Planning Authority, who has power to determine the application. Jurisdiction may pass to the Secretary of State, due to a refusal of planning permission, a failure of the Local Planning Authority to determine or to the exercise of 'call in' powers by the Secretary of State. When the Secretary of State is responsible for the determination of the case a Planning Inspector is appointed, who may either determine the case, or (in larger or complex cases) the Secretary of State may deal with the decision, relying upon the Inspector's report. Planning Inspectors are generally qualified as chartered planners, surveyors, engineers or architects following the recommendations of the Schuster Report (Schuster 1950). Some Inspectors are legally qualified.

The Local Planning Authority, the appointed Inspector and the Secretary of State are required by statute to determine the application in accordance with the Development Plan unless 'material considerations' point to a different result. The concept of material considerations is wide and expanding; this is explained in Chapter two. The result is that although notionally the Development Plan will

inform the applicant of the development that is likely to be allowed, in practice other material considerations may outweigh the Development Plan. The issue has been raised in public debate (Barker 2006).

In 2005 the government appointed a full review of the land use planning system. The published report, known as the Barker Review, considers improvements to the speed and, of relevance to this thesis, the predictability of the system. However the Barker Review (Barker 2006) is only one in a series of studies (see Dobry 1975, CB1 and NDC 1986) and reports seeking to improve the land use planning system in the United Kingdom. A further review was then undertaken (Killian Pretty 2008) but this was more limited to the application process, but not consistency or appeals. Through the years there has been tension between certainty and the legitimate aspiration for flexibility. For example the former Development Control policy notes confirmed that the planned allocation of land use will not always outweigh the importance of other considerations. This concept is developed further below. (see Ministry of Housing & Local Government Development Control policy notes). Evidence submitted to the Barker Review on behalf of business interests raised doubts about reliance upon the Development Plan. Under recent reforms the Development Plan will be formed by regional planning documents known as Spatial Strategies and the more local documents termed the Local Development Framework (known as LDFs). The private sector and business associations argued that smaller businesses have neither the time nor money to prepare and attend the various inquiries into such plans (Barker Review evidence presented). Barker concludes that where the Local Development Framework is not up to date, there will be a serious problem because of the lack of guidance in the planning framework against which decisions are taken.

The debate is topical; it raises issues of the balance between freedom and authority both at the local and national level. During the Thatcher years the Development Plan was reduced in significance and national policy changed the balance between the twin pillars against which decisions were taken, but subsequently the ebb and flow of politics resulted in the elevation of the Development Plan. (Thornley 1991)

1.2 **Practice based study**

This research addressed issues in professional practice. The author is a partner in Howard Sharp & Partners LLP (the Practice). Founded in 1935, it is independent although part of a larger group practice of Chartered Surveyors and designers.

The Practice specialises in advocacy planning, representing clients at many Informal Hearings and Inquiries taking place into planning and related issues (such as highways, public footpath diversions or closures and water matters). Some cases are resolved by written representations but others progress to Informal Hearings or Public Inquiries. The first of these take the form of a discussion about the issues; the second is a more formal method involving cross examination of witnesses. The founder of the Practice was particularly concerned about the protection of individual rights, and representation for those unfamiliar with the planning system. After the Second World War when the land use planning system was regularised under the 1947 Town & Country Planning Act, the initial proposals for public inquiries excluded non-lawyers., but largely due to his pleading, public inquiries were opened to others, (explained to the author by Howard Sharp circa 1975). Whilst the proportion of Surveyors, Architects and Town Planners who use this opportunity at Public Inquiries is limited, nevertheless the opportunity is there. It is more generally used at Informal Hearings (this is an observation from practice). The author took over the advocacy functions in the Practice, including reviewing the merits of cases.

CHAPTER 1
OUTLINE OF THESIS

The thesis evaluates of some of these cases and proposes a conceptual framework to assist the planning section of the group Practice which handles approximately fifty to seventy planning applications per year, a small proportion going to appeal. In addition clients will bring cases of refusals that may be worth progressing to appeal. On average between twenty or thirty appeals are handled each year, about half proceeding by Hearing or Inquiry. One responsibility of the Planners and Architects is to keep the group practice informed on planning issues and policy, explaining their impact upon the other departments of the group practice.

As the practice is national and long established there is a richness of material available. The following figures give a snapshot of the Practice:

No of cases –	1948 to 2008	Approximately 7,000 cases handled
Professional	1948 to 1975	1 sole Partner + 1 Consultant
Team	1975 to 1986	2 Partners + 2 Consultants
	1986 to present	3 Partners and 1 Associate (All Chartered Planners & Chartered Surveyors) + 3/4 Consultants all in full time or nearly full time practice, all Chartered Architects or Chartered Town Planners

(Data from the file index system recording all cases 1948 to date)

The Practice is independent but associated with a larger firm of Chartered Surveyors covering a wide range of work from brokerage to design and Building Surveying. The group employ about one hundred staff. (Further details of the practice are contained in Paper 1 of Stage 1 produced as Appendix 1).

From a practical perspective the subjects chosen are current in the Practice so that there is overlap between normal professional work and the project. This reflects the character of the professional doctorate.

1.3 Repertoire research

The Thesis explores the use of case studies leading to Repertoire or case study research, an approach advanced by writers such as Donald Schön (1983). Schön uses a philosophical perspective but seeks to advance and elevate the work of professional practitioners. ‘The Reflective Practitioner’ examines the work of five professions and seeks to give a stronger intellectual background to professional work – engineering, architecture, management, psychotherapy and town planning.

Paper 1, Stage 1 (Appendix 1) outlines the history and growth of the Surveying and Planning professions. The subject is covered in the centenary publication of the RICS (Thomson 1968). The then Surveyors Institution was founded in 1868, the Town Planning Institute in 1914. For many years the two professions of Surveying and Town Planning conducted their own examinations. During the 1960s the trend developed for graduate recruitment (1963 only 12% of new entrants had a degree (Thomson 1968) and the importance of a research base has been accepted in both institutions. (The RICS employs a full time Director of Research). Schön is concerned and sympathetic to the claims for the advancement of the intellectual standing of the professions, arguing that the professional people working in the fields he studies know more than is ever written down. He points to the opportunities for the enhancement of this work by, amongst other things, the process of ‘Repertoire Research’.

Schön develops an epistemology of professional practice, describing the gulf between the university department and the professional practitioner by posing a rhetorical question on the part of the professional practitioner addressed to his academic colleague: ‘While I do not accept your view of knowledge, I cannot describe my own’. There is a contrast between the universal theories taught in

the University departments of Medicine and Law and the ‘professional’ world. Schön’s theory is that competent practitioners usually know more than they can say or explain. The key and heart of his study is an analysis of the distinctive structure of ‘reflection-in-action’. The need to analyse and develop an appropriate epistemology is highlighted by an increasing loss of confidence on the part of professional people. Whether this is so extreme in the United Kingdom is a matter of debate. However, the argument has relevance. Schön illustrates the point by reference to the pressure put on professionals to process cases and achieve goals. One could refer here to the concerns in the medical profession arising from the increased bureaucratisation of their role leading to some professionals leaving the National Health Service for the private sector. In the planning profession there is serious under recruitment in many planning departments. Studies have found 13 percent of jobs in 2004 vacant in London Borough Planning Departments and up to 20 percent being filled by contract or temporary locums. The House of Commons Communities and Local Government report in 2008 found the situation had not improved in the intervening years. (Journal of the Royal Town Planning Institute July 2008). Whilst the evidence is to some extent anecdotal there are several examples of senior professionals in the field suffering extreme stress leading to death or breakdown. The Royal Town Planning Institute (RTPI) noted the problem and criticised the target culture of the planning world (Journal of the RTPI, issue June 2008).

Schön argues that the major professions such as medicine and law are grounded in a sound institutional framework supported by a body of scientific evidence. This he refers to as ‘Technical Rationality’ and contrasts the role of the major professions with others. Schön refers to the writing of Glazer (1974) who places Town Planning in the minor professions along with Divinity and Librarianship. Even this approach may be open to debate. A perfectly reasonable argument would point out that Divinity and the study of place have a long history (see

Bunbury 1879 History of Ancient Geography). On the other hand, some of Glazer's adverse criticisms are to be noted. For example, he refers to the standards in the University schools of the minor professions being not so rigorous, and dependent upon the contribution of other specialists who come from departments that are superior to the professional schools. Why is Glazer able to make this argument? The answer is the key to the debate. The reason is the epistemology of Technical Rationality. The major professions are grounded in systematic, fundamental knowledge, of which scientific knowledge is the prototype, or else they have a high component of strictly technological knowledge based on science in the education, which they provide. In contrast, the minor professions suffer from shifting, ambiguous ends. Certainly in the case of Town Planning there seems to be an increasing burden placed on the profession. Policy makers and politicians see a possible answer to the many ills of society, ranging far beyond land use. This, to an extent, is understandable but it can lead to layers of policy relating to crime prevention, social wellbeing, quite apart from the contemporary driving policies of sustainability. The evidence for this is the growth in policy statements produced by Central Government and the number of consultees involved in the application process. (Killian Pretty 2008 Recommendation 16).

1.4 **Reflection in Action**

Schön argues that professionals know more than they can put into words and professional practice is 'tacit knowing'. Schön then goes on to analyse reflection in action. His thesis is that most professionals know more than they can put into words. This analysis then leads to suggested research. Schön highlights four such areas. They are Frame Analysis, Repertoire – building research, Research in fundamental methods of inquiry and theories and lastly, Research on the process of reflection in action. This thesis will relate to two of these areas, namely Repertoire building, commonly known as case studies, and Reflection in action.

The Repertoire building approach implies more than just the analysis of precedents and other cases. The Schön argument involves the professional building up a series or repertoire of examples, images and understandings; all this material is reflected upon in the process of case analysis (Schön 1983, p 138). The arguments for and against the case study method are considered in the third chapter. The analysis of each case in the professional's mind will involve the process of reflection in action causing the case to proceed in a particular way. One of the concepts of this thesis is to try and transfer this thinking to areas of development control of particular forms of residential development.

Inevitably there are several themes running through the thesis. The balance between certainty and discretion is a major one, albeit a difficult one to explain to the aggrieved applicant or appellant. It is equally important to seek some overall theoretical explanation for trends in practice. In Paper 2 of Stage 1 (Appendix 1) the main overarching theories of planning were reviewed. These included Systems and Rational Theory, Marxist Planning Theory, Pragmatism, Advocacy Theory and lastly, that which is broadly related to Austrian Economic Theory. The debate between certainty and flexibility could be neatly put into one of Hayek's key sentences (Hayek 1976, p 212):

‘This brings us to what in modern times has become the crucial issue, namely the legal limits of administrative discretion. Here is the little gap at which in time every man's liberty may go out’.

1.5 The two main hypothetical propositions for the thesis and related research questions – consistency and predictability in decisions and repertoire building and research questions

The first hypothetical proposition in the project:

Planning criteria are not applied in a particularly consistent manner in reaching decisions on planning applications and appeals for residential development. The

question asked is whether similar applications and similar appeal cases are determined in generally a consistent and coherent manner. The project tests the existence of consistency in this sphere of administration. It is a matter of debate whether there should be consistency, and this is explored in the next chapter.

The second proposition is that the Repertoire building research is a worthwhile approach to better predicting outcomes. It would be rewarding if the research resulted in a model that could be used in practice. There may be opportunities for achieving greater consistency by the application of the method. This in turn may result in saving of public and private time. It may have legal implications. The results should certainly assist professional practice. This will be tested. Schön makes the argument that legal precedents have always formed an important part of university courses for the legal and medical professions. The theme is developed further into a case for the education of those in ‘minor professions’; Town Planners are grouped in this category. One can reasonably raise arguments against the grouping but this is not the subject of the thesis. However the value of the approach to professional discourse is relevant.

Whilst the first proposition of the thesis is that planning criteria may not be applied in a particularly consistent manner in reaching decisions and the second is the value of Repertoire or precedents, there are a series of additional questions. These are very practice orientated. This is appropriate in the context of the professional doctorate. They include:

1. Is there greater consistency of outcome where there is a defined policy in Local Plans or National Policy?
2. From the decisions examined are key policy concepts clear in the results?

3. Why are there so many cases determined on appeal when the national average success rate is only 30% to 35%?
4. Is there consistency of outcome in similar circumstances and should this form an objective of policy?
5. Is there consistency of policy in the plans of the various authorities in Kent and the area of North of England considered? The two areas were chosen because of relevance to the Practice and distance apart.
6. Could national policies be presented in a different way to reduce the volume of abortive appeals?
7. Does 'Repertoire' or the case study type of investigation assist professional practice?

1.6 Sources

The study material is mainly from the practice archive, fortunately some going back to the early post war period. Unfortunately material from the 1930s was destroyed during the war. The material consists of details of planning applications submitted, with supporting information leading to the decision notices. Where cases have proceeded to the appeal stage then copies of the evidence given by each party is available with the eventual Inspector's report and decision letter if the case involved the Secretary of State. In the smaller cases determination will be the Inspector's decision letter alone.

The information analysed is not limited to cases handled by the Practice. The process starts with the Practice material then the tentative conclusions are reviewed in the context of other decisions on similar cases. The second level of

information is not so detailed or rich in character. It consists of local authority files on the decisions or Ministerial decisions and associated Inspectors' reports on cases. This material is a primary source. Fortunately the form of the reports whether they be Council reports or appeal cases isolate the main determining reasons for the decision. Thus the key determinants can be extracted. At a third level the Compass decisions bureau provides overall statistics or summaries of cases on a particular theme. However the summaries are selective and not of the same level of reliability as the first two sources of primary material. In addition to study of the primary sources, other professionals have been contacted who work in these particular spheres.

The approach to the project is inductive, based upon in-depth consideration of selected cases but testing findings in a wider information field. Some summary numbers are used, and statistics produced by the Planning Inspectorate, the Department of Communities and Local Government and the Compass Bureau. More detail is contained in Chapter Three.

1.7 Selecting categories of residential development

To test the hypothetical propositions and research questions of 'residential development' would not be practical, so three sub-categories of development have been chosen:

1. Country Houses
2. Residential development in the Green Belt
3. Parsonage Houses

There are two reasons for this choice. The first is that the three subjects are so different. Proposals for Country Houses are proposed by the wealthy; schemes for Parsonage houses are resource limited. Proposals in the Green Belt are

considered against a background of highly developed and longstanding policy contained in national and local policy documents. Country House proposals are determined against a background of two paragraphs in one national policy document (Planning Policy Note 7). Proposals for parsonage houses have no published national policy to assist determination but the policy history for their determination is very interesting. Secondly the Practice has a continued involvement in all three spheres of work, and so there is overlap and a rich resource base to assist in the study. Furthermore the results will be directly relevant to improvement, it is hoped, in the quality of professional help. The Green Belt studies are of necessity limited to areas in which the Practice has operated, namely Sheffield and a surrounding district and Kent. The other two subjects cover many parts of England.

The results will answer the research questions posed earlier in this chapter. The first question related to consistency of outcome in areas where there is limited policy guidance compared to typically Green Belt with well known policy guidance. Similarly the examination of the decisions in each subject area will show how far policy runs through the decisions. Examination of the results in all three areas will explain the reasons for the low level of success on appeals and whether this could be assisted by changes in the presentation of policies. The results will lead to a broader review of the Repertoire case study approach in professional practice.

1.8 **Conclusion**

This chapter has set the scene for the thesis in the Practice and the reasons for the research. The questions asked are of importance to professional practice and to wider public issues relating to the costs of the planning process. The case study method has been introduced but the detailed justification for the method comes later in Chapter Four. The three areas of decision making have been contrasted.

CHAPTER 1
OUTLINE OF THESIS

The Green Belt subject area has much policy background but the material studied is limited to two parts of the country. The other two subjects will be considered at a national level and by contrast have less general policy background. Chapter Three reviews relevant publications. Some of the themes of the thesis have been touched upon by other authors but the concept of consistency in planning decisions and appeals has not been studied in this way. The thesis aims to analyse many appeal decisions and at first sight there might seem little pattern or predictability in the outcomes of decisions. In answering the hypothetical questions raised it is hoped to conceptualise issues and produce a useful model for practice.

The next chapter considers the legal and historical background to the subject, focussed upon the consistency issue within the evolution of planning. The chapter is not a general historical review of planning thought.

CHAPTER 2

LEGAL AND HISTORICAL BACKGROUND OF DEVELOPMENT CONTROL

2.1 Legal background: The planning application process

This chapter introduces the legal background against which planning decisions evolve. This is important because the thesis aims to improve the way decisions are made, so the statute and case law are very relevant. The process of application and determination is known as development control. The chapter continues with a review of the consistency issue in its historical context; this is important in assessing the merits of consistency.

A planning decision appears as an apparently simple consent, frequently contained in a relatively short two or three page document. It may have a legal agreement attached to it under Section 106 of the Town & Country Planning Act 1990. However its apparent simplicity seriously belies the process and implications of an approval. The piece of paper may change the value of land from agricultural value of three thousand pounds per acre to residential value of perhaps three million pounds per acre (such values are all evident currently in the areas of highest demand for homes). The planning application may take the form of an application for outline or full planning permission. However there are many other types of application apart from those most commonly considered, such as applications for Certificates of Lawfulness of Existing Use (Section 191 of the Town & Country Planning Act 1990 – ‘the Act’), Certificates of Lawfulness for Proposed Uses or Development (Section 192 of the Act) or applications to determine whether consent is required. The application must be made in accordance with the current regulations. This requirement is quite onerous because the current regulations require a full Design & Access Statement, outlining the size of the development, and the main determinants resulting in the chosen design.

An outline application cannot be made for a change of use of land but can include the extension or alteration of buildings. The outline consent may reserve various matters for subsequent approval, namely siting, design, external appearance, means of access and landscaping (see General Development Procedure Order 1995 – ‘GDPO’) Article 1(2). The Local Authority is enabled to use powers under the GDPO to require further information prior to registration of an application. The Barker Review notes (Barker, 2006 p 111) with concern the increasing load of paper forming the planning application; the point is put succinctly thus:

‘In this instance it is not efficient for Local Authorities to process excessive paper loads and businesses facing costs in the form of application fees and consultants’ fees should not be put in the position where they are asked for unnecessary information’.

2.1.1 The planning decision

So much for a brief outline of the planning application. For the purposes of this thesis the term in the title ‘planning decision’ will be taken to mean that decision or those decisions that allow development to proceed. The term development is defined in Section 55 of the Act to cover building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land. The thesis will be primarily concerned with the ‘building’ element.

The planning application results in its consideration under Section 70 of the Act. This is a much more complicated issue. As already mentioned, Sections 54a and 70 of the Act contain the key words that are both the strength and weakness of the planning system in the United Kingdom. They are so important that it is

appropriate to record them fully. Section 54a was added as a Government amendment to the Planning and Compensation Act 1991. It was introduced in the final stages of the process in the Commons on June 19 1991. It states:

‘Where, in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise’. This duty now prefaces the longstanding duty currently contained in Section 70 that conditions the consideration of development which reads, inter alia: ‘In dealing with such an application the Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations’.

The implications of this situation would appear to mean that decisions would be taken in a consistent way. However since this amendment to the Act the number of appeals has increased (average 1993/1995 - 14,815 per year to average 2003/2005 - 22,765) and the level of appeals allowed has varied consistently running at about 30-33% overall (2000 – 2008) (Department of Environment & Communities & Local Government). However the bland statistic hides very significant variations between sectors, size of scheme and location.

It is relevant to outline why the ‘inconsistencies’ may occur. The explanation lies in the scope and definition of ‘material considerations’. It is a matter for the courts to determine whether a particular consideration is a ‘material consideration’. However, it is left to the decision maker to judge the weight to be attached to any particular consideration. The generally accepted starting point for the debate is the broad interpretation adopted by Cooke J. in *Stringer v. Minister of Housing and Local Government* (1971) 1 All E.R. 65:-

‘In principle it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances’.

As a general observation the courts have allowed the scope of the concept of ‘material consideration’ to broaden over the years. In the *Great Portland Estates* case the Law Lords upheld a provision in the Westminster Local Plan which protected certain specified industrial uses in Central London from competition from more profitable uses which in the view of the Planning Authority did not add to the variety and character of Westminster. Lord Scarman’s judgement included the following:

‘Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control’. (*Westminster City Council v. Great Portland Estates plc* (1985) A.C.661) (Journal of Planning Law JPL108 1985).

Until this judgement by Lord Scarman it was generally held that individual circumstances were not relevant in the planning balance.

The end result of the widening concept of material consideration is that issues as varied as racial discrimination, public fears of danger or nuisance and financial viability can all be taken into the planning balance. Further examination of one of these shows how difficult the issues can become. In the *Westminster City Council v. Great Portland Estates plc* (1985) Lord Scarman went as far as to accept that public perceptions and fears even if not justified could be a material consideration: ‘Local fears which are not, in fact, justified can rank as part of the human factor’. Other cases go the other way; for example in *Newport Borough Council v. Secretary of State for Wales* (1998 Env.L.R.174) the decision was that

unless fears were substantiated by evidence they could not be taken as material considerations.

Of particular relevance to this thesis are the arguments and cases relating to consistency in decision making itself. In *North Wiltshire District Council v. Secretary of State for the Environment* [1992 JPL 955] there had been a previous refusal and an unsuccessful appeal. The issue was that the application site did not form part of the village so that the proposal could not be considered as infilling. A second application was allowed on appeal and came to the view that the site did form part of the village. However the Inspector did not explain why a different view was taken from the previous Inspector. The court held that consistency is an important concept. Mann L J. concluded at page 145:

‘One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration’.

The court went on to outline the areas for possible agreement or dispute and the matters to be reviewed, including policy, aesthetics and assessment of need.

In *Dunster Properties Ltd v. The First Secretary of State* [2007 JPL 1464 – 1474], the Court of Appeal held that an Inspector had failed to explain why he

was taking a different approach to a first floor residential extension in Kensington & Chelsea. One Inspector had found that the principle of a first floor extension was acceptable. However, the first Inspector did not like the design. The second Inspector took a totally different approach. The judgement held that it was not enough for the second Inspector to decline to comment on the total inconsistency between his view and that of his colleague. The case was determined in favour of the appellant developer because of the lack of reasoning in the decision. The first Inspector had found one thing and the second took a totally different view on a matter of principle, not detail design. The judgement concentrates on the failure of the second Inspector to give any reasons for not accepting the views of the first Inspector. This is a somewhat different point from the *North Wilts* case where the concept of consistency is considered. However, the import of the judgement is relevant to the consistency debate. First the judgement makes it clear that the Inspectorate must at least address as a material consideration the previous decision. In *Dunster* it was mentioned but no more. Secondly, if it is not to be followed then there should be a sound argument put forward to explain the departure. At least this second step concentrates the mind.

2.1.2 Conclusions on the legal context

To conclude on the implication of ‘material considerations’ it is evident that any matter relating to the character and use of land including those personal considerations that may result in land use issues are capable of being viewed as material. The case law has gradually advanced the importance of other cases in the process of decision making. One of the questions for this thesis concerns the legal basis of consistency in development control. Sometimes it is difficult to reconcile the accepted practice of every case on its merits with the accepted objective of consistency. Perhaps the most that can be advanced is that whilst every case must be considered individually, the pattern of decisions on similar

cases should be a material consideration. This approach is taking the point a little further than the position reached in either *North Wiltshire* or *Dunster*. The author believes this would have very significant results for practice. To achieve the objectives of this thesis, that is increasing consistency of outcome, may need the support of leading court cases. The cases reviewed relate to inconsistency on the same site but the aim of this thesis goes wider to achieve consistency in very similar instances on different sites. The question remains to be considered in the light of the examination of the decisions in practice. The next section of this chapter turns to consistency in its historical context.

2.2 Historical background

There are conflicting views between authors relating to the origin of the development control system in the United Kingdom. Booth (2003) argues that the control system was both a reaction to, and was influenced by, the history of building bylaws that go back to the Public Health Acts of the mid nineteenth century. On the other hand Crow (1996) has argued that the system came into being in the early years of the twentieth century and refers in particular to a memorandum produced by the then Town Planning Institute in 1917. One of the key themes is the balance between the private legal estate in land and the public domain. Set alongside this theme is the equally important consideration of trusteeship inherent in the great landed estates. Notwithstanding the current comprehensive planning system the landed estates continue with their own planning frameworks that may or may not reinforce the plans produced by Local Planning Authorities.

Two current memoranda of understanding (produced in the 1990s) are known in the Practice, one relating to the Devonshire estates at Chatsworth and the other evolved by Lord de Ramsey near Ely: both seek to reflect the local authority policies but extend private policy objectives as well. In the Chatsworth case the

document takes the form of a study of the evolution of the park and analysis of key views. It goes on to outline future plans for the estate. In the case of Lord de Ramsey the document is a village plan for Abbots Ripton near Ely highlighting the importance of the village stores, hotel and public house and the homogeneous design of new dwellings. The document has been so successful that new cottages and larger houses all reflect the input by the architect commissioned by Lord de Ramsey. There may be conflicts between the Lord and the planning authority: the debate is continuing in the context of the emerging development plan. The author is aware of two other cases where planning authorities have encouraged large estates or institutions to prepare their own master plans. The British Legion Village at Aylesford was invited to prepare a plan and Southampton University also was invited to do this and produced such a document.

Other national institutions have evolved their own systems and controls, for example the Faculty system that is administered by the Dioceses of the Church of England whereby consent must be obtained for alterations to the interior of Churches in religious use. Throughout the changes in development control there have been various motives. At times the objective has been primarily a public health debate. At times it has been aesthetic. In the nineteenth century, in Bedford Park (West London) the developer Carr prayed in aid Dr Richardson on the need for healthy homes avoiding overcrowding. Probably due to the waterlogged character of the area, Carr avoided basements and justified this cost saving by referring to the contemporary medical writing of Dr Simon (Harper Smith 1992).

2.2.1 Early forms of development control

The earliest evidence of some form of public control dates from the mayoralty of Hugh Fitz Ailwin in London at the end of the twelfth century (Booth 2003). The regulations defined nuisances that should be controlled. Several boroughs

developed a similar approach. More reliable evidence is found in the Assize of Nuisance of 1275: the regulations covered walls, gutters, windows, pavements and privies (Chew and Kellaway 1973). Actions were brought which regulated the relationship between freeholders. From the beginning of the fourteenth century, inspections were made to consider nuisances. The Inspectors were known as City Viewers and they continued to be appointed until the beginning of the eighteenth century. Considered in this light the current breakdown between the purely 'public official' and the private consultant who may undertake some public work is nothing new. Current examples could be the Consultant Planning Inspector or Engineers who work within some of the largest national engineering practices for both the Environment Agency and private clients.

The first detailed construction standards were contained in a Royal Proclamation of 1618. James I was encouraged to take a close interest in construction by Inigo Jones who was appointed Royal Surveyor in 1615. Jones then became a member of the Commission for Buildings which was charged with control on the construction of buildings on new foundations in the Cities of London and Westminster. The Act of Parliament was passed in 1593. It was a reaction to the apparent inexorable growth of the population of London from about 120,000 in 1550 to 650,000 in 1700.

Later in the seventeenth century controls were directed towards the appropriate rebuilding of the City following the fire of London in 1666. The Rebuilding Act of 1667 was concerned with heights of buildings and the width of the streets. The London Building Act of 1774 was a detailed system of control of new construction but it did not seek to limit the population of London. The administration of the Act depended upon Surveyors who held both private and public appointments. There is evidence of considerable flexibility in the interpretation and implementation of these early controls. For example, the Earl

of Bedford built on land north of the Strand in contravention of royal proclamations against building; they paid a fine and obtained a royal licence to retain the development and indeed continue with the development.

2.2.2 Development control in the nineteenth century

With the intense process of urbanisation in the nineteenth century a regulatory regime was seen to be necessary to improve the housing conditions of the majority. The earliest Acts were local, such as the Liverpool Building Act of 1842. The objective was to limit the worst aspects of ‘the courts’ which consisted of buildings placed behind the original terraced houses (Clarke 1920). An awareness of these abuses came from the writings of medical men such as Dr Duncan, quoted in Clarke: ‘It is in the ‘lodging houses’ – usually situated in the front streets, but sometimes in the courts – that the overcrowding of inmates is carried to the highest pitch’. Whilst Booth (Booth 2003) points to the 1858 Act there were a series of earlier Acts such as the 1846 Liverpool Sanitary and 1851 Lodgings Houses Act that marked the change to general national legislation. The circumstances of the time were brought to public attention in the writing of authors such as Charles Kingsley. The imperative was public health and the illustrious Dr Simon campaigned for both general Acts and specific local Acts. Little resulted from the 1851 Lodging Houses Act which was not a compulsory Act. Lord Shaftesbury and others continued campaigning and legislation took the form of the Artisans' and Labourers' Dwellings Acts of 1868, 1875, 1879 and 1882 were passed. The evolution of planning legislation is covered by Cherry (1974) and Booth (2003) but the consistency issue needs exploring. The second half of the nineteenth century was a period of standardisation, with legislation dominated by health issues. The urgent need to remedy public health problems formed an impetus to legislation that standardised development.

On the theme of 'consistency', arguably the flurry of building activity in the second half of the nineteenth century was a necessary and pragmatic reaction to the urgent challenge of urbanisation in the U.K. The legislation was an important strand in the genesis of the Town Planning movement but not the whole story. However it is relevant to the theme of the thesis, providing one element of thought. The philosophical debate about individual liberty was subsumed, perhaps temporarily due to the social and public health circumstances of the time. Booth (2003) places emphasis on the impact of the evolving law of covenants in influencing the eventual process of development control. The proposition is that separation of the rights of use, within the proprietary land unit, from its ownership formed the precursor for the concept in planning law of consent running with the land. The key legal case was *Tulk v. Moxhay* (1848). Moxhay purchased land in London (Leicester Square) knowing that the vendor from whom he bought had a covenant with the original owner not to build. The courts held that the covenant endured, thus separating the right to develop from the ownership of the land.

2.2.3 Development control in the twentieth century

Crow (1996) argues that the development control system 'was conceived through expediency, and, ignored by almost everyone it grew up in the cold, only to come in through the back door when almost everyone's attention was distracted'. Crow points to a "Memorial" submitted in March 1917 to the Local Government Board on the subject of 'Town Planning After the War' as the real starting date for the evolution of development control. Booth on the other hand views the Housing and Town Planning Act of 1909 and subsequent pre war legislation as evolutionary and indeed a reaction to the bylaws which were authorised by the 1858 Local Government Act and 1875 Public Health Act. The argument is that in resolving the public health issues of the rapid urbanisation of the nineteenth

century variety and discretion had been abandoned in favour of monotony. In support of this argument Booth quotes Aldridge (1915):

'But valuable as the new order and method were as compared with the chaos of development preceding the bye-law period, the sanitary reformers of the Victorian era left undone the most important part of the task..... They secured the provision of sanitary houses, but as a result of the limitation of their regulations, these sanitary house were placed together in what the President of the Local Government Board called in a picturesque phrase - "long rows of brick boxes with slate lids"....'

Schemes such as Hampstead Garden Suburb and Port Sunlight required specific private Acts of Parliament to allow departures from the bye-law standards. Canon Moore Ede was a member of a deputation in 1906 to the Prime Minister Campbell-Bannerman on behalf of the National Housing Reform Council:

'We ask that the by-laws may be remodelled, so as to give such elasticity as well, without lowering of standards of house building or sanitary requirements, encourage variety in planning of areas and houses' (referred to by Aldridge 1915 pg 175).

The issue of consistency versus discretion is reflected in the Prime Minister's response:

..... 'again it is said - Let the building bye-laws be made more elastic; on the other hand, if they are to be useful they must be strict.....' (Aldridge pg 181)

The 1909 Housing, Town Planning etc Act allowed Local Authorities to prepare schemes that would have regard to sanitary conditions, amenity and convenience in connection with the layout out of land and neighbouring land. The schemes

CHAPTER 2
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were permissive and only thirteen schemes were submitted for approval by the Local Government Board. The interesting element in the history for this paper relates to the inherent degree of discretion and flexibility. Booth (2003) draws attention to the debate (in the early 1900s) between the Local Government Board and Birmingham Corporation. The Corporation sought the Board's agreement to depart from standard dimensions laid down for building lines. However the Board only gave consent to Birmingham for a lower requirement than in the standard. The ebb and flow of the debate between local and Central Government has continued to the present. In another project (in the 1920s) involving the development of King's College, Cambridge lands in the Ruislip Northwood areas, the clause inserted in the eventual scheme included a power for the Local Authority to seek alterations which had to be reasonable in respect of design and materials. Punter (1986) has argued that this was a major historical milestone in the evolution of control in practice. The issue of planning authorities involvement in design issues has been a particularly vexed debate and is worthy of a separate study. It is an ever changing canvass for the debate on consistency. From initial work at stage one of the thesis (see App 1 Paper 3) it is a particularly difficult subject for analysis.

However this was a complete change from the previous advice. As will be argued in the next part of the thesis relating to Country Houses the discretionary debate results in widely differing interpretations of policy. The argument about good design and impact upon amenity gave the then Planning Inspector Thomas Adams great concern and he reported thus following a Public Inquiry into the Ruislip scheme:

'I am doubtful if the Board can approve the clause either in its original or revised form. The suggestion is to set up a censorship of taste in regard to the elevations of buildings'. (Referred by Booth 2003).

As it is not the aim of the thesis to review previous Planning Acts the primary sources such as Circulars and Ministerial policy are relevant to the consistency debate. One interesting side issue in this part of the history is the role of the Royal Institute of British Architects (RIBA) who were nominated as an arbitrator in disputes on these aspects. From a Practice point of view a recent development agreement drawn up by the Practice has included this arbitration arrangement that was used nearly one hundred years ago. The inclusion of such it is hoped will allow the design debate to be handled by both a nomination of the RIBA and the national advisory body on the built environment (CABE) rather than argued in the context of local government politics or on appeal.

The 1909 Act was seen to be unhelpful in bringing forward the development that was needed to meet the post war demand for more housing. A contemporary author referred to the result of the Act being to create a housing famine with the result of the Board's regulations being for 'delay and against progress' (Nettleford 1914). The 1909 Act was superseded by the 1919 Housing, Town Planning Act that liberalised the control process, under Section 42 the Local Authority did not have to obtain consent from the Local Government Board to prepare a scheme. Indeed this section authorised owners of an area for which the Local Authority was charged to prepare a scheme so the pendulum swung towards flexibility. The 1919 Act was followed by the 1932 Town & Country Planning Act which was innovative in several respects. It was explained by Circular 1305 of 1933 which was significantly entitled 'Town and Country Planning Act' without the inclusion of housing in the title.

Whilst the appropriate date of the start of modern planning in this country is debated between Professor Crow (claiming the 1909 Act) and Booth pointing to the long history of land use control going back to Tudor times one can legitimately propose the 1932 Act and the seminal Circular 1305 of 1933 as a

major milestone in the evolution of the planning system. The former Senior Partner of the Practice started his career under this Circular and always maintained it represented one of the most cohesive statements of policy in a liberal market economy. On balance the arguments for an evolutionary explanation of the history of planning would seem more plausible with some high points along the way and the text of this primary source is one such point.

Certainly in the context of the thesis the 1932 Act and associated Circular of 1933 displayed a distinctly liberal and permissive approach. First the Circular emphasises the continued need for private initiative and enterprise and describes the need for a 'broad framework'. Secondly, for the first time authorities were enabled to include areas that were already developed within the scheme (see page 3 of the Circular). However it was a permissive approach and the Circular coined the phrase 'static areas' and argued against the inclusion in plans of areas that were unlikely to change. This permissive approach to areas was continued throughout until the requirement in the 1990s to produce full plan cover for England and Wales. The Circular and Act very much aim towards elasticity, indeed one paragraph in the Circular states 'the interests of owners are safeguarded by the Act, which provides that an application for particular development may be refused only if certain specified conditions prevail..... Reasonable elasticity must be permitted and due regard paid to the interests of owners' (Circular 1305, p 7). The issue of design was largely taken out of the debate by the clear statement, 'Taste is not a matter for dogmatism. The powers should be used for preventing what may reasonably be regarded as outrages' (Circular 1305 p 7). Elasticity meaning variety of built form was to be the key to practical planning both in detailed applications and zoning. 'The Ministry have always insisted on reasonable elasticity in schemes Needless difficulties will arise if unreasonable rigidity is attempted' (Circular 1305 page 16). The Circular ends with the flourish:

‘Authorities should not be content with an attitude of negation aimed at preventing what is injurious to the community..... but should be constructive ready to help developers with suggestions how land may be put to better use’ (Circular 1305 p 19).

Underpinning planning decisions in the period up to the war was the key assumption that consent should be granted unless there was a clear cut objection. Indeed in areas of interim control an application was deemed to be consented (the reverse of the present situation) if no decision had been made after eight weeks. It is wrong to think of the planning debate starting after 1947, because there was much planning activity before the war. The planning work was undertaken within the Ministry of Health reflecting the historic relationship between health and planning for sanitary purposes. Study of primary sources such as successive annual reports of the Ministry of Health on Housing and Town & Country Planning for the pre war years reveals appeals being allowed favouring the ‘elasticity’ so uppermost in the Circular accompanying the 1932 Act. Despite the search for flexibility there were problems with the 1932 Act in that if an authority with an adopted scheme wished to approve a proposal that was a variation of the adopted scheme then a modification order had to be made to the adopted scheme. This was slow. From study of the Practice archives, it is evident that in the pre war planning system the issues of flexibility were a vital part of the planning debate.

The background to the 1947 Act included reports of Barlow, Scott and Uthwatt, the first concerned with the distribution of industrial population, the other two with planning and compensation. The key section of the 1947 Town and Country Planning Act was Section 14 which required authorities in determining applications ‘to have regard to the Development Plan and to any other material considerations’. This section was retained in subsequent Acts with some

amendment. After the 1947 Act Central Government put forward highly prescriptive recommendations for plan making, drawing upon the model clauses used in the 1930s. Circulars 59 (1948) and 63 (1949) produced by the Ministry of Town and Country Planning in 1948 and 1949 prescribed the form and content of plans, with little room for deviation.

Throughout the debate successive Ministers have preserved the philosophy of liberalism and latitude within the decision making framework. Dame Evelyn Sharp was Permanent Secretary at the Ministry of Housing in the period following the 1947 Act but had been in the planning field prior to the Act and indeed worked on the 1932 Act. In a seminal address to the then Town Planning Institute in 1964, (Sharp 1964) she made three substantive points, first that the planning decisions had now become the servant of many different departments and disciplines. It was seeking to implement social and economic policies. Secondly she was outspoken in her denunciation of too much control; she said:

‘I firmly believe myself that good quality will be evolved only by allowing the maximum freedom to designers. And if I have one reflection on planning that stands out in my mind it is that the planners try to interfere and control too much But I am convinced that this is something we have to fight against – the temptation to use the enormous power of planning to deaden initiative, to prevent change, to preserve things as they are, to take no risks’.

Lastly she anticipated the reform of the Development Plan system.

These issues remain in current debate. Central government generally favoured a considerable degree of freedom in planning decision-making. process and within the planning process. The debate that followed the address by Dame Evelyn

Sharp was illuminating. On the one hand some such as L B Keeble detailed what can only be described as planning horror stories justifying in his submission the total redirection of the Development Plan system. On the other, contributors expressed concern about too little planning control and the mediocre character of much development. In reply to the 'control' lobby she stuck out consistently for latitude in decision-making. [The practice's former Senior Partner was present on the occasion].

At a practical level a series of Circulars and national guidance notes expressed this concern for flexibility. Circular 69 of 1949 produced by the then Ministry of Town and Country Planning was entitled 'Town and Country Planning Act 1947 – Planning Appeals'. The preamble to the Circular states '..... if it were allowed to become the practice for too many of these cases to come to appeal this would put a severe strain on the whole machinery of planning control' It went on to explain the presumption in favour of development 'In cases where no serious issue is involved and where the authority can produce no sufficient reason for refusal, the presumption should be in favour of granting the application'. (paragraph 5) It continued, 'recent decisions have shown that there is a tendency on the part of some authorities towards too rigid on application of planning principles (paragraph 6 App.3). This approach was reiterated in the Ministry of Housing and Local Government Circular 61 of 1953; this contained the clear statement 'Development should always be encouraged unless it will cause demonstrable harm to an interest of acknowledged importance'. Assuming the continuation of this approach over the years it is understandable that in each class of proposal one finds a pattern. This can result in a self generating pattern of decisions. National guidance became available not just in the form of Circulars but also in a series of Development Control Policy Notes (DCPNS). The cardinal principle of each case being considered on its merits was enshrined on the frontispiece of each of the notes. DCPN1 encapsulates the Ministry approach, paragraph 10 reads:

‘Development which accords with the provisions of the Development Plans still needs planning permission and will not necessarily get it; while development which does not accord with the Plan may be permitted’ (DCPN1 1962)

2.2.4 The search for efficiency and speed

The Permanent Secretary’s concern (Sharp 1964) about Plans being too ‘fussy’ may have been a factor leading to the appointment and report of the Planning Advisory Group (PAG) who in 1965 recommended the Structure & Local Plan system was in force since the 1968 Act; now it has been superseded by the Development Plan Framework. The Structure Plan Authority was required to produce a Plan but the District Councils were not obliged to do this. There was little debate about the consistency issue in the PAG report, except for a fleeting assertion that the old town map system resulted in consistency in control. The issue of consistency has serious implications in terms of political economy and it becomes a political issue. In the period up to the PAG report there had been a general consensus, perhaps towards modest reform but not in the direction of radical action. However in the 1970s George Dobry QC was asked to report on the Development Control system. He found that the system was ‘slow, even at times desperately slow’. (Dobry 1975 Section 2). With the change in administration in 1979 any organisation that was apparently preventing enterprise was open to question. This period of government has been analysed by Thornley and others (Thornley 1981).

Thornley (1981) observes that there is little specific mention of town planning in the writing of the late 1970s and early 1980s. However the neo-liberal approach attacked the perceived bureaucracies that prevented enterprise. It could be thought that the planning world would be within this group. Thornley outlines

several reasoned academic contributions to the debate. However it is surprising that the very specific Hayekian critique of random administrative action (Hayek 1976 p 212) is not developed as an argument to review town planning decision making. The general concern is evident in the literature but the specific concern that has prompted this thesis is not developed. On the other hand it could be argued that the scope and latitude of the decision making process accommodated the individualism of the era. On balance this would not be a correct interpretation of a Hayekian critique because it is the issue of certainty and the minimisation of the administrative decision that is uppermost in the approach. Whilst the rhetoric was evident, the changes to the planning system that were introduced were far less radical. Possibly the Thatcherite approach impacted most through the general Circular on Development Control of 22/80 and Circular 14/85 on employment. The latter stressed that the Development Plan was only one factor to be considered in coming to a planning decision. The first reminded Local Authorities to always grant consent unless there are clear cut reasons for refusal. Design was largely taken out of the debate, however the consistency issue was not addressed. Brand & Williams (1984) wrote in the Estates Gazette that 'no Circular emanating from Marsham Street in recent years has evidenced the changes in principle and emphasis that have occurred in Central Government thinking about the role of the planning system as much as Circular 22/80'. Issue is taken with this view, it fails to acknowledge the evidence from the past of the revolt against the bye-law housing of the mid 19th century, and the stress in the interim control days and after the 1947 Act of the need for a presumption in favour of schemes. Indeed there was a reassertion of this approach but no more. The issue of certainty and consistency was not addressed and in the opinion of the author the changes were not as radical as argued by some writers (Brand & Williams 1984).

If the Thatcher period had sought to simplify the planning system the events of 1991 represent a total change of direction. Indeed they represent one of the most significant swings to state control ever seen in land use planning. On 16 May 1991 the opposition tabled an amendment to clauses in the Planning and Compensation Bill that would give greater weight to the Plan. However Sir George Young (Secretary of State) went further than requested, hence the resultant amendment in Section 54a whereby any development must be 'determined in accordance with the Plan' unless other material considerations indicate an alternative result. This approach was not favoured by the senior civil servants (a point confirmed in informal conversations with the Practice). The general presumption in favour of development was subsequently withdrawn. Meanwhile the number of appeals made in England has risen. The total number made rose from 16,208 in 1980 to 22,897 in 2007/2008 (Planning Inspectorate annual statistical reports). Articles in the professional press noted the change as the most significant event in planning since the 1947 Act (Edwards & Martin 1991). There were warnings in the professional press about the implications of not having proposals in the plan. On the other hand the then Chief Planning Inspector was more relaxed about the interpretation of Section 54a (Crow 1993). In addressing the Town & Country Planning Summer School he said:

'The meaning of Section 54a is clear, despite what some legal commentators might have us believe. We simply do it. There are two steps. First we consider how a proposal before us measures up to the plan, and form a conclusion. Second, we consider the other material considerations, and ask ourselves if they override the conclusions about the plan. How much weight we put on the conclusion of the first step against the material considerations identified in the second is a matter of policy But neither statute nor policy rule out the practical application of common sense in unusual or exceptional circumstances'.

The Chief Planning Inspector commended the ‘enormous amount of discretion’ that is given to decision makers in planning.

In May 2004 the Planning and Compulsory Purchase Act was passed. The main changes are the Spatial Regional Plans instead of the Structure Plans and the Local Development Frameworks. The key point is that the Plans are now divided into the Core Strategies and the related documents. The Core Strategy is meant to remain valid for a longer period and the subsidiary documents can then be altered without changing the Core Strategy.

2.3 **The consistency issue in a comparative context**

Booth (1996) has compared the planning systems in Europe, particularly in France, the USA and Hong Kong. The theme he examines in the context of these various planning systems is the issue of discretion.

Booth (1996) in his conclusions suggests that the debate can be distilled into a series of basic points thus:

- Systems for controlling development need to recognise that absolute certainty is unobtainable, but should be able to define the limits of uncertainty.
- Entirely open-ended systems of control nevertheless depend on standards and criteria that may not be fully articulated. Unwritten rules and practices will be devised to lessen the difficulty of taking decisions.
- Negotiation and bargaining are an essential part of the development control process and will take place no matter how rigid the framework was within which the decisions are made. Development control systems need to ensure that the parameters of such negotiations are clear and the process not obscured.

- The presence of discretionary decision-making of whatever kind is inevitable in development control. Criteria for evaluating the use of discretionary power are essential.
- Both the basis on which decisions are taken and the process by which they are taken need to be reasonably accessible for users of the system.
- Mechanisms for ensuring the accountability of decision-making need to offer the possibility of debating that appropriateness of decisions.

These general conclusions emerge from analysis of the various control systems. Booth points to the French system which aims to achieve certainty but this is not always the result. Booth suggests a tendency for the British system to be moving towards the French although this was a tentative possibility some ten years ago.

2.4 **Conclusion**

This review of the place of discretion in the evolution of the planning control process has shown a continuous ebb and flow of the debate. However the need for consistency has not been one of the main aims in the various changes of the planning system. The thinking behind development control originates in the surveyors and city viewers of the seventeenth and eighteenth centuries; in the nineteenth century the impetus came from public health concerns and resulted in excessive conformity, perhaps excessive consistency. The twentieth century saw the evolution of the planning system as we know it. The work of the senior civil servants in the evolution of policy has been shown to be very significant. The contribution of Dame Sharp (Sharp 1964) and Senior Inspectors in cautioning against rigidity in the planning system has been an important theme. Their policy contribution has been made in successive departments because the

planning work has moved from the Ministry of Health through Housing and Environment to the current situation in the Department of Communities and Local Government.

Should consistency of decisions be a desirable objective? It can be argued that discretion is the strength of the system. However if Hayek's warning (Hayek 1976) concerning the crucial issue of modern times is taken seriously, namely 'the little gap at which in time every man's liberty may go out' then there is an issue. From an Austrian liberal perspective the greater the process relies upon general legal principles, the less likely the dangers of very random administrative action. It has shown that despite the political debate from 1980 onwards there has been little close application and argument of these principles. Political history is not the main subject of this thesis, but planning policy is intricately related to political process. The two following chapters consider the relevant literature and appropriate methodology.

CHAPTER 3

PLANNING THEORIES

3.1 Introduction

This thesis is undertaken against the background of the various and often conflicting planning theories. The literature in the field is very considerable. This chapter has two objectives.

The first is to suggest ways in which the results of the research may relate to the various schools of planning theory. The second is to perhaps mark a preference between schools. Allmendinger's review of planning theory provides an overview (Allmendinger 2002) and starts the exploration of theories by asking the basic question – what constitutes theory. He puts forward the following suggestions to explain theory: 'abstracts from reality a set of general or specific principles to be used as a basis for explaining and acting with the theory being tested and refined if necessary'. The point is then made that theories are not objective and even in the pure sciences long accepted theories may not apply in all circumstances. One approach is to consider all knowledge fits into a paradigm a particular view of reality at one time (Kuhn 1970). The paradigm will change with new knowledge, so there are layers of knowledge that illuminate the world. It is a matter of argument whether everything becomes open to relativistic questioning, on this basis nothing is fixed at all. In terms of this thesis one of the aims is to try to reduce the unknowns to an extent and produce some generally accepted criteria. However even using the words 'generally accepted' obscure a range of assumptions that are made in every decision in planning.

Judge, Stoker & Wolman (1995) identified six categories of theory, described in Page 2 of Stage 1 (Appendix 1):

- Normative – suggesting how the world should be organised

- Prescriptive theories – theories of how to achieve a particular aim and the example quoted was cost benefit analysis
- Empirical theory – relating cause and effect of relationships such as retail impact studies based upon central place theory
- Models – but this is surely covered in empirical theory
- Conceptual frameworks or perspectives – relating to points of view. The example given is the Marxist perspective
- Theorising generally – a category for general discussion and ideas

Critics of all theorising would argue that theories only reflect the outlook and ‘prejudice’ of the theorist. This is the approach of the relativist. The argument is that there are no absolutes. Allmendinger advances an additional category of theory which he terms ‘discourse’. The examples he takes is the Green Belt. For example for some, Green Belts protect the countryside but for others they cause long journeys that could be avoided with more housing near their places of work. Thus the same concept can be described in a negative or positive way depending entirely on attitude. The author suggests that rather than a separate category of theories these insights should assist in the interpretation of theories. They assist in considering the weight to be put upon theories.

Within this approach some authors stress that power politics comes into the weight placed on normative elements in the planning process. The debate about theories is intimately connected with a related and complex debate in planning about ‘discourse’. Discourse broadly covers the intangible aspects of relativism.

This chapter places the overall research into a theoretical framework. Furthermore the studies are revealing an opportunity to develop theory in a useful way. At this stage the theory debate reveals a mixed pattern including post positivist theories. The positivism of the 1960s and 1970s gave way to the situation today of a variety of theories of planning, some of which have been referred to above. A further theme is the relationship between planning theories and professional practice. Allmendinger explains this by reference to the relationship of planners to the government. He points out that the American City Planning Institute (ACPI) was established in 1917 and the Town Planning Institute in the UK was founded in 1913. Both bodies came into being to meet a groundswell of concerns and the association of individuals who were involved in addressing these concerns. Some authors such as Reade (1987) argue that the planning movement was born so easily that it arrived without any need for a theoretical background. This chapter argues strongly for an integration of the discovery theory of planning within the framework of the proprietary land use unit. As far as can be seen from the literature this approach is new. Whilst this chapter considers the value of the main analysis of criteria in planning against each of the main approaches to the theory the chapter leads to an integration of approach in the discovery theory of Kirzner (1985). The remaining part of the chapter tests the value of criteria assessment in relation to each major approach to planning theory.

3.2 Theories of planning

The purpose of this section is to consider how the study of the decisions whether in connection with Country Houses, Green Belts or other residential decisions relate to the theories of planning. None of the authors of the research reviewed in the next chapter on methodology relate their work to any particular theory; the professional doctorate places emphasis on the research design being based in

practice rather than extant theory. On the other hand, practice can be illuminated by theoretical perspectives and a knowledge of relevant literature. As the project relates to decision making on applications and appeals the test may be how the various theories can accommodate and relate to the myriad of planning decisions made every year in the planning departments and Inspectorate. Rather than describe each theory in detail this section relates the theories to the subject of the project. Only a brief summary of the theory itself will be recorded as the theories are more fully set out in Paper 2 of Stage 1 (Appendix 1). As this thesis is practice related it does not seek to concentrate on planning theories but it would be wrong to be unaware of the related literature.

The systems and rational planning theories (McLoughlin 1969) of the 1960s and 1970s were evolved from the biological sciences. The theory is that with enough information a whole city or region can be modelled. In practice many of the tools used in the process involve significant subjective choices. Even if models are produced with alternative options for the evolution of the city or region it is essentially a political task to opt for one or another. The proposition advanced in Paper 2 (Appendix 1) was towards Discovery Theory being the most helpful umbrella concept for the thesis. Many of the decisions that are made in the planning process lack the rational element. By this it is implied that the decision is without full knowledge of all the relevant circumstances, the players in the planning process operate with imperfect knowledge. Their lack of knowledge will relate variously to other comparable cases, perhaps the history of the application site and the policies and politics of the Officers and Members who will deal with their application. They are thus to an extent in the same position as an entrepreneur operating in a free market (Kirzner 1985). The rational systems view of planning would be comparable to an economic system in which all the prices were in equilibrium and decision makers had perfect knowledge. It is not a state that the work so far in the decision making process in planning would support.

A brief comment on Marxist planning theory may be adequate. As recorded in Paper 2 of Stage 1 (Appendix 1) the Marxist planning theorist (Harvey 1989) suggests that towns and cities are spatial accumulations of capital and excess profit. The theorists do not explain the decision making process in planning. It could be argued that some aspects of Green Belt policy are now used to protect those that have property from change and a diminution of their amenities. This may be a result if not an intention of Green Belt policy. However the aims of the policy originate in efforts to improve the circumstances of those living in metropolitan areas, they were not introduced by the landowners in society. Similarly emerging policies relating to Country Houses and special groups in society are a reflection of architectural and essentially liberal attitudes to control. Possibly it can be argued that aspects of the behaviour of some groups in society can be interpreted by elements of Marxist theory.

The third group of theories covers Pragmatism, Incrementalism and Advocacy Planning. Allmendinger (2002) proposes a school of thought that is separate from that which he describes as the 'New Right'. As the title suggests the practical approach involves trial and error. It can be argued that this is essentially the approach of the Austrian Discovery school of Kirzner (1985). Advocacy planning is certainly an evidently important feature of the planning scene. Indeed the Practice was based upon this process although in the form advanced by its major proponent Davidoff (1965) it relates to political movements. The example of work against clearance areas (McKie 1971) is an example. Certainly advocacy planning is a valid element in the process. However it does not explain the process of the determination of the majority of applications, but gives an insight into the work of some planners sometimes. The Practice certainly is involved in the advocacy of a cause which may relate to a particular development or a policy. As an over-arching theory advocacy planning only describes a small proportion of planning work.

Collaborative planning places emphasis upon dialogue between participants in the planning process. The foremost advocate of this approach is Patsy Healey (Healey 1997). The key characteristics of the process include:

- Planning and Planners should seek for levels of mutual understanding using comprehensible language
- All information should be admitted to the debate-
- All parties involved in the matter should be admitted and encouraged to participate
- All parties should expect to see their attitudes change

Certainly the approach has value and in some instances one can see the process working, but it does not cover the whole field of planning activity. However as mentioned above in the debate with authors with a mainly statistical approach (Brotherton 1982) the insight is helpful to this thesis; it examines the complexity of the process of decision making.

As concluded in Paper 2 (Appendix 1) many of the theories of planning offer an insight under some circumstances to aspects of the planning process; there is an argument to join two distinct concepts in economic literature with perhaps an element of perception psychology. These concepts are Discovery Theory advanced mainly by the Austrian school of liberal economists and secondly proprietary land use theory. The key events in the decision making process whether it be for a Country House, a Green Belt scheme or other residential development must be analysed.

3.3 **Discovery Theory**

The key element of change is the decision by an owner, a planner or special interest group to promote change. To transfer the concept into economics one traditionally would argue that the decision is one of moving away from an equilibrium situation, although the very existence of equilibrium is a concept capable of demonstrable challenge. This thesis is not concerned with either supporting a rigid adherence to such theory or, for that matter, arguing against in the way that Shackle (1972) has done. The various theories reviewed earlier do not, it is argued, adequately explain the process of change and do not relate to an over-arching theoretical position. In basing the approach on Kirzner the microeconomic element must be applied to change in the land use context, the vehicle for change will, it is argued, be the proprietary land use unit.

The key element in the discovery process is seen by Kirzner to be ‘alertness’. He states it thus:

‘The genuine novelty I attribute to the entrepreneur consists in his spontaneous discovery of the opportunities marked out by earlier market conditions (or by future market conditions as they would be in the absence of his own actions). It is the opportunity for pure profit that those market conditions made possible that switches on the alertness of potential entrepreneurs, generating entrepreneurial discovery’. (Kirzner 1985, p 11).

Kirzner then explores the nature of entrepreneurial alertness and argues that it is not a conventional economic resource, rather it is part of the decision making process itself. It is costless, unlike other economic resources. Alertness and perception of opportunity are unlike say technical or managerial skills, they have an element of the ‘reflection in action’ which was examined in the context of professionalism in Paper 1 of Stage 1 (Appendix 1).

The next issue to consider is why does entrepreneurial alertness sometimes remain untapped, because it cannot be argued that there is a limited supply of the concept. The explanation may lie in the institutional framework. This is where this theory of change relates to planning and why the criteria may be vitally important to processes of change in society. At this stage in the analysis an example from the Practice may help. A well known sports car manufacturer started in a small way in a workshop at the back of his house situated in a pleasant North London suburb. The business went well, the entrepreneur had seen a niche in the market and had been alerted to it. Then enforcement action was taken against the use and the company faced problems, profits dipped and new research was held back. After three years of struggle the business was reprieved on appeal for a breathing space and enabled to find time to relocate. It was chance that the entrepreneur found the advice to obtain the breathing space, indeed early conventional wisdom from his established advisers had suggested closure. The question remains however – why did the survival of the business depend largely on the chance of getting that advice? How many acceptable entrepreneurial projects have been lost meanwhile because there was no such ‘chance’? Why was the outcome a matter of lottery? Kirzner asks what institutional frameworks are best suited to tap the reservoir of alertness, and the corollary for this thesis is what planning theory, and in turn what legal framework, will allow for this alertness and opportunity?

The alertness then leads to the discovery. This is an important aspect of the theory. Simply being alert is a sense of mind and of attitude, doing something about it in an economic functional sense is another. The event of discovery takes place not at the time of equilibrium in the price structure but in disequilibrium.

In disequilibrium prices do not co-ordinate decisions but it is when these dis-coordinated prices are available that the discovery may occur. The Austrian economists place emphasis on the importance of human action as opposed to the concepts of logical, rational economising as articulated by Lord Robbins. Von Mises (1949) in the classic 'Human Action' argues that each of us is pursuing an entrepreneurial function, facing risk and uncertainty and helped by the concepts of alertness and discovery. He cogently argues that even the self sufficient landowner who anticipates the seasons, discovers the best soils, is displaying the function of entrepreneurial action. All these insights display an approach removed from equilibrium. They explain human action, the restless change in the market and this applies to a theoretically free market or to a regulated market.

Some additional relevant aspects of the decision process will be explored including uncertainty and error. The two are connected. Kirzner's (1985) insight laid emphasis on the importance of the discovery of error. Kirzner takes the example of Robinson Crusoe on his desert island catching fish. Suddenly Crusoe realises he can use his time much better by making a fishing net and then even better, building a boat to catch fish in areas where they congregate. By his alertness, his discovery and his acceptance of error he has displayed a series of attributes that are consistent with the entrepreneur. He produces pure profit from that moment of discovery and incidentally refutes Menger's law of satisfaction which argued the possession of goods or services are valued according to the satisfaction obtained – quite clearly at the moment of discovery Crusoe is far from satisfied with what he has been doing. So to act in this way is to identify opportunities overlooked until now.

As events unfold the uncertainty of the future is analysed by the consideration of error and information. The entrepreneur endeavours to seek out the future but

cannot know and make his or her assessment of the future correspond with events. The key elements of alertness and reflection on error help to this end. The achievement is pure profit; this is often financial but not always. Without this process it would be pure luck and this is not the result of analysis. Can this approach apply to the decision making process in planning?

The case for the entrepreneur and the characteristics described above help resolve some of the other issues raised by Hayek and Von Mises. Hayek's spontaneous order is seen as the natural and desirable ordering for society and economics but how does the mechanism of change work in the natural order or Kosmos. The Greeks had words for the natural order being the Kosmos but the forced or created order was the Taxis. The implications are that the changes occur in the myriad of entrepreneurial events displaying alertness, discovery and postulating. If this analysis of economic change is accepted then the key issue is what circumstances maximise such activity and this relates to non financial activities as well as to business affairs. The suggestions include:

- free and open economy that permits equal access to entrepreneurial activities
- guarantees of ownership of property legally acquired
- stability of institutional practices that allow for aspects of the above to be settled
- the market process must not be controlled to prevent discovery. As the entrepreneur will not know what is to be found from the market, or even to know in advance the results of market involvement, therefore market violation will have unknown consequences.

3.4 **Overview and relationship of theories to the thesis**

This review of various theories of planning reveals individually useful insights. However none seem to take a cohesive holistic approach of an overall

established theoretical model. Each offers something, perhaps an insight into a process or a view of planning. The exception would be the Marxist approach: at least it could be said that it is holistic. The rationalist systems theory is useful in that it offers certain tools for practical planning problems. The submission is made that a full understanding of the key concepts from Austrian theory will reflect processes in the real world and such an approach could lead to an 'Organic theory of planning' which will incorporate a whole approach to change. Furthermore, the approach incorporates elements of the Discovery theory of Kirzner and operates through the proprietary land use unit thus adopting Denman's seminal analysis of the property market mechanism (Denman 1971). Allmendinger describes the broadly Austrian approach as 'New Right' and writes it off thus:

'Overall, New Right theory helped identify many of the problems of civil society be it economy, bureaucracies, the role of the state or whatever. As an explanation, like Marxism, it gave us a useful critique but its application demonstrated its inherent contradictions and shortcomings. Luckily for planners, the practical application of theory was hampered by these contradictions'.

(Allmendinger 1992)

Allmendinger claims a wide application of such theories in the 1980s and 1990s but the land use policies changed little as is evidenced by the debacle over some alterations in Green Belt policy in the early 1980s. The then Secretary of State proposed a review of Green Belt boundaries, to release certain areas that were neither green nor acting in the role of a green wedge or lung for any urban area while adding areas that performed some genuine Green Belt function. The uproar that resulted was deafening and a rapid retreat was made with emergency debates in the Commons (Thornley 1991 p 213). Modest efforts at reform continued with the Labour government encapsulated in the new Planning Policy

Statement Number 3 (2002). Secondly, Allmendinger's description of such a school of planning as 'New Right' can be disputed as there is nothing particularly new about the underlying theories. The approach is an adaptation of classical liberalism, evolved over the last eighty years. The categorisation of the New Right theory covers several different theoretical perspectives, namely public choice theory, liberalism and conservatism. There is a difficulty in this approach because those who espouse the liberal or neo-classical school liberal approach have very little in common with the traditional Conservative approach. Indeed some of the strongest apologists in the neo-classical school (Seldon 1990 p 373) jettison any alliance with the traditional Conservative elements.

Pennington's contribution (2002) usefully relates an Austrian perspective to some of the other theories such as collaborative planning as proposed by Healey. The Austrian school of Hayek and Kirzner paint a very realistic picture of society. Hayek's fundamental tenet is the spontaneous order of societies. The spontaneous order is defined as a:

'state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest'
(Hayek 1982 p 36).

Hayek emphasises the importance of actions that are tacit, whose explanations in society are non written or even actions that are not capable of verbalisation. The Austrian approach is critical of the pure neo-classical liberal economist where there a high degree of rationalism in the reaction to market indicators and makes choice difficult to perceive. As was debated earlier (Kirzner 1985) important additions explain error in the Crusoe context and perception. Individuals become

human beings in the Austrian approach who have choices, perceptions and make errors. At a subjective level it is an approach that is attractive. As Pennington (2002) explains, the market economy is a social process that is understandable and relates to trial and error. The Austrian approach is severely critical of centralised planning due, inter alia, to imperfect information and general market discordance. This also involves exchanges of ownerships in both proprietary land use units and other forms of ownership. Advancing the Organic theory of planning one step further the proprietary land use unit itself becomes an element of change and mechanism in which (not by which) the discovery process operates, as a shell, or container for the process, not the process itself.

As Pennington (2002) explains, the Austrian perspective explains why the often ambitious aims of planners are not realised in the event. There is always a new plan or a better plan that will robustly produce the results. Events, however, have a nasty habit of catching up and outpacing the great enterprise. The case quoted in Paper 2 (Appendix 1) related to some fifteen miles south of Birmingham. At the time of local government reorganisation in the 1970s the just appointed Chief Planner announced at a major Public Inquiry defending a refusal of planning permission on grounds of prematurity (ie premature to the Plan) that his first task would be a new Plan for Bromsgrove. Some thirty years later the Planner had retired but there was still no Plan for Bromsgrove

As outlined above the unit of change is the proprietary land unit; it forms an element within that group of entities or units that go to form society (Denman & Prodano 1972). The proprietary land unit is somewhat similar to the firm, similar only in that it is an element within the economy. It would be wrong to argue that the proprietary land unit is a theory of planning by itself. The land unit will become the unit or vehicle for exploration of the themes of this thesis, including the theme of change and the psychology of aspiration.

Discovery theory forms a framework that accommodates the processes detailed in the Cambridge residential case study explained in Paper 1 of Stage 1. When the Paper was written it was anticipated that the thesis would cover the practicalities of residential development, such as separation distances between buildings, overlooking and issues of general design. The description of the case in the early Paper highlighted the debate between a Planning Officer and Developer.

The Cambridge case involved a redevelopment of a site suitable for residential purposes in Cambridge. The Planner wanted to see the scheme developed to meet an intense housing need in the city: this was also the aim of the Developer. However both sides kept their information and real intentions so close that they failed in the end to achieve their aims. Schön would describe this the 'Frame' in which they chose to operate. It is one of four areas of research for planning predicated by Schön:

- Frame Analysis
- Repertoire Building Research
- Research in methods of inquiry
- Research on reflection in action

The thesis is primarily but not exclusively concerned with Repertoire Building and Research on reflection in action.

In terms of theory the Frame analysis is the mechanism for discovery. Each side is looking to see what can be achieved. This thesis is not concerned with the principle of development of large housing sites from green fields. Such decisions involve political decisions at the national level; essentially it is concerned about the way in which professionals approach the negotiation of planning permissions for sites that are accepted for development.

The Model 1 frame postulated by Schön is followed where neither the developer nor the planner come out into the open with the full facts. They hold back information from the other side that will ultimately determine whether the project goes forward. The planner comes to the meeting with conflicting aims. On the one hand he quite wants to see a good development go ahead. On the other he is only an intermediary between the Development Board and the developer. Schön describes how the developer will seek assistance and negotiate but without appearing to do this. The whole process is self-reinforcing. In the British context this frequently happens when the applicant for planning permission meets the Planning Officer. The applicant will usually be accompanied by a professional, often a planning consultant. The role of the Planning Officer is quite ambiguous, indeed it is ambiguous in various ways. The Officer is given a professional judgement on a scheme and at the same time representing the final decision making body, namely the Planning Authority. The planning consultant may be in a somewhat similar position with personal professional views but also representing a client.

The Mark One behaviour model is characterised by seeking:

- Achievement of the task
- In a win/lose situation trying to win
- Trying to keep the process as rational as possible

As part of the process the professional will seek protection so that there is no exposure to a total loss situation. This will inevitably involve a lack of openness if not absolute economy with the truth. In the case study by Schön the key fact unknown to the planner acting for the Municipality is that the problems posed by him had put the developer off the project entirely. Schön explains that the game of mystery and mastery played by the planner resulted in the entrepreneur deciding during the interview with the planner to abandon the project. The developer was required to make a case to the Appeal Board for what is known as

a 'variance'; in the UK we have a similar but not identical situation, where the developer may be seeking a departure from the Development Plan at either the local (at application stage) or national level (appeal stage). The approach adopted by the planner is classed as a Model One theory but an alternative approach could be adopted where the assumptions on each side are made public; such would become a Model Two approach. Subsequent to the grant of planning permission owners have chosen to pursue a non residential development for the site. This use does not require a new planning permission. The City Council planners may have failed in their wish to see the residential development. They pursued a hard line, forcing the owners to make a series of applications. The City pursued a very similar model for negotiation as outlined in Schön's example of a Mark One model of mystery and mastery. A different model for behaviour could have enabled the owners to get the consent earlier and they would not have been driven to look for alternative proposals. The aim of the overall thesis is to examine the criteria and hopefully by producing some generalisations on the issues raised by way of objection bring more certainty to the negotiation process. If it can be shown from examination of cases some objections taken can be regarded as substantial or otherwise then such conclusions may help the practitioner in the process of Reflection in Action. It is part of the Discovery Theory because some points become fixed in the process.

In the Cambridge case study the first reason for refusal on each of the three applications raised objections about some or all of the following matters:

- Scale and massing being out of character
- Design, detailing and style of building
- Overall height and length again out of character
- Materials being out of character with materials in the area
- Reference to glass blocks and copper

The second and third reasons for refusal raised the following:

- Poor living environment for residents
- Lack of excellence in urban design
- Overlooking of private garden areas by balconies

There were additional reasons for refusal relating to highway matters and the contribution being offer to public facilities in the area.

A second theme arising from he first reason for refusal in each case related to proposed materials conflicting with the materials allegedly found in the Conservation Area. This is a frequent issue in debates with Planning Authorities. Investigation of the schemes in Cambridge shows a wide variety of materials in new developments. There was adverse criticism of glass, timber, copper for roof treatment but examples of such materials were found in many recent schemes.

How very useful it would have been to have been able to set out the results of a study of a number of cases where this issue had arisen. Perhaps to have been able to send the results to the Planning Officer before the parties had taken a stand with all the costs of a Public Inquiry. But to do this depends on careful and objective examination of the cases. At this stage in the research the answers are not known but the need is evident. Certainly the case specific examination of 100 instances of new development did not support the objection. No evidence was found to support homogeneity of materials with the Conservation Area: however the Council had spent much time on this point that was not supported by the Inspector.

Another main issue examined by the Inspector was the living conditions of the residents. The Council had maintained there would be inadequate separation

distances between both the existing and the proposed dwellings. This was not accepted by the Inspector. However the Council were supported in objecting to direct overlooking from access routes and rear gardens. Again a coherent analysis of cases on this subject would be valuable.

Unfortunately time and space has not permitted the examination of each of the themes from the Cambridge study. However the main point that Frame Analysis and Repertoire building research can help the professional applies to the assessment of many of the case studies that follow. If the research isolates some fixed points in the debate or discovery process then it can be transferred to other subjects. Further work could then follow on the Cambridge topics.

3.5 Conclusion

The purpose of the thesis is to consider criteria in the planning decisions. The examination of some of the relevant theories suggests that this examination will have relevance to several of the theories of planning. For example, the Marxist approach may illustrate why decisions are taken and the interest groups that may be seeking to use the planning process. The rationalist or systems approach will welcome categorisation of information. The advocacy school will examine criteria to see if the decisions are applied uniformly to seek out points to help the case that is being put forward.

The argument has been made for what is apparently a novel approach, namely the Organic or Natural theory. This approach has the advantage of being founded on an overarching and coherent view of human action whether it be aggregate or spatial. The process of change is the discovery process and the unit of change the proprietary land use unit. In the context of this approach the establishment of criteria, or fixed points in the Frame of negotiation or at least their examination, is appropriate. The Austrian school deplores excess

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administrative freedom in matters relating to individual liberty or proprietary land units. This is why the examination of criteria, their uniformity and character are relevant to the Austrian approach.

CHAPTER 4

METHODOLOGY

4.1 Introduction

The first chapter of the thesis posed the hypothetical and research questions. They relate to issues of certainty, consistency and the implications for practice. The second chapter considered the consistency debate in its legal and historical contexts and outlined the legal framework within which planning decisions are taken. The third chapter considered planning theories. This chapter reviews the appropriate methodology for the assessment of the material which is to be studied in the thesis, namely decisions on Country Houses, residential development in the Green Belt and Parsonages for the Church of England.

In Chapter One reference was made to Schön's (1983) epistemology of professional practice. The case Schön makes for the Repertoire building approach is persuasive. It involves analysing a series or repertoire of examples and images relating to professional experience. Schön justifies the use of this method of research by reference to the successful schools of medicine and law where this approach has been used for many years. However the case study method has been adversely criticised (Kennedy 1976) and the issues arising from its use need to be considered. This chapter outlines how it is applied to the material relating to the three distinct topics of Country Houses, residential development in the Green Belt and Parsonages. Other writers, Willis (1995), Gilg and Kelly (1996) have touched on some of the issues and the relevant literature is considered following the review of methodology. Originally it had been intended to consider consistency in relation to aspects of normal residential development: this topic was excluded as the work progressed due to the abundance of material relative to the three topics.

4.2 Method of research – case studies

The discussion in Stage 1 Paper 1 (Appendix 1) on reflection in action, following the work of Schön (1983), considers how professionals in planning work. The example Schön takes of negotiations between a Planner and Developer is relevant to the theoretical aspects of the thesis. The example used by Schön was set in the USA and concerned a development that was likely to depart from the zoning control. The Developer, his Architect and the Planning Officer played out a model of negotiation that Schön describes as ‘mystery and mastery’. The Planner was hoping to enable the development to take place but did not reveal this underlying aim. However he was imposing conditions and limits that would cause the Developer to think again about undertaking the project. In the key meeting both sides kept back vital information from the other. The Developer did not reveal his possible abandonment of the project and the Planner did not indicate his genuine wish to see the original development proceed. The Planner and Developer displayed a behaviour theory that withheld information, tested assumptions privately and endeavoured to get control of the other. In practice both lost control. An alternative approach would have given and received valid information, provided factual information so that each party could have made an informed choice, tried to open up the underlying values for each party and make available for public testing underlying values.

As indicated in Chapter three Discovery Theory can be applied to aspects of planning using the proprietary land use unit as the mechanism, the vehicle of change. Schön’s work fits in well to this framework and the analysis of criteria also helps particularly to the model of an open debate. In Paper 1 (Stage 1 Appendix 1) reference was made to a typical case handled in the researcher’s practice, the laboratory for this exercise. The example quoted involved normal residential development in Cambridge. The Cambridge City Council wish to see the site developed. The Developer also wished this to happen but the settlement

the Officers forced upon the Developer was so harsh that an alternative non-residential use may occur. A certificate was granted confirming that no planning permission is needed to use the property for a private hospital treating day care cases only. An approach had been pursued that would be classed by Schön as mystery and mastery. The scope, complexity and time spent on the debate might be reduced by less argument over interpretation of matters that could be settled but remained as unknowns. The process in the Cambridge case fits in well with Discovery Theory; the parties have been engaged on a process of testing the unknown. The unknown in that case consisted of both unclear planning limitations and variable market evidence on the value of the eventual properties. The value of the site and the economics of the firm have in no way reached equilibrium, the entrepreneurial process in one of discovery and uncertainty. Codification of some of the parameters would have helped to limit the uncertainties.

4.3 The context, scope and limits of the research

As this is a professional doctorate the research is set within the office. The professional practice is a long established town planning consultancy handling a range of planning applications, research studies and planning appeals. The planning practice is set within a group practice of eleven partners over one hundred staff covering architecture/design, conservation work, valuation and residential and commercial agency.

The wider context of the study must be seen as the surveying and planning profession both in terms of the historical evolution of the profession and its current political context. Paper 1 of Stage 1 examined some aspects of the historical context of the surveying professional which has only relatively recently crept into the world of university training and graduate recruitment. Schön categorised town planning as one of the minor professions. The suggestion is

made that research related to the professions will enhance the professions and is to be encouraged. Schön suggests there are four types of research which can assist the professional practitioner, namely Frame Analysis, Repertoire research, methods of inquiry and lastly, research on reflection in action. All these approaches have value in advancing knowledge and indeed the standing of the professions. In Paper 1 of Stage 1 the emphasis was placed on Repertoire research and this certainly remains a vital element of the main thesis. However Chapter 3 (and Paper 2 of Stage 1) showed the variety of planning theories that abound. Frame analysis may have a role to play, for example, if the City Planner working on the Cambridge case had examined the role he could play he might have interpreted the material rather differently. If his aim had been to bring about housing in an acceptable form as soon as possible instead of defending certain criteria contained in the planning documents then the outcome could have been different. It will be useful to be mindful of the idea of the frame when looking at the Repertoire or case studies. The third context outlined by Schön refers to overarching theories: these were reviewed in Chapter Three. However Schön describes such theories as ‘springboards for making sure of new situations’. Whilst enquiries of planning schools indicate that such theories are considered, most planning surveyors are not aware of them in their practice. There has already been reference to overarching theory and the thesis fits in with this framework. Indeed, Austrian theory covers it well and the last category of research ‘reflection in action’ would address the practicality and working within the theory.

Realistic limits for this work are important. For example, the Planning Inspectorate handle some 22,000 planning appeals every year; some of these will eventually be withdrawn but nevertheless it would be unrealistic and unhelpful to seek to examine a very large number of cases. Such an examination might be numerically impressive but would be cursory and also removed from the office

which is the laboratory. The remaining section of this Chapter continues to consider the scope and limits of the research, methodology, their choice and justification, relativity, data collection and subdivision of the material.

To assist in assessing these issues the following subjects are covered in section two of the thesis which reviews the case studies:

1. The consistency of criteria in planning control relating to new Country Houses
2. The consistency of criteria in planning control in Green Belt areas
3. The consistency of criteria in planning control relating to special cases; the example chosen is Parsonage Houses in the Church of England.

The material relating to control in Green Belts is large. Therefore the geographical areas to be considered will be limited. Fortunately there is easy access to information in the practice covering the subjects in very different geographical areas. The Repertoire research will therefore start with the office cases. The material will then be assessed working out from the well known. The material is within the public realm.

4.4 Research strategy and design

The general approach to the thesis will follow a phenomenological paradigm. The material will be interpreted as far as possible in a realistic assessment of the cases endeavouring to understand the essentially subjective aspects of the issues. This paradigm will tend to produce qualitative material for study; however there may be elements of generalisation based on simple numbers such as the frequency of particular arguments in certain types of cases.

There are no general theories available to cover the material that will be examined. Any preconceptions are not based upon tested theory. It is hoped that this essentially inductive approach will produce some conclusions that are useful within the particular areas of policy such as the encouragement of exceptional Country Houses or the administration of Green Belts.

The steps to be taken are somewhat similar to the research by Foster (1995) in investigating crime in certain public housing estates. This thesis started with some general questions about comparability and consistency. Foster started with questions albeit relating to a totally different subject. Foster explored general contentions that areas of high crime have poor levels of social control. However, there were other issues relating to the problem such as layout and design. The research then proceeded to select a suitable site, collect the data, interpret it and then conceptualise and proceed to theoretical work.

As with the crime study the research will be grounded in sites and areas. The material to be studied will be the documents, plans and photographs relevant to the cases. Some additional site visits may be organised. The documents to be used must be corroborated as genuine, the research must be aware of bias in the documents and this awareness will be an essential element in the research. When each theme is considered a process of qualitative content analysis will be employed. The approach has been previously employed for example by Altheide (1996) (quoted in Bryman 2004) who describes the process as Ethnographic Content Analysis (ECA): the key quotation selected by Bryman states:

‘ECA follows a recursive and reflexive movement between concept development – sampling – data, collection – data, coding – data, and analysis – interpretation.’

The steps involved are thus:

- generate a research question;
- become familiar with the context within which the documents were generated;

- become familiar with a small number of documents (6-10);
- generate some categories that will guide the collection of data and draft a schedule for collecting the data in terms of generated categories;
- test the schedule and select further cases to sharpen it up

The process will lead to conclusions on each theme and to overall conclusions. These two stages are distinct and important steps. Indeed it is possible that consistency is found in one area of control but not another.

4.5 **Reliability, Replication and Validity**

The term 'reliability' is taken to mean the extent to which the research study can be replicated or repeated with other cases. The pilot studies in Stage 1 have indicated that replication of the studies will be reasonable and this has been shown by the thesis. The main study is to consider whether policy is applied in a consistent manner. Many of the studies will have the advantage of a longitudinal element; this will be achieved by considering the theme, for example development control, in the case of new Country Houses on two dates with an interval in between.

The internal reliability meaning the degree to which the material is observed in a consistent manner is more difficult. There are two stages in this. The first is the study of the perception of the case by the decision maker. In so far as documents are being analysed they must be considered largely at face value. The presence or absence of certain factors will be a factual matter. However some qualitative content analysis is likely on the interpretation of cases.

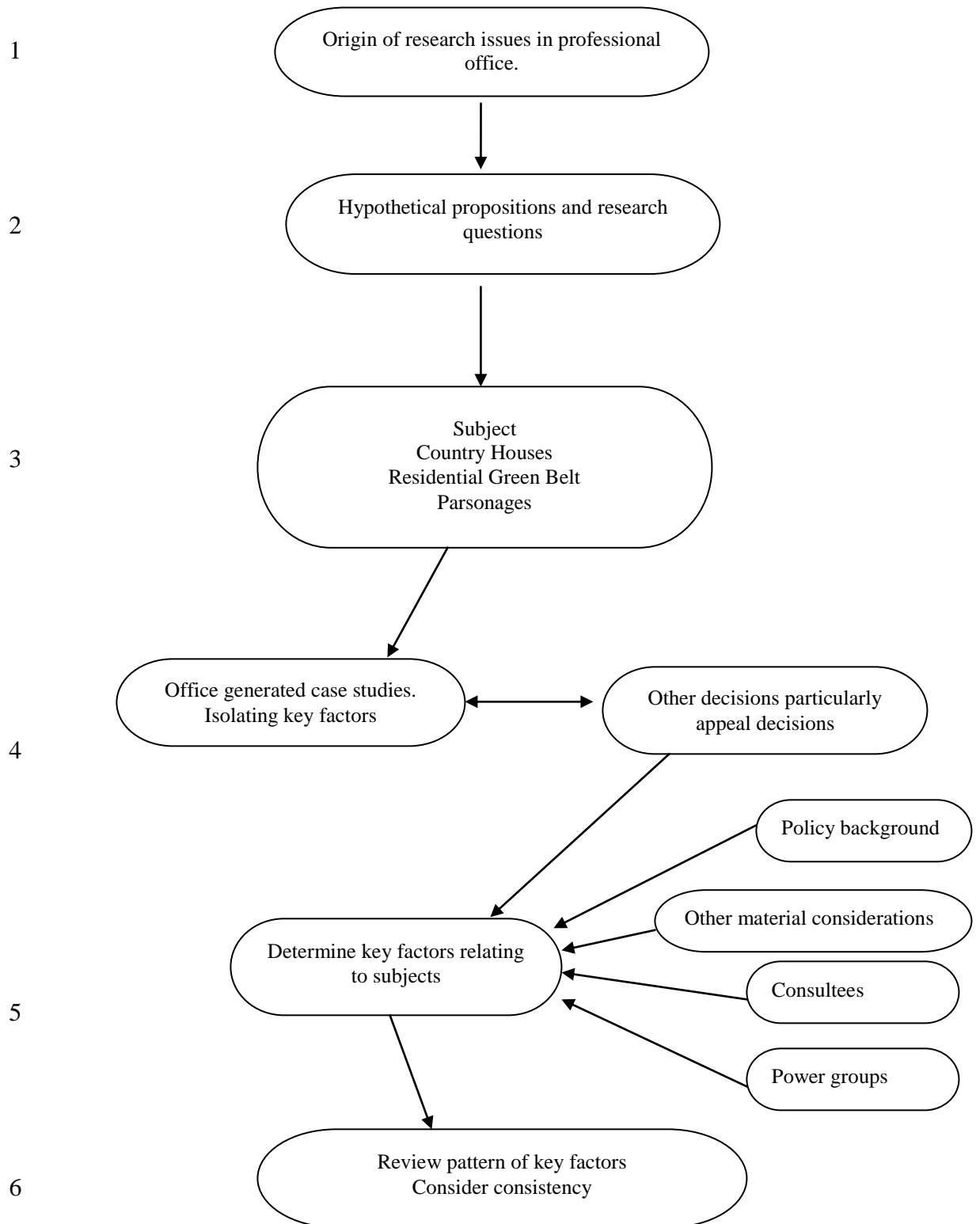


Figure 1 Research process

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The procedure to be used in considering each subject area will be as follows:

1. The likely issues in each subject area come from the cases in the professional office.
2. The cases have given rise to the hypothetical propositions and research questions.
3. The subject areas have been chosen – Country Houses, residential development in the Green Belt and Parsonage Houses for the Church of England.
4. The key determining factors are considered and isolated in the case studies; those handled by the author throughout in more detail than those where only files, reports and decisions are available.
5. The key determining factors are isolated relating to each subject and tabulated.

The process is shown diagrammatically on the flow chart (Figure 1).

The approach is essentially qualitative based upon case study material in the Practice. The University's requirements relate well to this approach to qualitative work detailed in Bryman's Review of Social Research Methods (Bryman 2004). The approach for each subject within the sphere of determinations on residential applications broadly follows the process described by Bryman (2004: 269).

1. General research questions based in practice.

2. Selection of material and cases from practice; their analysis and then reviewing the cases within a wider context of other similar cases adopting an approach that is action based in practice. The review stage allows for the testing of hypothetical questions.
3. Interpretation and transfer of approach and learning.
4. Production of general conclusions that are evidence based but then relate to theory and concepts.

4.6 Case study method – possible shortcomings and alternative methods

Yin (2003 and 2009) outlines the essential elements of the case study approach. The procedures to be adopted in each case must be specified before the work starts. In the case of this thesis there were useful pilot projects at Stage 1: the relevant paper is included in Appendix 1 Paper 3. The thesis considers cases from this Practice in detail. The case study method is useful in this type of work because it concentrates on both how the case evolved and the reasons for it. The review of relevant literature which follows in this chapter points to the dangers of using purely quantitative sources, thus this approach was rejected.

Some of the key elements of a case study research method have been taken from Yin (2003 and 2009) and Robson (1993):

- The case study method involves empirical investigation around a specific instance in a real life (the Practice) situation.
- The material may involve persons, events or an organisation.
- The boundaries between the subject of study (in the thesis planning decisions) and the context (in the thesis the complex planning process) are not clear.

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- The approach benefits from the prior development of theoretical propositions to guide the collection of the material.

Yin (2003 and 2009) warns of the possible shortcomings of the case study method. For example the material available may be used for teaching purposes and it could be manipulated to illustrate a particular point. This is a relevant issue as some material in the Practice has been used for both internal lectures for professional development and elsewhere. No teaching material has been used in the thesis. A second argument is that the case study method does not have the validity of a wide quantitative survey.

In the field of this thesis a purely quantitative approach would struggle to answer why certain things happened. Similarly it would not help to understand the full background to events. The multiple case study approach seeks to overcome this objection to lack of quantification. In the thesis the propositions are tested in a wider field.

The three topics, Country Houses, residential development in the Green Belt and Parsonage Houses have been selected due to the availability of source material, immediate relevance to the Practice and the contrasting existence of relevant policy. Proposals in the Green Belt are determined against a background of detailed policy guidance at national level and usually at the local level. There is a little policy guidance available for determining applications for Country Houses but no national policies in the public realm for deciding applications for Parsonages. Thus the three subjects are contrasting in terms of the nature and amount of policy guidance.

They are contrasting subjects in other ways. Country Houses are proposed by the wealthy. Parsonages are proposed by the Church of England with limited

resources available. The number of proposals for both Country Houses and Parsonages are limited; it is possible to obtain research material over a wide area (England), Green Belt proposals however are very numerous, and the study is limited to Kent and the Sheffield area, to contrast a northern and southern area. (The Practice has involvement in both).

A common research protocol has been applied to all three areas of study. The most detailed resource material is within the Practice. Not only is the material available but the background to the cases is known to the author. However the hypothetical questions are then applied to other material. This includes cases not handled within the Practice but where documentation is fully available. The records include local authority files, the full decision letters on the appeals and information supplied by other professionals. A third level of material is also available in the Compass Bureau decisions. By moving through the three levels of material hypothetical propositions can be checked or triangulated. It could be argued that the Practice cases are not typical and conclusions generated from this limited source might not be valid, hence the concept involves moving into the wider field to test and compare. The remaining parts of this chapter explore other research and some of the methodological issues become evident.

4.7 **Other work relevant to the thesis**

Claydon (1998) reviewed the general background to decision making in planning. Claydon points to the significant difference between continental planning systems that are generally operated by administrators and the British planning system operated by professionals. The important point is made that the professionals have highly developed value systems which go some way to the outcome of the discretionary system. Claydon's paper examines operational discretion from three perspectives, first in the process of planning applications, second in the structuring of the organisations that administer control and third as a product of the culture of the Officers.

The research into process shows key variables; these include the extent to which pre-application discussions are held and the seniority of the Officers involved. The structure of the planning department is also a very important factor in the process. For example it was found that if Case Officers were involved in the final decision they took a greater interest in the application and applied themselves to discussions. Lastly, the culture of the authority was found to be relevant to the handling of negotiations. An uncertain political situation was less likely to encourage active negotiations. Claydon's article does not seek to compare outcomes and consistency of decisions; it does point to the complexity of the process. It is useful to the thesis because it points to the problems of a purely quantitative approach where process and background are complex.

Willis (1995) introduces the concept of the elusive 'gold standard' in judging decisions in professional practice. The paper by Willis is the most relevant to the thesis. Reference is made to the great difficulty in achieving consistency in professional practice. By way of example Willis refers to work by De Dombal (1984) in which it was found that the accuracy of the initial diagnosis of cases in accident and emergency departments of a hospital varied from 42% for admitting doctors, 79% for registrars, 82% for senior consultants but 91% for computer aided systems. Willis studied decisions on mineral applications in Durham, comparing the County Planning Officer's recommendation with the decisions of the final committee. The conclusion was that the County Planning Officer for Durham was very good at predicting the wishes of the committee. Of the 99 cases studied the County Planning Officer recommended 38 refusals and permission in 44 with no recommendation on the remainder. In only four cases the committee granted consent despite a negative recommendation and a similar number were refused. However Willis concludes that the reasoning on the decisions shows that few variables are considered. In terms of this thesis the role of case studies or repertoire research is not mentioned. However it is of value in pointing to how inconsistencies may or may not occur. From a practice point of

view it confirms the advantages perceived by many applicants in going direct to Senior Officers for discussions. The research shows the input of the head of section or Case Officers. This is widely recognised in the planning world. In terms of this thesis the key point is that in most cases the determining issues are limited and this supports and facilitates the evolution of a model to better predict outcomes. Thus it supports the recommendation in this thesis for practice that a few variables determine most cases. It is not obvious from the large quantity of planning information but the thesis has found the simplification of the material is a practical possibility.

As Willis explains, in planning it is difficult to know how to judge success. He contrasts the work of the planning profession with medicine where success is generally recognised by the patient recovering. In planning the success may be decisions being made in conformity with the Development Plan, or is it the Planning Inspector's judgement or even the Secretary of State's decision which may or may not follow the recommendation of the Inspector. Willis poses the question – what is the gold standard? From the perspective of this thesis it will be argued that consistency offers an acceptable test of success; although it could be argued that this does not show proof that the decisions, even if consistent, are right. However the perspective adopted in the thesis is that justice requires consistency and even if this is not the only gold standard it is an important concept.

A study of decisions on agricultural dwellings in North Devon found that decisions were heavily influenced by the attitude of councillors, many with a farming background (Gilg and Kelly 1996). The study formed the major part of a doctoral thesis and raised a debate about method. The authors categorised studies of development control decisions by method:

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- Simple statistical and cartographic analysis,
- Use of data to test hypotheses which they described as logical positivism,
- A political economy approach viewing the process as a power struggle,
- A post modernism approach viewing the process as a random but related sequence of events

The approach adopted in this thesis might be closer to the second but the issues to be tested have been viewed as propositions rather than elevated to hypothesis. Gilg and Kelly identify two schools of thought on the use of numbers in planning research. On the one side is Brotherton (1984), who related development pressure in a National Park to the population; areas with the most rural parks attracting the highest development pressure. The response of McNamara and Healey (1984) to the original article was outspoken:

‘The stimulus to our writing this comment is that Brotherton’s article gives the firmest warning yet to our urban and rural researchers about the dangers of working with the development control records kept by local authorities in a crude and unsophisticated way’ (McNamara and Healey p 91).

Healey has consistently pointed to the complexity of the development control process, a relevant and valuable marker for this thesis, and is the experience of the Practice. The point is eloquently made thus in the 1984 response:

‘In summary then, development control records are not simple units to be added or subtracted, but are ‘end state’ statements of negotiated process which are often complex. They cannot be used on their own to evaluate policies or to analyse development pressure, because such methods cannot place conclusions about development pressures in their true perspective’ (McNamara and Healey 1984 p 96).

Thus in this thesis the worth of some overall numbers is acknowledged. Indeed to come to conclusions without a framework to test the hypothetical and research questions would be partial. For example the rich qualitative practice sources can produce tentative results which can then be considered in the wider framework of other decisions drawn from local authority records and the Compass Bureau results which give a full coverage but are brief. On the other hand the contribution of Healey is referred to above in relation to general planning theories: it is a most valuable insight and helpful in this thesis. The insight is that planning processes are political and a balancing of interests and power. A purely quantitative approach does not take account of this background. Thus a qualitative research position has advantages and the case studies are a practical application of this approach. The debate between Brotherton and Healey has highlighted the issues arising from too simplistic an approach. Having examined the literature on both sides of the argument the decision to proceed on the basis of a qualitative approach was strengthened. This literature was relevant to this decision.

The authors referred to above do not relate their work to the overarching theories of planning recorded in the literature and taught in the planning schools (Allmendinger 2002). These authors concern themselves with the output and the results of the planning process rather than theories of planning. The exception is perhaps Healey. The various theories of planning were reviewed in the previous chapter.

4.8 Conclusions leading to Section Two

The review of related work is valuable in that there are pointers to be employed. Brotherton's emphasis on use of statistics is useful, but the causal relationships between the numbers must be treated with care. Healey's emphasis upon close analysis of power play in the planning process points to the need to be careful in assuming close causal relationships. On the other hand there should be some

general patterns emerging from the study. The insights from planning theories in Chapter 3 are helpful; the political economists analyse change in prices and the motivation for change. As the thesis is considering consistency and predictability both concepts have implications in terms of political economy, what is just and appropriate to a liberal society where the rule of law is paramount. If outcomes are so variable and unpredictable and open to political and social pressures does this hold back economic growth. The Austrian economists would be critical of such. The Healey approach would suggest the bargaining element in the planning process is paramount. The review of work shows that some authors such as Willis are looking for the ‘gold standard’ which may be unobtainable. Each has something to offer to this thesis. The point made by Willis that despite all the information available the determining factors on decisions is usually down to a small number, is a valuable insight. It will be tested in the forthcoming chapters.

The next section (section two) of the thesis covers the case studies. Section two includes three chapters each of which considers a separate subject, namely Country Houses, residential development in the Green Belt and the third, Parsonage Houses for the Church of England. There is some overlap between the policy background relevant to each, for example some of the case studies relating to Country Houses and Parsonages are in the Green Belt. However, policy and historical background are distinct to each study. Therefore the reader is guided to the policy background in the first part of each chapter. Where policy has changed over the period of study this is explained within the chapter and the case studies are allocated to the relevant period.

After the general background and sub section relating to policy (or policy in the relevant period) the case studies are described and the determining or key factors in each analysed. The third part of the chapter contains a summary table of the key factors and a conclusion based upon the table.

As the process evolves a model or framework emerges. The likelihood is that a few determining factors are paramount in each area. If that is found to be right then there may be a model available to be used in practice to assist in the prediction of outcomes particularly on appeal. This would use the insight of Willis. The process is qualitative in so far as judgements are made on findings but the number of cases considered is known. The aim must be to produce order and generalisations out of a variety of information.

The case studies are described in a standard form. A brief description of the site and proposals comes first, then a review of the arguments resulting in the decision. At the end of each case study the key determining factor(s) are stated. These are then incorporated in a table at the end of the chapter. Where a case has been handled throughout by the author and a little more of the background or personal circumstances of the case are known this is included and there is greater detail. In other cases whilst taken from practice archives the material is based on the facts recorded in the decision notices, the committee reports and appeal decisions. The reader may wish to refer to the appendices where the relevant appeal decisions or consents are produced. The case study approach builds upon a series of cases, some can be summarised in a few lines but others are lengthy. They all illustrate the theme.

SECTION 2 – CASE STUDIES

CHAPTER 5

NEW COUNTRY HOUSES

5.1 Introduction and background

This chapter considers consistency in decisions on new Country Houses. As outlined in the previous chapter the subject Country Houses can be considered at a national level, information covers England. The numbers involved are small compared with the number of decisions relating to residential developments in the Green Belt. Unlike Green Belt matters national policy is limited. The national policy background to Country Houses will be outlined in detail because of subtle changes that have taken place. The Country House cases are used to consider the two hypothetical propositions, one relating to consistency and the other, the methodological issue of the case study approach. The chapter then considers the various research questions posed in Chapter One Section Five. As previously recorded the aim is to produce a model that could help to anticipate outcomes at application and appeal stages. At the end of the chapter in the conclusions the key determining factors are listed in tabular form.

The architectural and social background to the building of new Country Houses has been outlined by authors such as Robinson (1984). The story of the Country House in the twentieth century can be traced through from what has been termed ‘Tudorbethan’ in the early years to the emergence of neo-Georgian and mature buildings. During the latter part of the nineteenth century architects such as Salvin and Devey were producing designs that took as references the stately homes of Elizabethan times. Some of the designers such as Devey were able to manage the ‘Tudor’ approach with elements of the arts and crafts movement; Devey’s work at Leigh and Penshurst in Kent remains a prime example.

The post war period was marked by limitations on both new building and restorations due to the shortage of materials. Building licences were used to limit the value of reconstruction. Clough Williams-Ellis (1978) referred to the

demise of the wealthy client proposing major new grand designs. He put it down to the war and socialism. However his initial post war depression gave way to a realisation that despite the pressures on the country estates they survived; in some instances the payment of large amounts of death duties proved a spur to a much more profitable and businesslike approach. The payment of the then large sum of £20,000,000 on the death of the second Duke of Westminster in 1957 stimulated a new approach to the management of the estate. The estate became a worldwide property empire with an income that dwarfed the payment. Robinson argues that the social and economic background that gives rise to change and development has improved since the war. In 1955 seventy-six Country Houses were demolished but the statistics indicate a sharp reduction in the rate with only twenty-six demolitions in 1957 (Robinson 1984).

From work in the Practice it is evident the influence and standing of some of the greatest houses has remained. For example, at Chatsworth the Devonshires moved back in 1959. Their relationship with the planning authority reflects the strength of both parties. They, along with other clients, have prepared master plans which although not binding are informally adopted. This strength arose from the traditional but continuing role within the local communities covering many groups and societies. In terms of planning theory this process would support Healey's emphasis upon power groups in societies influencing the planning process (Healey 1984).

It can be argued the Country House has adapted to the needs of its patrons and residents. In the nineteenth century the traditional landowning groups were augmented by 'new money' coming often from heavy industry. An example would be the Newcastle based Armstrong family or Lord Leverhulme. Since the war the client base has expanded; the traditional landowning families remain but with the strength of the economy over the last twenty years the potential client

base has widened yet again. From experience in the Practice the new proprietors often come from the leisure and service industries. It will be interesting to see the impact of the credit crisis of 2008 on this group in society.

The pilot study (Appendix 1) took the example of Country Houses and explored one case in some detail but made reference to six other decisions, some made before the publication of Planning Policy Guidance Note 7 in 1997. This part of the thesis develops the cases relating the theme to the hypothetical propositions and research questions posed in Chapter One. It goes further in relating the policy changes and decisions to appropriate concepts in Public Choice Theory and Discovery Theory. Not only are the questions posed about consistency in this particular sphere of planning control but also an explanation sought both by the application of theoretical concepts and in turn the concepts are developed.

The approach is in two parts:

First, to identify and locate new Country Houses and establish the nature of the development in planning terms (Greenfield sites, redevelopment of a previously developed site, enhancement or rebuild of an existing house). The sources include Robinson, (1984), contacts with Country House architects, Local Authorities, the Compass decisions index and the RIBA index of country houses. Second, to investigate the history of decisions in selected cases, involving visits to Council offices to inspect case files.

As with much research in planning history there are major problems of definition which can often only be clarified by inspection of the original source material, namely the planning application, including plans, and the decision notice. It would be unwise to rely on reported conclusions that are not based in this level of original material. Furthermore, the proper interpretation of the material can best be done by a site visit which at least enables an assessment of the landscape even if entry to the property is not feasible.

The material is reviewed in relation to changes in policy over time:

- From 1950 up to the publication of the 1997 Policy Guidance Note
- The seven years from 1997 to the publication of the current Planning Policy Statement 7 (2004)
- The present period from the new Policy note characterised by considerable controversy.

The total number of consents over the whole period are relatively small: any consent is noteworthy and key documents, committee report or Appeal decision letters are produced as appendices to the thesis.

The information is limited to England.

5.2 **The period to 1997**

The policy background up to 1997 was devoid of any specific contemporary guidance in favour of new Country Houses. Following enquiry of the then Department of the Environment in 1991 the only known national guidance was very dated consisting of the relevant guidance or notes published just after the coming into being of the 1947 Town & Country Planning Act. The publication was entitled 'Notes on the Siting of Houses in Country Districts'. Whilst this note has been superseded by the series of Policy guidance documents, nevertheless some of the themes evident are still current. Some of the reasoning and commentary is dated but the overarching theme of the debate between consistency, justice and reasonable discretion comes through very clearly. Indeed the Guidance Note opens with this:

‘The Minister recognises that any advice he offers on this subject can only be in the most general terms. Over England and Wales local circumstances, in particular the size and compactness of villages, and the nature of agricultural practice, vary so much that each case must be considered individually’

The opening continues to stress the need for flexibility:

‘These problems should not, therefore, be approached in a rigid or rule-of-thumb way, and the following Notes are not intended to do more than suggest certain broad principles which in themselves imply a careful and discretionary approach by the Authority to the individual case’.

From this it is evident that the important role of local discretion was very much in the policy maker’s mind.

Following the 1947 Town & Country Planning Act a series of initial circulars set out policy. Circular 5 considered the rural areas and generally aimed to safeguard agricultural land essential for good production. Scattered development was strongly discouraged, however the Notes of 1950 were concerned about Authorities taking too strict an approach. The comment is made about the lack of flexibility:

‘This advice, read with the directions given in the same section of the Memorandum to limit expansion to selected villages, has led some Authorities to believe that such applications should inevitably be refused. This is too strict an interpretation, and the Minister while still believing that most new housing should be sited in or near to existing villages or hamlets, feels that the claims of people who really desire to live on their own away from other people should be recognised’.

From the Notes it is not clear whether the Policy makers had in mind small dwellings perhaps to be used by agricultural workers but the possibility of a larger Country House seems to have been in mind. Indeed the argument is made that ‘a fine house may, on occasion, enhance the landscape by being conspicuous’. Participants in the current debate would find the concluding sentence familiar:

‘Good houses, well sited, should be looked upon as a permanent addition to the wealth of the countryside’.

The issues of precedent and consistency were carefully considered in the Policy Note. The argument was made that just because one house has been permitted this does not mean others should be allowed even in the same locality. The balance was expressed thus:

‘To permit one application in a particular spot places no obligation on the Authority to give further permission on sites where they consider any more development undesirable. On the contrary, they should hold themselves free at all times to decide applications on their merits ...’

Even in Green Belts proposals were apparently to be considered on their merits but with ‘particular care’.

The research was based in two parts, the first concentrated on identifying Country Houses built in the period and secondly to investigate the planning history of selected examples. The research included reference to magazine and newspaper articles; in addition Martin Robinson’s Gazetteer of new houses proved invaluable (Robinson 1984). As anticipated in Paper Three Part One the information available is not always clear. For example, Robinson’s Gazetteer includes within the concept of ‘New Country Houses’ buildings that have been

extended by their present owners: these are not developments taking place on previously undeveloped greenfield sites. Similarly he includes rebuilding within the category of New Country Houses. Whilst from the architectural point of view this is valid and Robinson is primarily examining style and quality of architecture, the sources must be treated with care bearing in mind the aim is to examine the questions of criteria and their consistency.

Robinson (1984 p 31) identifies 1955 as the key year for the revival of the Country House. The demolitions reached their peak (76 losses by demolition) then falling down to 26 in 1957. The reaction against the immediate post war austerity found support in the change of administration to the Conservatives and the Macmillan era of improving living standards across the whole of society in the late 1950s and 1960s. A new factor came into being with emphasis on widening the role of countryside away from pure agriculture to a greater variety of uses (Marsden et alia 1993). Commentators such as David Sinclair were writing in the quality papers about the 'Country Graveyard' (Sunday Times 25 March 1990) implying that planning policy was stifling the rural economy. However, planning policy was generally negative to development in the countryside except for proposals related to agriculture and forestry. Within Green Belts the chances of obtaining consent for a new Country House were even less. By way of example, Hertfordshire County Council took the initiative to call a conference in 1958 of all the Home Counties to produce a policy for control in the Green Belt. This found expression in the 1961 publication 'Building in the Green Belt' produced by Hertfordshire County Council, which excluded any possibility of a new Green Belt Country House.

The issues of consistency and policy came to the fore in a case handled in the Practice in the first period prior to the 1997 Policy Guidance Note 7. It involved a new Country House at Fourways Farm, Bedfordshire, near the village of Great Gaddesden: the Inquiry was held in 1991. The farm had a total area of 394 acres

Practice research above, over 50% of the owners, where ownership is known, would be counted as prominent names. It has been established that even prior to Planning Policy Guidance Note 7 there were new Country Houses. 18 cases were researched for the period up to 1990 and of these 9 are on greenfield sites. Some of the consents were not implemented at the time of investigation. As explained on page 74 each case study follows a standard form with the description, analysis and conclusion leading to the determining factors. All case studies merit a supporting appendix containing key documents.

5.2.1 Case studies prior to 1997

Site:	Sunninghill Park Gardens, Winkfield
Local Authority:	Bracknell Borough Council
Reference number:	612730
Date of decision:	1987 (November)
Decision:	Approval on application
Source:	Local authority & Practice archives
Appendix:	4

Description:

This first noteworthy Green Belt case involved a large detached dwelling with 16 habitable rooms within an area described in the committee report of November 1987 as a semi-derelict nursery garden extending to just over 8 acres. The site is Crown land and involved the construction of the Duke and Duchess of York's house. From a limited site visit and the committee report the following planning background facts are evident.

- The site had an area of 8.43 acres (3.41 hectares)
- Location on Crown land south side of B383 Sunninghill Road south of the junction of the A332 Ascot-Windsor Road

- The previous use was a nursery garden surrounded by a high red brick wall with some tree growth
- The site is in the approved Green Belt for Berkshire
- The relevant policy when the application was considered was contained in approved Green Belt plan for Berkshire which in turn reflected the Structure Plan policies EN5 and EN7. The policy (Policy 1) stated:

‘Within the area of the Metropolitan Green Belt in Berkshire, approval will not be given, save in very special circumstances, for new building or for the change of use of land or of existing buildings for any purpose other than the following:

- A Residential development in the form of infilling within settlements;
- B Development essential to the use of land for agriculture or forestry;
- C Mineral extraction;
- D Appropriate kinds of recreation;
- E Public Utilities which cannot be located elsewhere;
- F Any other purpose wholly appropriate to a rural area’

Analysis:

The report to committee (1987, see Appendix 4) confirmed that the residential use did not comply with any of the six uses that would be acceptable in the Green Belt. Therefore the proposal had to achieve ‘very special circumstances’ which would make it possible to grant a permission as a departure from the Development Plan. The consistency issue in the approved Green Belt forms a subsequent part of the thesis. Three aspects of the committee report are particularly interesting justifying its inclusion in the appendices. The first is the assessment of the site’s isolation, it is described thus:

‘It is in a relatively isolated position there being only 5 or 6 nearby properties’.

The second is the acceptance of the issue of security justifying the very special circumstances. Whilst the need for security can be appreciated, to prove this on the balance of probability would demand a daunting evidential case. Thirdly, the report concludes that ‘no harm would be caused to this particular part of the Green Belt by approving this application’. From experience, many Green Belt proposals within physically contained sites (for example areas cut off from other open land) are refused on pure policy grounds, the argument being that the condition and character of the land is no justification for releasing Green Belt land. This view was advanced in the House of Commons Environment Committee report of 1984 which recommended that in drawing boundaries of the Green Belt no account should be taken of the condition of the land. The consultation response from the County Council was neutral and described the security requirements as a ‘very important element’ but did not come to a view on the strength to form ‘the very special circumstances’, instead charging the Bracknell District Council with the duty of coming to a view on the case.

Conclusion:

The two key factors arising from this case are the very special circumstances and the treatment of damage to the Green Belt. The first is an undefined concept; the work on the Green Belt cases shows it being used when authorities wish to approve a proposal in the Green Belt. The second aspect relating to damage to the Green Belt is not applied consistently because in policy terms the key factor is keeping the land open. The appearance of the land is not a policy issue.

Key determining factor(s) – very special circumstances and no harm to character of Green Belt.

Site:	Cobham Hall
Local Authority:	Gravesham, Kent
Local Authority reference:	GR/84/204E
Appeal reference:	SE5277/220/1, 270/53 and 411/1
Date of decision:	1986 (February)
Decision:	Determination by Secretary of State Consent granted
Source:	Practice archives
Appendix:	5

Description:

Two applications were considered by the Secretary of State, as a ‘call in’ under the then Section 35 of the Town & Country Planning Act 1971. The Inspector held a three day Inquiry in April 1985 and reported to the Secretary of State. The project involved the conversion of the Darnley Mausoleum and the extensions thereto to form a new Country House. The parkland setting was designed by Repton. A second application was for the conversion of the Mausoleum but without any additions. One of the key issues in the debate concerned the physical condition of the building and landscape. The Inspector described the situation thus:

‘The building has been thoroughly and systematically vandalised over the years with a single minded dedication that has to be seen to be believed’.

From knowledge of the site at the time this assessment can be confirmed as fair.

Analysis:

The Structure and Local Plan policies preserving the Green Belt and excluding new development in the countryside were totally against the scheme. However the Inspector concluded that both schemes should be supported; the Secretary of State agreed with both the conclusions and recommendations.

Conclusion:

Two points emerge from this decision; the case was allowed because of the advantages of the restoration of the listed building, this gain overcame the Green Belt objection and formed the very exceptional circumstances. These two determining factors are clearly evident in the reasoning section of the decision (Appendix 5).

Key determining factor(s) – very special circumstances/restoration of listed building.

Site:	Dogmersfield Park, Hampshire
Local Authority:	Hart District Council
Local Authority reference:	HDC/12564
Appeal reference:	T/APP/N1730/A/85/635727/P4
Date of final decision:	1986 (June)
Decision:	Application refused, appeal allowed
Source:	Practice archives
Appendix:	6

Description:

The site was on the northern side of the A287 Odiham – Farnham Road about 1km from Odiham. The Development Plan policies contained in the Hart District Plan and North East Hampshire Structure Plan aimed to resist development in the countryside. A previous appeal had been dismissed in 1983. Research into the history of the Park showed major changes of circumstance since the earlier appeal. By the time of the 1986 appeal the ancient medieval park had been included in the list of Parks and Gardens of Special Historic Interest, prepared by the Historic Buildings and Monuments Commission. The Inspector's decision summarised the case for the project thus:

‘For the appellant the crux of the argument is that only through the benefits of living in such an attractive setting would he or his successors have the necessary incentive to continue indefinitely the heavy expenditure on restoration and maintenance without which the lake would soon silt up and the woodland become more impenetrable ...’

(Appendix 6, paragraph 3)

Analysis:

The Inspector’s reasoning in allowing the appeal shows how national policy can change to produce totally different results within a relatively short period. In 1985 the national policy was that planning consent should be granted unless it could be shown that the development would cause demonstrable harm to interests of acknowledged ‘importance’. Circular 14/85 was also invoked that placed Development Plans as only one among other material considerations, whereas currently proposals must be determined in accordance with the Development Plan unless other material considerations point to a different result. The Inspector came to the view that allowing the project would be to the advantage of the landscape and that it would not harm the use and character of the countryside. Inevitably there was considerable reference to the previous decision which was dismissed but the Inspector distanced himself from the dismissal thus:

‘I consider that the policy presumption favouring the Council’s decision on the early proposal has been in effect replaced by an obligation from the Council to prove harm’.

Conclusion:

The policy change was Circular 14/85. The Inspector went on to conclude that the circumstances had changed sufficiently in the two years to allow the appeal.

Weight was attached to the greater understanding of the historic landscape. A subsequent application was recommended for refusal but consent was granted for a relocated proposal nearer the lake. This case is particularly interesting showing how changes of emphasis in national policy may produce a different result.

Key determining factor(s): restoration of parkland and policy change in favour of consent being granted.

Site: Fourways Farm, Hudnall Corner, Nr Dunstable
Local authority: Dacorum Borough Council
Local Authority Reference: SB/TP/90/0412
Appeal Reference: APP/N0220/A/91/176100
Date of final decision: 1992 (April)
Decision: Application refused. Appeal dismissed.
Source: Practice archives
Appendix: 7

Description:

The case involved a large new Country House at Fourways Farm Bedfordshire. The farm had a total area of 394 acres but with no main farmhouse. The scheme included parkland, a lake, woodlands and a Butterfly Bank open to the public. The site selected lay at the head of a valley stretching towards Great Gaddesden. The style selected was Palladianism and the concept created a house of 28,000 sq ft on ground, first and lower ground floor.

Analysis:

The Bedfordshire County Structure Plan (approved 8.2.90) was quoted against the scheme. The relevant policies were Policy 8 (Green Belt) and Policy 58 (seeking to protect the Chilterns Area of Outstanding Natural Beauty), including sub paragraph (vi): ‘that the area should not be regarded as one of availability

from the point of view of development, and communications should be subordinated to the basic theme of the Area of Outstanding Natural Beauty'. Other policies included those from the Rural Area Local Plan, namely Policy 1 (Green Belt), Policy 13 (relating to essential dwellings such as farm workers' cottages), Policy 14 (relating to the protection of the Chilterns Area of Outstanding Natural Beauty).

Conclusion:

The Secretary of State's key finding was that as the house was to be in the Green Belt it is contrary to policy and very special circumstances have not been shown to exist (see Appendix 7, paragraph 6. The next paragraph (paragraph 7) takes the argument further and concludes that the totality of the scheme does not overcome the objections and would harm the Area of Great Landscape Value and the Area of Outstanding Natural Beauty. The Inspector's report ran along clear policy lines which could and perhaps should be applied to all Green Belt circumstances. However one clause in the Inspector's reasoning runs totally against the approach adopted in the Sunninghill case. As recorded above one of the arguments in favour of the Sunninghill scheme was the enclosed nature of the site that enabled the report to committee to conclude that:

'no harm would be caused to this particular part of the Green Belt'.

In the Fourways Farm case the Inspector discounted the argument of no harm to the individual site. He concluded that pure policy must be against the scheme

'even where it can be shown that the building would be inconspicuous or would do no harm on the particular site'.

This approach was not taken in the Cobham case or the Larmer Farm case. Both were proposals in areas subject to Green Belt policy but in both decisions the

impact and degree of change on the locality were assessed in detail and found to be material considerations. Indeed it could be argued that the isolated nature of the Bedfordshire case enabled the project to avoid the disadvantages inherent in the Sunninghill case.

Key determining factor(s): contrary to Green Belt policy.

5.2.2 Conclusion on the period to 1997

The following table summarises the results of the investigations on consents up to 1990. The investigations did not review proposals rejected on both application and appeal because the third level of data is not available for this period. The consents granted are divided into two groups, those that are essentially new proposals and those on the same site. The detail obtained varies between cases so the material is not exhaustive. The table shows the small number of consents; a further table later in the chapter summarises the key determining factors; Table 1 is informative rather than analytical.

From Table 1 it can be seen that despite restrictive policies such as inclusion within an Area of Great Landscape Value or even Green Belt, consents have been forthcoming for new Country Houses. It seems that the judgement as to what constitutes very special circumstances is somewhat arbitrary. The Sunninghill case appeared to accept the submission that other secure properties could not be found. One theme coming through very clearly is the advantage of schemes linked to the maintenance of historic parks and buildings; the Cobham Hall and Dogmersfield cases are illustrations of this.

The conclusions of the Inspector in the Fourways Farm case to justify following tight policy do not sit easily with the decisions referred to above; for example the comment that there was no differentiation between the Country House proposed and ‘any other form of unrestricted residential use’ seems to clash with the

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conclusion that the large established Country Houses are ‘an agreeable and pleasant feature of rural England and the Green Belt’ (Appendix 7 - para 5.5 of the decision letter). The Inspector accepted that the proposal would be a focus of interest but the possibility that it would add positively to the Green Belt like (the existing estates) was not acknowledged. As there was no adverse comment on the quality of the design, indeed the reverse, the failure to accept the positive contribution to the landscape points to possible inconsistency.

Table 1
Selected Country Houses – planning consents granted to 1990

A. Generally Greenfield but cases involve historic landscapes

Scheme	Date	Special policy	Estate size
Sunninghill	1987	GB	8 acres
Dogmersfield (Nr Odiham)	1986 (App)	-	40 acres
North Astin (between Banbury & Oxford)	1985	-	2.5 acres
Upton Parva (Nr Upton House – A422, 7 miles Banbury)	1987	-	241 acres
Waverton (West of Moreton in the Marsh)	1977	AONB	184 acres
Hurcot (1 mile north east of Somerton B3153)	1988	GLV	183 acres
Bilbury Court (About 9 miles north east of Cirencester)	1986	-	Not known
Newton Solney		GLV	10 acres

B. Same site as previous property

Merks Hall (East Great Dunmow)	1983	GLV	Not known
Bretby Park (Close to Bretby Hall north of A50 Swadlincote)		-	246 acres
Angmering Park (On A250 south of A27 Chichester/Brighton)		AONB/GLV	Not known
Cobham Hall (South of A2 east of Cobham, Kent)	1987 (App)	GB	150 acres
Ashfold House 7 miles approx north of Crawley Not visible from road		GLV	Precise area not known but extensive
Ashampstead East of B4009 between Goring & Newbury		AONB	15 acres
Updown Court	1990	GB	11 acres
Larmer Farm (1) North east of St Albans B651		GB & GLV	71 acres

(1) Larmer Farm involved a replacement scheme for some apparently poorly designed dwellings

App – appeal decision

Sources Robinson (1984) and contact with Country House architects all contained in Practice archives.

Note: This table shows schemes granted consent. All the cases listed above are not analysed. The key determining factors in the cases analysed are shown in Table 4 at the end of the chapter.

5.3 **Period after Planning Policy Guidance Note 7 1997 – 2004**

In 1997 PPG7 was revised to include the policy relating to the tradition of the Country House:

‘An isolated new house in the countryside may also exceptionally be justified if it is clearly of the highest quality, is truly outstanding in terms of its architecture and landscape design, and would significantly enhance its immediate setting and wider surroundings. Proposals for such development would need to demonstrate that proper account had been taken of the defining characteristics of the local area, including local or regional building traditions and materials. This means that each generation would have the opportunity to add to the tradition of the Country House which has done so much to enhance the English Countryside’.

In 2004 Planning Policy Statement 7 (PPS) replaced PPG7 and the relevant policy now states:

‘Very occasionally the exceptional quality and innovative nature of the design of a proposed, isolated new house may provide this special justification for granting planning permission. Such a design should be truly outstanding and ground breaking, for example, in its use of materials, methods of construction or its contribution to protecting and enhancing the environment, so helping to raise standards of design more generally in rural areas. The value of such a building will be found in its reflection of the highest standards of design in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area’.

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The 2004 policy used words such as innovative nature of design, ground breaking in its use of materials or methods of construction. The most controversial element of the policy is the inclusion of the phrase 'highest standards of design in contemporary architecture'. The consultation draft of PPS7 omitted the Country House exceptions policy.

Estimates of the number of new Country Houses granted consent under PPG7 vary between twenty and twenty-five. It is impossible to be precise over the number but it is a good indication. Similarly absolute accuracy over the number of appeals to the Secretary of State is not possible because the Compass Bureau listings include cases which hardly justify being treated as serious Country House proposals. The figure is in the region of thirty to thirty-five cases. Of the thirty-two examined, four were allowed between 2000 and 2004. In addition to these the balance of permitted schemes received consent at the local level. In addition to the PPG7 approvals there are examples of Country Houses granted for estate management reasons or as replacement dwellings. Thus precise definitions are difficult.

The Royal Institute of British Architects mounted a national exhibition on the subject of the New English Country House in the autumn of 2003; the occasion was marked by the publication of a significant publication on the subject (Guy 2003). This source has been invaluable in assessing the subject. PPG7 linked the need for outstanding architecture and landscape design. This theme is reflected in the RIBA publication. Guy suggests the relationship between the Country House and the landscape is one of the characteristics of the Country House tradition. As so much of the landscape in this country is man-made the relationship of landscape and house become critical.

Table 2
Country Houses approved under PPG7

Scheme	Architect	Style	On Application	On appeal	Estimate Size
Great Canfield, Essex	Quinlan Terry	Classical	-	Appeal 2000	47 acres
Wootton Hall, Staffs	Francis Johnson & Partners	Classical	Approved 2000	-	660 ha
Swinhay House Near Stroud	David Austin Architects	Contemporary based on sustainable	Approved 2000	-	72 acres
The Lake House, Arlesey	Applin Associates	Reference to Frank Lloyd Wright	Approved 2000	-	64 acres
Ashley, Kings Somborne, Hants	Robert Adam Architects	Classical Greenfield site	-	Appeal 2001	50 acres with further estate
Alderley Farm, Stroud	Owen Inskeip	Queen Anne Style	2001	-	
Lime Kiln House, Shillingstone, Dorset	Gerald Steer	Arts & Craft design in an SSS1 and AONB	2001	-	14.5 ha
New Grafton Hall Malpas, Cheshire	Kathryn Findlay	Contemporary RIBA & competition winner	2001	-	114 acres
Nyn Park, Northaw, Herts	Julian Bicknell	Classical	2001	-	150 acres
Salford Manor, Chipping Norton	Edward Tyack	Classical AONB	2001	-	60 acres
Hungerford Park, Hungerford	Jeremy Blake	Neo Classical	2002	-	273 acres
Corbin House, Egginton, Burton	Shedkin	Contemporary	2002	-	4.77 acres
Spye House, Chippenham	Anthony Shores	Neo Palladian	2002	-	900 acres
Whittlebury Lodge, Silverstone, Northants	Peregrine Bryant	English Palladian within SSS1 AONB	2003	-	300 acres
New Boyland Hall, Long Stratton, Norfolk	David Bissonnet	Mixed styles	2003	-	11 acres
Witley Park, Thursley, Surrey	Robert Adam	Neo Palladian	-	2004 (Called in)	196 ha
St John's House, Oxon	Adrian James		-	2004 July	24 ha

Source to Table 2 on previous page: adapted from Guy 2003, Compass Bureau and Practice archives. This table summaries the consents in the period. The determining factors in the cases analysed are contained in Table 4 at the end of the chapter. Not all the consents listed are analysed.

A constant theme in the literature is the concept of what is ‘truly outstanding’ in terms of architecture and landscape design. Guy (2003 p 7) suggests that a good building becomes outstanding when it touches the human spirit, suggesting that a building is lifted from the simple functionality of providing shelter when reason, inspiration and function all come together to lift the human spirit and give delight. One could argue that an outstanding building composition must relate to a tradition of design and interpret this in a fresh manner. The scope for debate is considerable.

Of the four cases allowed by the Secretary of State (or Inspectors), all followed a full Inquiry. Each case is now considered in turn and key documents included in the appendices. With so few cases allowed each has an interest and significance.

5.3.1 Case studies 1997 – 2004

Site:	Great Canfield, Essex
Local Authority:	Uttlesford District Council
Local Authority reference:	UTT/1592/98/FUL
Appeal reference:	APP/C1570/A/00/1035304
Date of decision:	2000 (July)
Decision:	Application not determined. Appeal allowed.
Source:	Practice archives
Appendix:	8

Description:

The scheme proposed the demolition of an existing house and associated buildings on an appeal site of 47 acres. The main characteristic of the locality were smaller houses set in the countryside.

The Inspector identified three main issues in the case:

- whether the proposal would harm the rural character contrary to development plan policies
- whether the proposal conforms to the advice on country houses then set out in paragraph 3.21 of PPG7 which explains the exceptional circumstances in which a new house can be justified;
- if so, the extent, if any, to which that could outweigh any harm identified in the first issue.

(see Appendix 8, paragraph 9)

Analysis:

The scheme was found to comply with some policy elements of the Development Plan, in particular policy H8 of the Local Plan. This policy envisaged replacement houses in the countryside and the scheme proposed just this. However, policy H8 required interpretation as to compatible scale. One interesting aspect of the policy debate related to the proximity to the nearest dwelling, Water Hall at 338 metres. On the first issue the Inspector found that there would be impact upon the area but it would not necessarily cause harm. The harm or otherwise would be related to the quality of the proposal.

Turning to the second issue, the identity of the architect receives specific mention at paragraph 27 which includes the following ‘it must be accepted that the appellants’ architect is a leading exponent of classical architecture, who has

designed and built many distinguished buildings, including country houses'. However, the scheme is then carefully analysed against each requirement of PPG7 paragraph 3.21.

Conclusion:

The Inspector found that although the scheme would bring change to the area this change would not be harmful and the new dwelling met the tests of the PPG. The scheme conformed to a local policy and was represented by a leading architect.

Key determining factor(s): conform to both local plan policy and PPG7, outstanding architect.

Site:	Kings Somborne, Hampshire
Local Authority:	Test Valley
Local Authority reference:	TVS.08293/1
Appeal reference:	APP/C1760/A/00/1048547
Date of decision:	2001 (January)
Decision:	Application refused. Appeal allowed.
Source:	Practice archives
Appendix:	9

Description:

This case involved a new Country House of 11 bedrooms, two flats and swimming pool near the Hampshire village of Kings Somborne. The parties accepted that the proposal would not meet Structure Plan policies so it had to be justified under the exceptions policy of PPG7.

Analysis:

The decision allowing the appeal starts with a careful analysis of what is justifiably viewed as outstanding in design terms. The Inspector's comments on this are useful. He relates the ideas to basic architectural concepts of form, space, scale and context Appendix 9, paragraph 8). The next phase is illuminating in that he moves to reject the requirement to create a totally new landscape in favour of reflecting the existing qualities of the countryside.

In paragraph 10 the Inspector very carefully justifies the view that the house is outstanding:

- first he refers to the particular architect and states: 'it has evolved as a design under the direction of a skilled architect with a national reputation for an innovative approach to the classical tradition';
- the design is based upon sound principles of composition, proportion, space and style which he considers will be attractive and enduring;
- the principles are carried through to the room designs;
- the principles flow into the detailed designs of the elevations;
- the landscaping complements the house
- The property will be seen apparently but only from a few places and fits in with the landscape.

Conclusion:

This decision shows how factors some would think extraneous to the planning process may have influence. The Inspector was encouraged by the identity of the architect (although normally in planning decisions personal factors are not excluded). However in practice this is unreal and the standing of the professionals involved becomes a consideration. The debate about the criteria for the design to be viewed as outstanding shows how subjective the issue is. It might be possible to assist applicants by the inclusion in policy of some of the tests used by the Inspector.

Key determining factor(s): Outstanding design and identity of architect

Site:	St Johns House, Ramsden, Oxfordshire
Local Authority:	West Oxfordshire District Council
Local Authority reference:	W2003/0978
Appeal reference:	APP/D3125/A/03/1129739
Date of decision:	2004 (July)
Decision:	Application refused. Appeal allowed.
Source:	Practice archives
Appendix:	10

Description:

The Appellants intended a new Country House in an isolated 59 acre rural setting near Witney, Oxfordshire. The site lies within an Area of Outstanding Natural Beauty and High Landscape Value.

Analysis:

A classical approach was accepted as outstanding. One interesting point of this decision is that the fact (recorded in para 46 of the decision) that the house will be visible is not regarded as an adverse point. Indeed the new St John's House

would be evident from a ‘broad zone of visual influence’. This area of visibility, all within the Cotswold Area of Outstanding Natural Beauty, was noted to form an arc of 3.5 kilometres. However the fact that the property would be seen ‘from a number of viewpoints’ was not a problem (see para 50). As the Inspector remarked in the subsequent paragraph, several Country Houses in Oxfordshire are visible and Blenheim Palace itself is hardly hidden away.

Conclusion:

Again the presence of a well known architect at the Inquiry was a relevant factor in the assessment and Mr Adam’s assessment of the proposal is recorded in full. The identity of the professional team is a factor in the debate.

Key determining factor(s): Outstanding design

Site:	Witley Park, Thursley, Surrey
Local Authority:	Waverley Borough Council
Local Authority reference:	WA/03/0399
Appeal reference:	APP/R3650/V/03/1128039
Date of decision:	2004 (July)
Decision:	No decision by Authority, called in by Secretary of State
Source:	Practice archives
Appendix:	11

Description:

The site involved 484 acres of mature landscaped grounds surrounded by an estate wall. The previous house was destroyed by fire in 1953. Some of the original lakes and outbuildings are listed. This case was called in by the Secretary of State following a decision by the Waverley Council to grant

permission. The site is located in an area subject to very restrictive notations, namely Green Belt, Surrey Hills Area of Outstanding Natural Beauty and an Area of Great Landscape Value.

Analysis:

This case is particularly important because it was a ‘call in’ so the Secretary of State’s views are recorded on a series of very interesting issues (Appendix 11). As with all call-in cases the Secretary of State indicated the matters upon which he wished to be informed as follows:

- a. Whether the proposal conflicted with published guidance on Green Belt policy and if so, are there very special circumstances to justify consent.
- b. Whether the proposal demonstrates that it is of the highest quality and within the AONB.
- c. The relationship of the scheme to advice in PPG Note 13 on transport and the degree of reliance on the private car.
- d. The relevance of the proposal to PPG 15 ‘Planning and Historic Environment’.
- e. Other matters and conditions.

On the first matter, the Inspector found the scheme involved inappropriate development in the Green Belt with an adverse impact upon the openness of the area. The Inspector’s reasoning is consistent with the appropriate approach to the assessment of the issue; this was not evident in the Sunninghill case, when the Council considered the practical visual aspects, looking at the Green Belt

quality. This aspect is set out in paragraphs 44 to 48 of the Inspector's report; at paragraphs 49 and 51 the view is taken that the house would be truly outstanding and again the identity of the architect played an important role in this conclusion (see Appendix 11). As the property is well away from any towns and services it was clearly contrary to Planning Guidance Note 13 'Transport' which places emphasis on the availability of services.

Conclusion:

In the overall assessment the Inspector emphasised the contribution the house would make to the overall historic landscape and buildings within the area. The Secretary of State accepted that in total the case justified the grant of consent contrary to the Development Plan policies.

Key determining factor(s): very special circumstances of enhancement of landscape. Well known architect. Replacement of earlier house.

5.3.2 Conclusions on the period 1997 - 2004

Having considered in detail the cases where consent was granted the overall picture was reviewed. As previously explained the Compass summaries give information on the decisions. There were 28 cases dismissed under the PPG7 policy. The appeals dismissed showed a pattern emerges of less carefully considered applications and appeals often presented by the written method or Informal Hearings. The most frequent failing was the lack of outstanding design. The second characteristic of the four cases allowed or determined after Inquiry is that in each case a well known architect had either designed the scheme or gave evidence in support. Thirdly, the reasoning for the decision was clear, and where subjectivity entered into the argument this was acknowledged.

Generally, but not exclusively, the schemes permitted were classical interpretations of the English Country House tradition. Favourable decisions by

Inspectors or the Secretary of State involved leading well known architects in that particular tradition. Two cases have involved detailed reasoning, one on the definition of outstanding quality, the other on the relationship of policies, namely Green Belt, transport and the historic environment.

5.4 **Period after Planning Policy Statement 7 (August 2004)**

The wording in Planning Policy Statement 7 (PPS7) was introduced against a controversial background debate; indeed at one time it appeared that the exceptions policy was possibly to be omitted entirely from the new policy document.

The new wording differs from the old in several respects. First, it stresses the innovative nature of appropriate designs. The term is taken further by the use of examples including:

- use of materials
- methods of construction
- contribution to protection or enhancement of the environment
- raising standards of design in rural areas

Secondly, the emphasis is placed upon contemporary architecture.

The omissions are as informative as the inclusions. There is no specific reference to landscape design although the setting of the proposed new house is mentioned. However, the earlier Planning Policy Guidance Note 7 included a criteria of enhancement of the area. There was a clear traditional element in all this with the emphasis upon ‘the tradition of the Country House’ and the enhancement of the English Countryside (perhaps themes of the party in power at the time).

Table 3
Country Houses approved under PPS7
2004 – 2008

Scheme	Architect	Style	Application or Appeal	Estimated size
Ashby-cum-Fenby	Feilden Clegg	Contemporary	Application 2006 (March)	84 ha
Buckminster Coston, Leics	Mr Bancroft		Call in 2006 March	-
Lowther Deer Park Cumbria	Mr Hamilton	Classical National Park	Appeal 2006 (August)	162 ha
Leeds, Nr Maidstone		Contemporary	Application 2006 (July)	25 ha
Culworth, Northants	James Gorst	Contemporary	Application 2006 (October)	328 ha (associated farm)

Sources: Feilden Clegg, Mr Bancroft, Mr James Gorst, Compass Bureau and Practice archives.

Consents on application and appeal (or call-in) are few as Table 3 shows and indicate the difficult issues inherent in the test of the new PPS7. Although correspondence with the Secretary of State's office has confirmed that no particular architectural style is required, in practice the emphasis has moved from a predominantly classical to a contemporary. This is a result of the wording of PPS. It is equally interesting to analyse some of the dismissals on appeal which show a pattern of reasoning.

5.4.1 Case studies after Planning Policy Statement 7 (2004)

Site:	Coston, Leicestershire
Local Authority:	Melton Borough Council
Local Authority reference:	04/000/30/FUL
Appeal reference:	APP/Y2430/V/04/1161775
Date of decision:	2006 (March)
Decision:	No decision by Local Authority, called in by Secretary of State & consent granted
Source:	Practice archives & Paul Bancroft Architects
Appendix:	12

Description:

The proposed Country House was in parkland that had once accommodated a stately hall. The hamlet of Coston is an isolated small collection of farms and dwellings. The Inspector was reporting to the Secretary of State. The Inspector isolated two main considerations in the case, namely the relationship of the proposals to the Development Plan and national policy and secondly whether the quality of the design justified construction of an isolated dwelling.

Analysis:

In practice the Inspector dealt with the debate slightly differently and dealt with three issues, namely impact upon the countryside, the policies and the PPS7 aspects of the particular scheme. It is interesting that the Secretary of State's decision letter simplified matters by going to the policies first and then the PPS7 arguments. The latter format seems the most cogent.

Dealing first with the Development Plan location policy, the decision letter accepted the Inspector's view that the proposal was contrary to Strategy Policy 8 of the Structure Plan and Policies OS2 and C8 of the Local Plan. Strategy Policy 8 is a Structure Plan Rural Policy. Continuing under the head Development Plan and sustainability, in terms of location the site was found to be remote and hence contrary to the plan in this case (see decision letter, para 10). However, still in the Development Plan some support was found in the Regional Spatial Strategy Policy 4 and Structure Plan policies relating to landscape character (see decision letter, para 14). However, overall the proposal was found to be conflicting with the Development Plan.

Therefore the scheme had to be assessed against the criteria of paragraph 11 of PPS7. Each key element in the list of criteria can be analysed:

- Exceptional quality – apparently not according to decision letter, para 18, but it does present high quality design. This view was contrary to the Inspector's view stated very clearly at paras 131 and 133.
- Ground breaking and innovative nature – again it did not qualify. Paragraph 19 is somewhat difficult to understand in that the apparent failure of the property to be innovative arises from the use and character of local building materials. It has to be remembered that one of the objectives of new Country Houses is to show 'sensitivity to the defining characteristics of the local area' (see last clause of PPS7, para 11).
- Enhancement of the setting and sensitive definition of local characteristics – whilst this is one of the criteria in PPS7, para 11, the Secretary of State's letter and the Inspector dealt with it more generally. The interesting feature of

this decision letter and the Inspector's report is that the two differ considerably but both come to the same result but for different reasons.

The Inspector's report at paragraphs 37 and 38 recorded the contemporary technology that was to be used:

- low energy whole house ventilation system involving air entering the building through triple glazed cavities detailed into the windows and exiting through tall chimney stacks,
- wood chip heating system fuel coming from the locality,
- solar water heating system,
- reclaimed construction materials,
- rainwater would be recycled

Conclusion:

The Inspector accepted that the degree of innovation and use of techniques qualified the PPS7, para 11 test but the Secretary of State did not accept the view. One important point was overlooked in the decision letter and this was the Inspector's coherent argument at paragraph 126 that the coming together of materials and design had produced a scheme of great merit. Earlier in this paper the definition of good design referred to the relationship of function and form that achieves a lifting of the spirit. This is surely what was in the Inspector's mind at paragraph 126 which justifies quoting:

'It should be recognised that the degree of synthesis evident in the design of the house – particularly the interpretation of traditional forms of construction and modern building services requires a high level of skill and experience' (Appendix 12).

This holistic concept seems to have been somewhat lost in the decision letter or possibly just bypassed.

Key determining factor(s): Restoration/relationship with historic parkland.

Site:	Lowther, Penrith, Cumbria
Local Authority:	Lake District National Park Authority
Local Authority reference:	7/2004/3124
Appeal reference:	APP/Q9495/A/05/1188213
Date of decision:	2006 (August)
Decision:	Application refused. Appeal allowed
Source:	Practice archives
Appendix:	13

Description:

The second case determined by the Secretary of State under PPS7 involved a new dwelling in open countryside in the Lake District National Park, South of Penrith. The scheme was described as Palladian in concept with Michelangelesque elements. Apparently the appellant contended that the proposal represents the first use of these elements fused with Palladian ideas in an English Country House. The National Parks Authority refused this scheme on grounds that the proposal was contrary to Structure Plan policies, in particular those preventing development outside larger villages and towns.

Analysis:

It is interesting that the Inspector at paragraph 33 found that the innovative techniques to be employed would meet the test of paragraph 11 of PPS7. These were rainwater harvesting and re-use, solar panels, ground source heat exchange system and use of sheep's wool for insulation. Again the Inspector took a

holistic view of the project relating the materials to the design. The proposal involved the removal of incongruous buildings in the park.

Conclusion:

Overall the advantages of the project outweighed the disadvantages. The appeal was allowed.

Key determining factor(s): overall improvement of historic landscape and achieved the ground breaking standard/high quality design.

Three cases were granted without appeal or call-in.

Site:	Fulford Farm, Culworth, Northants
Local Authority:	South Northamptonshire District Council
Local Authority reference:	S/2006/0720/P
Date of decision:	2006 (October)
Decision:	Consent granted on application
Source:	Practice archives and James Gorst Architect
Appendix:	14

Description:

The scheme involved the demolition of the existing dwelling and construction of a new house of 1,433.7m² with an associated agricultural building of 1,216.8m². The scheme was considered as a PPS7 exception to policy rather than on the basis of the needs of the farm and replacement dwelling policy.

Analysis:

The very careful report to committee found that the use of local materials was innovative; para 6.10 of the report summarised the matter thus:

‘the use of local stone, bronze panelling and sedum roofing is an innovative approach, with regard to issues of sustainability as well as complementing and referring to the usual form of development within this part of the district.’

The report goes on to state that the project was based in technological innovation and results in buildings that are self-sufficient and carbon neutral. The site is within a Special Landscape Area and the landscape treatment was particularly commended in the report. An independent review was undertaken by a well respected architect who joined with CABE in rightly commending the project.

Conclusion:

It is interesting that the identity of the architect as both well known and well respected in the profession finds mention. Just as with the successful PPG7 cases the design is seen as holistic both in the arrangements of spaces and the relationship of the form to the environment and landscape.

Key determining factor(s): Outstanding design & outstanding Architect.

Site:	Barton Farm, Ashby-cum-Fenby near Grimsby
Local Authority:	North-East Lincolnshire
Local Authority reference:	DC/1282/05/WAB
Date of decision:	2006 (March)
Decision:	Consent granted on application
Source:	Practice archives & Feilden Clegg Bradley
Appendix:	15

Description:

This scheme involves the demolition of a derelict farmhouse and replacement by a large country house. The site is just outside a small village of Ashby-cum-Fenby. Again this scheme was put forward as an exception to the policy on the basis of PPS7, para 11. Whilst the site is not in the village one can see the nearby settlement from the site. As the report explains (Appendix 15), the project involves the creation of a large lake and additional tree planting.

Analysis:

The Officer's report to committee once again highlighted the standing of the architectural practice involved. The scheme involved provision of 50% of the energy needs of the property from renewable sources. The whole scheme had been carefully planned to enhance the linearity of the landscape. (See Figure 3)

Conclusion:

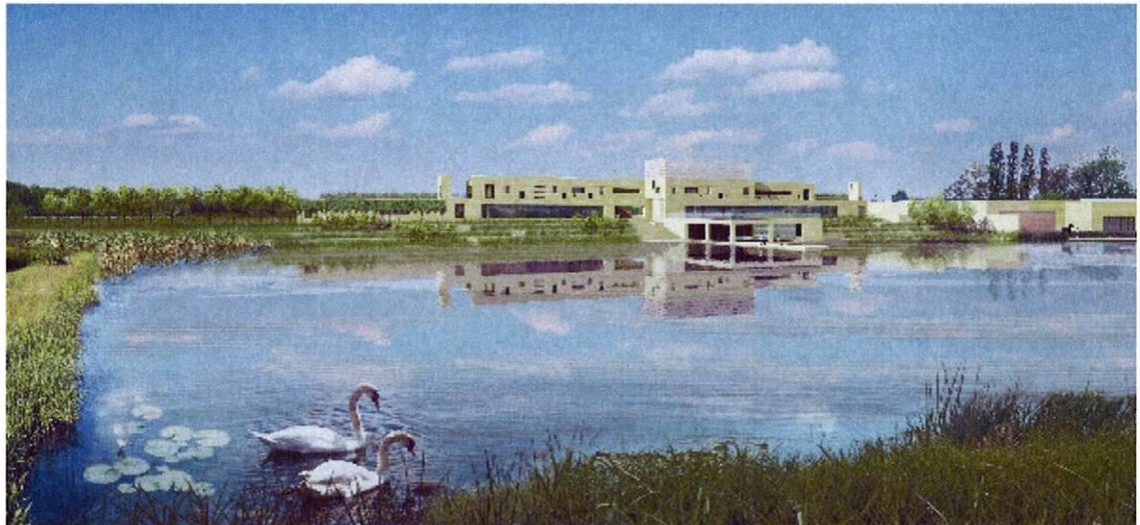
This result shows the importance of local views and careful collaboration with the local authority leading to a mutual understanding between applicants and authority. Again the identity of the architectural practice is key.

Key determining factor(s): outstanding design and identity of architect.

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Ashby cum Fenby, near Cleethorpes. A new w PPS7 approved country house.

Designed by Keith Bradley of award-winning practice Feilden Clegg Bradley, with the plan handled by the Reading office of Barton Willmore, and backed by CABE, the home will be very different from most other 21st-century houses. Its scale will compare with some of the big country houses in history. "The floor area of about 40,000 sq ft will be about the same as C Howard or Hardwick Hall," says Bradley. Not only will the roof of the two-winged home be covered in grasses, but more than half its energy needs will be provided by bio-crops grown on the estate



Computer-generated images of how the PPS7 house at Ashby cum Fenby will look when finished. A photovoltaic roof above entrance hall will collect solar energy. Geothermal heating will be installed and a grass-covered roof will provide insulation. Bio crops the estate will supply more than half its energy needs. The roof terrace will incorporate solar-thermal water heating panels.

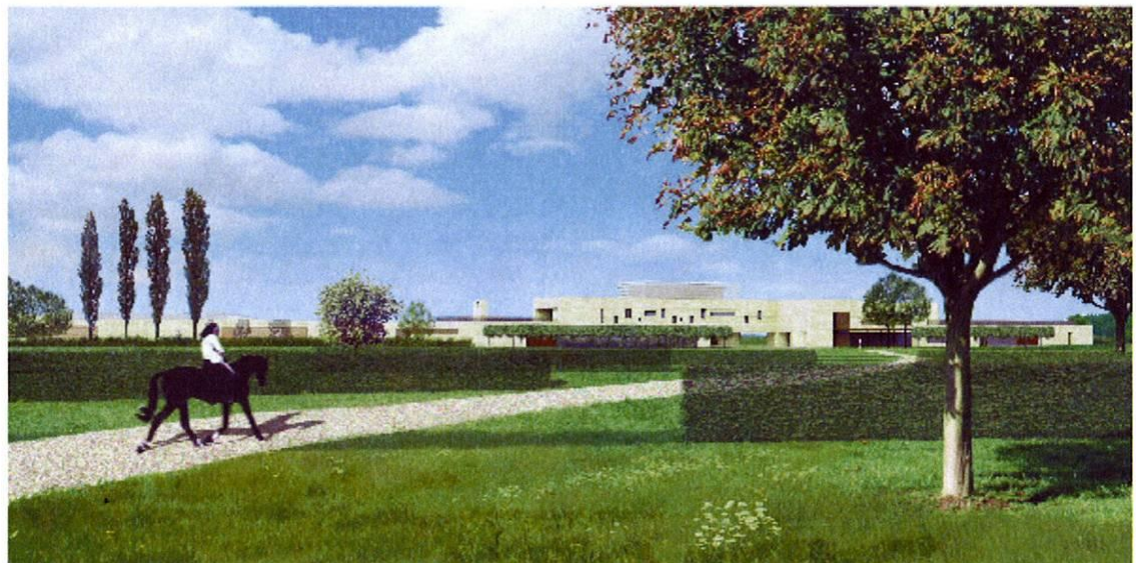


Figure 3 Ashby-cum-Fenby (Source: Feilden Clegg Bradley)

Site:	Merriam's Farm, Leeds, near Maidstone
Local Authority:	Maidstone Borough Council
Local Authority reference:	MA/06/0700
Date of decision:	2006 (April)
Decision:	Consent granted on application
Source:	Practice archives & Maidstone Borough Council
Appendix:	16

Description:

The scheme involved the demolition of chicken sheds and erection of a new house in a very contemporary form. The location was below a key ridge line but outside any settlement in open countryside.

Analysis:

The project involved a variety of sustainable elements, namely rammed earth construction, wind power generation and a wood fired pellet boiler. From knowledge of the area and the scheme the degree of local character and use of materials was not as much in evidence on this project as on the other two analysed. However this project involved landscape improvements and a close integration with the landscape design.

Conclusion:

This was a scheme worked up in close collaboration with the planning authority and the support of Cabe was given to good if not very well known architect.

Key determining factor(s): Outstanding design, site enhancement and very sustainable.

Site:	Ravenstonedale, South of Kirby Stephen, Lake District
Local Authority:	Eden District Council
Local Authority reference:	03/1154
Appeal reference:	PP/H0928/A/04/1153298
Date of decision:	2005 (January)
Decision:	Application refused. Appeal dismissed.
Source:	Practice archives
Appendix:	17

Description:

More cases were dismissed on appeal than allowed. From the Compass Bureau analysis most were presented at a modest level, and determined by written representations. One such involved a scheme at Ravenstonedale in the Eden District Council area. The location is described as an isolated area on the edge of rising moorland.

Analysis:

The decision took the usual form of analysis of policy first and then considering the relevance of PPS7. However, the Inspector almost guided the appellant to the sort of scheme that could meet the standards of PPS7: at para 11 of the decision letter he states inter alia:

‘One would expect the architecture of a small landed estate to reflect polite national rather than local vernacular traditions. It, nevertheless, would utilise sympathetic local materials and incorporate modern, sustainable technology, including solar panels at low level on the garden front and the use of recycled rainwater’.

Conclusion:

The case was dismissed, the scheme failing to represent exceptional quality and innovative design. The dismissal is important in showing the negative mirror image to the positive cases. It failed on the criteria that are emerging as key.

Key determining factor(s): failure to meet highest contemporary design standards.

Site:	Hurstbourne Priors, Hampshire
Local Authority:	Basingstoke & Deane Borough Council
Local Authority reference:	BDB/59225
Appeal reference:	APP/H1705/V/04/1170642
Date of decision:	2006 (May)
Decision:	Local Authority did not make a decision Application called in and rejected by Secretary of State
Source:	Compass Bureau discussions with architect
Appendix:	18

Description:

The site lies at the end of a downland ridge between the River Test and the Bourne Rivulet. The nearest village is about 0.5km away. The proposal was for a new Country House in a former chalk quarry and within Hurstbourne Park which is listed Grade II in the English Heritage Register of Parks and Gardens of Special Interest: the site is within a protected environment and the whole area is one of Outstanding Natural Beauty. The proposal was for a four storey house with south facing living areas mainly in glass.

Analysis:

The Council supported the scheme, but it was 'called in' by the Secretary of State. The main reason being that further information was needed on the extent

to which it was consistent with ‘national policies on important matters’. The key issues included consistency with the general policies of PPS7 and the impact on the North Wessex Downs Area of Outstanding Natural Beauty (Appendix 18).

The proposal was opposed by the Hurstbourne Park and Testbourne Estates who instructed two Barristers and seven expert witnesses. The Inquiry lasted for eleven days, the decision letter and Inspector’s report raised questions worth longer examination than most cases. This is undertaken by comparing the points upon which the Secretary of State had indicated a wish to be informed and the conclusions of the Inspector. The author was not involved in the case but has discussed it with the architect involved.

The first matter upon which the Secretary of State wished to be informed was the extent to which the proposed development accords with the Development Plan for the area including regional planning guidance. Many of the relevant policies seek to direct development to sustainable locations with services and good public transport. Also considered under this head were matters relating to the preservation of nearby Grade II* listed buildings. It is not surprising that a Country House will be away from public transport. Similarly it is unsurprising that a new Country House will not further the aims of the landscape objectives of the Area of Outstanding Natural Beauty although the existing Country House in the vicinity and associated buildings were accepted and protected.

Of greater note is the treatment of the proposal against the key principles of PPS7. By virtue of the nature of a Country House it seems wrong to review the application on a box ticking basis applying these general principles. The Secretary of State’s ‘call in’ letter asked to be informed of the extent to which the proposed development is consistent with the Key Principles in paragraphs 1(i)-(vi) of PPS7. However, in the decision letter the Secretary of State conceded that

‘the Secretary of State considers that it is appropriate to consider the relevance of each Key Principle to the proposal under consideration. In this case, the Secretary of State recognises that, as the proposal is clearly an isolated dwelling in the Countryside, it should be considered in the first place against the Key Principles 1(v) and 1(vi) and the exceptions provided in paragraphs 10 and 11 of PPS7’.

One wonders why the Inquiry was set up to review all six of the principles when at the conclusion only two were reviewed.

The terms of the Inspector’s review of these Key Principles (whether they be relevant or irrelevant) give an insight into the outlook of the Inspector. For example, Key Principle (i) refers to decisions being based on sustainable development principles. The Inspector concludes: ‘The proposal does not seek to reduce social inequalities or address accessibility for all members of the community to jobs, housing and other facilities’. It is unlikely that any new Country House will achieve these aims: this issue has not been brought up in other cases. Elsewhere in this section the Inspector argues that the proposal was exclusive and therefore contrary to the aims of PPS7. This approach is not found in the two cases that were allowed after ‘call in’ or on appeal. Other parts of the decision letter are more comprehensible. In terms of design, the Inspector found against the proposal on grounds that the modern sustainable elements such as the photo voltaic cells were not well integrated into the overall design; indeed the scheme involved their location in the gardens. The scheme design was found not to respond as a holistic whole.

Conclusion:

The proposal was dismissed and the Appellant faced costs for the expenses incurred by the objectors. This proposal was supported by the local Planning Authority but was rejected by the Secretary of State, and the Inspector's report seems to go beyond what could be anticipated surprisingly indicating a degree of bias. It is inappropriate for the decision branch to so extend the terms of reference for an Inquiry and then from the same section of the Inspectorate or Department of Communities and Government disregard the very matters initially raised. Of all the decisions considered this case seems to be the most difficult to understand.

Key determining factor(s): Design not innovative nor relating well to landscape.

Site:	Burley Hill, Hampshire
Local Authority:	New Forest District Council
Local Authority reference:	85643
Appeal reference:	APP/B9506/A/06/2010924
Date of decision:	2007 (July)
Decision:	Application refused. Appeal dismissed.
Source:	Practice archives
Appendix:	19

Description:

This proposal by a University Professor of Engineering sought to apply sustainability principles to the construction of a new Country House at Burley Hill in the New Forest. The site was on the edge of a village. Computer generated (Figure 4) illustrates the proposals. As the practice was involved for most of the case background information is available hence a slightly longer entry for this case. The house was to be constructed of timber, sourced from the New Forest, and is contemporary in design, relating gracefully to the Lakeside

setting. The location is isolated in that only three properties can be seen from the site but it could not be described as remote as local services are available in Burley. The proposal was supported by the Commission for Architecture and the Built Environment (CABE), but refused by the New Forest District Council, (since their New Forest became a National Park, and the National Park Authority defended the original decision). The reasons for refusal can be summarised:

- the scheme is not particularly innovative,
 - it is contrary to the New Forest Policies that prevent all development outside a few defined settlements and Burley Hill is not one of these defined and accepted settlements,
 - the Conservation Area would be harmed,
 - ecology and trees would be damaged by the scheme
- (See Appendix 14)

The arguments advanced to show the house is ground breaking in design terms can be summarised under four headings:

- Bioregionality
- Construction Ecology
- Design for Deconstruction
- Building Biology



SOUTH VIEW

Burley Hill House 2005

James Gorst Architects Ltd 15th August 2005

Drawing no BH05/PA/404

Figure 4 Burley Hill

The Bioregional approach takes account of local environmental, economic and social factors. The proposal at the House by the Lake used local materials (particularly New Forest oak) which is given added cultural and economic value by being felled and processed locally in the New Forest. Thus local identity is fostered and energy used in the production process is minimised. Similarly Cob Walling is another traditional construction process used in the New Forest. The site for the House by the Lake has a rich supply of blue and brown clay and reed that can be used as a filler. A legal undertaking was signed to prevent any use of PVC, steel or concrete within the construction process.

A purely scientific justification for sustainable development is divorced from the cultural implications and the realisation of place. By this type of project local cultural and social values can be preserved (Guy & Moore 2005, p 225).

The stress upon the Bioregional approach meets that part of paragraph 11 of the PPS7 which refers to the 'defining characteristics of the local area'.

Construction Ecology is the second concept in the approach being a process to minimise resource use using the following basic principles.

- use of natural resources should not exceed the rate at which natural processes can replenish them,
- the use of resources never exceeds the capacity for natural systems to absorb the changes involved without detriment to existing and future ecosystems,
- as far as possible the waste from one process is used as a product for another

The materials and products such as the oak and clay would be checked through the audit process as recommended by the Building Research Establishment.

The concept of Design for Deconstruction is at the forefront of the challenge to reduce construction waste (the biggest component of waste produced in the United Kingdom). The fabrication of the House by the Lake would be entirely based on these principles: thus the building could be taken down and the materials re-used in another location.

The last element in the approach is Building Biology. This is an approach to building which acknowledges the link between human health and building design. The aim will be to minimise the amount of toxicity present in the indoor

environment by auditing materials and leaving structural and cladding materials untreated. Sheep's wool would be used for insulation rather than insulation based upon crude oil such as polystyrene.

Analysis:

The appeal was dismissed by a decision letter of 2nd August 2007. An appeal decision letter can be challenged by the process of judicial review in the courts, but only on a matter of law: this means the merits of the case cannot be re-opened but if there is a failure in the reasoning of the decision or information is wrongly recorded the issue can give rise to a successful challenge. A legal opinion was taken on the decision. The Counsel's view was that it was not clear in several respects but the challenge would not be so certain of success that the costs could be justified. Generally in the analysis of Inspectors' decision letters a 'box ticking' approach is frowned upon by lawyers; it can be done as part of the assessment. The preferred approach takes the main themes of policy and see if generally the decision has adequately applied policy. In this case the key section of PPS7 requires that 'a design should be truly outstanding and ground breaking' and this can be in its use of materials, methods of construction or its contribution to protecting and enhancing the environment: the important word is 'or' the project does not have to achieve all these desirable objectives.

It seems the Inspector found in favour of the totality and holistic approach to the construction project. At paragraphs 12 and 13 he summarises his assessment thus:

'It is suggested that collectively, together with the acknowledged architectural quality, their use would be genuinely innovative; thus providing an important and influential example of the holistic fusion of design with sustainable technologies and materials.'

‘I do not disagree, but consider that whilst ground-breaking and welcome in that sense and acknowledging that this argument may go a long way towards justification under paragraph 11 the benefits must be weighed against other significant harmful effects’.

‘It is difficult to see how, in the long term, notwithstanding its qualities, this house would satisfy the part of paragraph 11 that requires a new dwelling to protect and enhance the countryside’.

The drafting of the policy paragraph 11 does not require the scheme to both be ground-breaking and to enhance the environment – these are alternatives. It can be argued that the New Forest is quite exceptional and the reader should know what is generally meant by the Inspector. On the other hand at paragraph 10 the Inspector states that the landscape although natural in appearance is largely formed by human activity over years.

Conclusion:

The appeal was lost on the ecological arguments that the simple presence of human beings and in particular their cars, might cause harm to the Forest. The present situation in this case is that further work is now being undertaken on the issue of the relationship between human activity and evolved landscape. The evidence on this aspect was factual in terms of the presence or absence of species, however it needs to be further expanded.

Key determining factor(s): harm to countryside

5.5 Overall conclusions on Country Houses

Without undertaking the research the background work for these cases the information in the Practice would be much thinner and a few valuable concepts could not have been advanced. The evidence shows there are a few main

CHAPTER 5
NEW COUNTRY HOUSES

determining factors in most cases, shown in Table 4. These key factors are reviewed in the following pages. At the time of writing the two schemes consented under PPS7 by the Secretary of State were both replacement Country Houses related to an existing historic landscape. The Compass Bureau summary results show six schemes rejected all failing to meet the test of outstanding design.

TABLE 4
Country Houses
Summary of key determining factors in cases analysed

A. to 1997	Green Belt Very Special Circum- stances	Impact on Character of Land or Green Belt	Restoration or replacement of Historic Buildings or Parks	Changes to National Policy PPG or PPS	Outstanding Quality of Design	Identity of Architect
Sunninghill G.B. (A)	✓ (security)	✓				
Cobham Hall G.B. (A)	✓ (restoration)	✓	✓			
Dogmersfield (A)			✓	✓		
Fourways Farm (D)	x		x			
B. 1997/04						
Great Canfield (A)				✓	✓	✓
Kings Somborne (A)				✓	✓	✓
St John's House (A)				✓	✓	✓
Witley Park (A)			✓	✓	✓	✓
C. 2004-2007						
Coston (A)			✓	✓	x	x
Lowther Cumbria (A)			✓		✓	
Culworth (A)				✓	✓	✓
Ashby-cum Fenby (A)				✓	✓	✓
Leeds Maidstone (A)		✓		✓	✓	✓
Ravenstonedale (D)				✓	x	x
Hurstbourne Priors (D)		x		x	x	x
Burley Hill (D)		x		✓	✓	✓

Sources: Practice archives, relevant Local Authority files, Compass Bureau

A – Allowed on application or appeal

✓ Argument accepted

D – Dismissed on application or appeal

x Argument rejected

5.5.1 Policy interpretation

National policy forms the backcloth against which decisions are made. It is a given constraint. The change in emphasis between PPG3 and PPS3, that is moving from the traditional to the contemporary design, is evident in the decisions. It features in all the post 1997 cases (see particularly Ashby and Leeds). The interpretation of policy is less consistent with the case at Hurstbourne Priors including contradictory tones to the other cases. Similarly the interpretation of Green Belt policy at Sunninghill is at variance with the normal interpretation of Green Belt policy due to the weight put on the particular character of the site.

5.5.2 Outstanding design

One consistent theme is the importance of outstanding design featuring as a positive factor nine times, and the conclusion that has emerged from the studies is perhaps a working definition of good design; following Guy (2003) that a good building becomes outstanding when it touches the human spirit when ‘reason, inspiration and function all come together to lift the human spirit and give delight’.

In the present post PPS7 climate one may add that they must do so in a sustainable and innovative manner. Outstanding quality goes way beyond pure functionality. However, functional elements must be incorporated in the design from the start. One or two schemes have failed because contemporary sustainable elements have not been part of the initial concept. Hurstbourne Priors is an example. There must be unity of concept between the site and the building: these are the characteristics of good design. In nine of the cases reviewed and summarised in Table 4 outstanding design is a key factor. The end result must be a holistic creation and in the right place such will be both inspiring to the community at large and good to live in.

5.5.3 **The identity of the Architect**

This was a key determining factor in seven of the decisions and was linked to the design issues.

5.5.4 **The importance of the local decision**

As a result of the close examination of cases it is now possible to advise clients of the likely problems they face in promoting schemes for new Country Houses. One evident conclusion is that if a Council can be won over at application stage this is by far the best approach. Of the recent PPS7 as opposed to PPG7 cases, two cases have been allowed with the involvement of the Inspectorate. Neither have been for new Country Houses unrelated to a previous Country House or established landscape. In the case of Lowther Deer Park in Cumbria, within a National Park, there were exceptional circumstances of the replacement of an existing property and the completion of a historic estate. Indeed the completion or replacement of a historic estate is a theme running through many of these cases even prior to PPG7. On the other hand the new houses at Ashby-cum-Fenby and Leeds near Maidstone involve modern well designed Country Houses in locations where there has been little or nothing in the past in terms of buildings. The three new Country Houses as opposed to ‘historic replacement’ projects were all granted on application and from discussions with the advisers involved a great deal of local discussion and gentle local pressure. Indeed this seems the key approach which was evident in the Buckminster, Leicestershire case which was called in by the Secretary of State and had the support of the local authority.

5.5.5 **The consistency of the Inspectorate/Secretary of State**

At the time of writing no PPS7 house has been allowed on appeal unrelated to an additional argument as at Lowther Park or Buckminster, both of which involved the completion of a historic landscape. However there is more to it than this.

The end result is that some 95% of appeals (as detailed in the Compass summaries) on new Country Houses are dismissed, the implication is that there is a great deal of wasted effort with concomitant public and private sector wasted expense. It can be suggested that the policy needs to be reviewed: for example it could be that a warning paragraph should be added to point applicants to the unlikely success of a project in the Green Belt, the National Parks and possibly Areas of Great Landscape Value. However, the exceptional situation does occur and the earlier example of the Duke & Duchess of York's property at Sunninghill would be an example. But on balance such clarification of the policy would be useful. It could go further and give one interpretation of good design, obviously there would be other interpretations.

It seems unsatisfactory that a policy that has been in existence for over three years has not so far given rise to any positive interpretation at the appeal stage. From reading the decisions the tone and approach seems to vary widely from the positive at Buckminster to the extremely negative at King's Somborne. Both sites were remote – the first was accepted by the Inspector, the second was put through the full policy analysis. It can be argued that further academic and professional debate on the subject will enable policy makers to refine their objectives. Meanwhile paragraph 11 could be re-drafted and elaborated perhaps in an appendix as is the case with several of the concepts in the housing policy note PPS3. The evidence indicates there is consistency in the use of a few determining issues. This is helpful enabling professionals to concentrate on these.

It will be interesting to find out whether the swings of style and approach by the Inspectorate are as evident in the Green Belt area. It is ironic that even with PPS3 the number of cases allowed whether on appeal or at application up to summer 2007 do not seem to be very different from the situation before even PPG3.

5.5.6 Practice implications relating to Country House schemes

Having undertaken this study the advice in the Practice is much more focussed. We would now suggest to clients wishing to undertake a Country House that they should take full account of the determining factors found and summarised in Table 4 namely:

- Be certain the design concept is well thought and outstanding from early on and relates to the site.
- Generally avoid Green Belt areas and probably National Parks and Areas of Great Landscape Value. Avoid ecologically sensitive areas.
- Whenever possible select a site that forms part of a historic landscape where the Country House has been lost.
- Engage a nationally known ‘signature’ architect.
- Discuss the project with local interest groups, the Parish, residents nearby and the District Council to try to obtain support.
- Obtain full site survey information and a team of advisers probably concentrating on leading academics in their field rather than professional practices. This is an important point because the right academics will be at the forefront of work in what is a quickly changing environment. From reading the evidence recorded in the various Inspectors’ reports this point comes through clearly, it applies particularly to experts on sustainable construction techniques and particularly concepts that generate these new approaches to bioregionality and construction ecology.

The situation is rapidly changing and the research report that now underpins the professional practice's work must be updated on a regular basis. One of the more interesting aspects of the work on this part of the thesis has involved discussions with leading architects of all schools of design. They have invariably given of their time and information in a cordial and helpful manner. It would be wrong to attribute particular views to individuals but frustration and uncertainties were the main responses to the way in which the planning system responds to their proposals. Since the Burley Hill Inquiry the importance of the witness evidence has been confirmed to the practice: this came from informal discussions with decision makers in the Inspectorate.

As a result of experience the practice is now tending to foster even closer links with university researchers. A typical proof of evidence as produced at the Burley Hill Inquiry is appended (Appendix 20). This was specifically commended by the Inspector in the subsequent informal discussions. The experience of the Practice is that leading academics are often able to bring the very latest knowledge source documents to their evidence. It is always important to be sure the chosen academic expert has detailed knowledge of the subject. This was clearly the case in the Burley Hill instance. The appeal was dismissed on other grounds than the subject of the particular expert. The evidence was singled out for commendation by all those involved, even the opposition. This theme will be developed in the conclusions. The project has not just involved comparing decisions but also reviewing the steps on the way to them and comparing evidence and its impact. This is a by product of the main research themes. This has significance for the Doctoral programme and relationship of University departments and the professions.

CHAPTER 6

DEVELOPMENT CONTROL IN GREEN BELT AREAS

6.1 Introduction

As with the Country House topic the overall background is first reviewed then detailed policy background to each case study subject. The concept behind Green Belts is very simple: the urban area stops and the rural, undeveloped countryside starts. This idea has a long history but came into active public debate in the inter-war period. In 1938 the Sheffield City Council approved a Green Belt scheme designed to preserve the City's unique surroundings, and in the same year the London County Council promulgated the Green Belt (London and Home Counties) Act. These early belts were owned by the public authority and generally acquired by purchase or gift.

The first Green Belt Circular of 1955 requested planning authorities to define Green Belts around towns and restrict development. The Circular referred to two further objectives, namely the prevention of neighbouring towns merging into one another and thirdly to preserve the special character of towns. Circular 50/57 took the advice further, defining acceptable uses in the Green Belts. Despite the invitation, the Ministry of Housing and Local Government did not respond positively to all the proposed new Green Belts. This period in the history of Green Belts is well documented (Elson 1986). A continual debate started about the supply of building land that continued from the late 1950s up to the present. The Counties used the Green Belt to defend themselves against the housing needs of adjoining urban areas. The debate about the form of the Green Belt continues but this is not the subject of the thesis: the arguments are regularly traversed in the professional journals (Elson 2002). For the purposes of this thesis a key concept is the scale of residential uses within the Green Belt. An early study of London's Green Belt (Thomas 1970) found residential and commercial activities occupying 6.2% of the Green Belt.

Institutions standing in extensive grounds occupied a further 1.1%: this is a relevant land use because such uses have been subject to changes of use. Of the broadly non Green Belt uses this category is the largest so inevitably there is a debate when applications are made relating to this category of use.

6.2 Acceptable uses in the Green Belt

Elson (1986) argues that despite the recommended tight control of new development in Green Belts no two authorities operate in precisely the same way. His examples of Staffordshire and Cheshire illustrate the variability of detailed policies. The Cheshire Structure Plan deemed a wide variety of intensive agricultural buildings were deemed appropriate uses, such as commercial glass houses and buildings for intensive animal rearing. Turning to the residential theme Circular 42/55 was an emergency measure to prevent any further deterioration in the position and Circular 50/57 put forward a coherent approach to control within areas covered by the Green Belt. Broadly settlements would either be washed over by Green Belt or excluded by an existing inset settlement boundary, the latter were normally classed as 'recognised settlements'. Elson (1986 Table 6.2) explores the widely varying application of policy in Local Plans in the West Midlands Green Belt through three categories of new housing development (replacements, infilling and local needs):

Table 5
Treatment of Green Belt Policies in Local Plans in West Midlands
Green Belt

Category of development	Will be permitted	Considered on merits	Will not be permitted	Not considered
Replacements	2	1	4	10
Infilling	10	-	6	1
Local needs	7	-	9	1

(Source: Adapted from Elson 1986 table 6.2)

This finding supports the proposition that, if local policy varies significantly between authorities, outcomes may be inconsistent. This area of investigation is so different from the study of Country House policy. In the latter study it was shown that few, if any Districts had specific policies to apply to applications for Country Houses. In the case of Green Belts the general policy has been well established for over fifty years. In the early 1980s Green Belt policy was closely linked with the housing land availability issue. The initial 1983 Green Belt Circular anticipated the removal of small areas of Green Belt which were within areas of existing development. There was a major political backlash, reflecting the tensions within the Conservative party between reformers and traditional interests in the shires. The latter supported the status quo and reflected traditional rural constituencies in often affluent areas around the major conurbations. The eventual Circulars were less innovative than had been anticipated and the 1985 Circular was eventually replaced by the 1988 Planning Policy Guidance (PPG) which in turn has been revised.

6.3 Current national policy on Green Belt residential development

The three approaches to existing villages in the Green Belt still apply. There is little alteration to the 1957 categories; namely those villages where no new building will be allowed are washed over by policy, secondly those where infilling will be allowed can be either specified in the policy or inset and thirdly limited development villages can be inset (see PPG2 para 2.11). PPPG2 states that all inappropriate development in Green Belts can only be permitted if the harm is clearly outweighed by other considerations. The construction of new buildings inside a Green Belt is inappropriate, unless for traditional purposes of agriculture and forestry, or for essential facilities relating to outdoor sport and recreation.

In the 1995 PPG, for the first time a paragraph is included indicating the preferred uses of land in the Green Belts. These uses refer to provision of access to countryside, opportunities for sport, enhancement of damaged landscapes and protection of agriculture and conservation. Frequently an objection to inclusion of land in the Green Belt is based upon the quality of the site involved but such an argument has always been discounted because of the evident danger that people might despoil their land. There is however an arguable relationship between the realistic use of a site, for example offering good quality countryside near dense residential areas and the policy objectives of keeping land open. Paragraph 1.7 emphasises the precedence of the policy of inclusion over land use character. If Green Belts are to undergo some reconsideration this relationship of policy and quality of land needs to be revisited but it is not addressed here.

In the Green Belt, new buildings are ‘inappropriate’ unless they are for the following purposes:

- agriculture and forestry
- essential facilities for uses that are in themselves appropriate, these include small changing rooms or facilities for cemeteries
- limited extensions, alterations or replacement of existing buildings
- infilling in some circumstances and affordable housing
- redevelopment of major existing or developed sites identified in adopted Local Plans

These categories of appropriate development raise innumerable issues of definition and have slightly changed over the years. The 1955 and 1957 Circulars accepted institutions or schools standing in large areas as acceptable uses in the Green Belt but that category was removed in the first PPG, although it can be argued that the remaining category of uses appropriate to a Green Belt where incidental additions can be allowed covers similar circumstances. Before

the 1992 PPG2 the re-use of existing vacant buildings in the Green Belt had been considered inappropriate development on the grounds that the use of the structure could give rise to activities inappropriate to policy. As paragraph 3.7 of the current PPG records, the re-use of buildings does not alter the open character of the Green Belt as the buildings are 'already there'. However the qualifications introduced give rise to numerous arguments. These safeguards include the proviso that the new use does not have a materially greater impact than the present use on the openness of the Green Belt. From a practice viewpoint the issues in debate usually revolve around external storage, domestic equipment and car parking. Lastly the buildings to be converted must be of permanent construction and capable of conversion without complete reconstruction.

The infilling category is generally a less controversial subject area. Normally the pattern of development dictates the acceptability or otherwise of the proposals. For example the infill plot should be of similar size to the other developed frontages.

The last category of acceptable development involves the future use of major developed sites in the Green Belt. Annex C to the PPG outlines the safeguards to be applied to such projects. The schemes should have no greater impact on the openness of the Green Belt and ideally less impact. There is an opportunity to trade off the area of cover with decreases in height of the structures.

6.4 Case studies of Local Plan Policy, Kent

For this Thesis two contrasting areas are selected for study, Kent and the Sheffield area. The choice was determined by the Practice's involvement in both areas thus producing material for the study. The southern example is Kent. The Kent Development Plan originating in the 1950s covered the southern part of both Bromley and Bexley Boroughs; they still have Kent addresses. With regular

practice involvement in both areas there is evidence available. The second area selected is in the north of England: Sheffield, Huddersfield and Wakefield.

Without a consistent policy base outcomes of similar applications may be different, despite the standard national advice in planning policy statements and guidance notes. Whether consistency is desirable is open to debate and raises issues of legitimacy, freedom of administrative action and practice. The indicators of consistency selected come from the national guidance and those selected are:

1. Purposes of Green Belt including openness and restorative policies
2. Definition of inappropriate development
3. Re-use of buildings in the Green Belt
4. Extensions and alterations to buildings

The following table summarises the contents of Kent Local Plans.

Table 6
Kent Districts - Purpose of Green Belt

	Dartford	Tonbridge & Malling	Tunbridge Wells	Sevenoaks	Gravesham
Changes anticipated in Green Belt Boundary	Yes	No	No	No	No
Restorative policies	Yes	No	Yes Limited	No	Yes
Very detailed policies with boundary justification	No		Yes To naming functional Green Belt wedges	No	No
Emphasis on open character	Yes Strong	Yes But no stress	Yes	Yes Particularly development control aspects	Yes
Emphasis on leisure use	Yes		No	Yes	No

Sources: The approved Local Plans for the Kent District

Table 7
Kent Districts – Green Belt replacement dwellings policies

Dartford	Commercial developments may be acceptable if the schemes resulted in improved contribution of a site to Green Belt. Re-building and modest extensions of residential buildings. The details are contained in an appendix. There is an indication in Appendix 14 that no extension greater than one third of the original cubic content would meet the objectives of the guidelines. It is to be noted ‘quantification’ will not always be used in the assessment. More general criteria are listed such as the open character of the area and the cumulative impact of changes.
Tonbridge & Malling	The standard approach is taken based upon PPG2. Replacement dwellings are not to be ‘significantly larger’ than the dwelling replaced.
Tunbridge Wells	As above.
Sevenoaks	The general presumption against inappropriate development is set out with emphasis. However on the one hand the drafting is negative but on the other the exceptional circumstances are very detailed with specific policies for extensions and replacement dwellings.
Gravesham	<p>The Gravesham policy on replacement of existing dwellings in the Green Belt is very specific and detailed. Proposals will only be permitted if they meet nine tests which are summarised below:-</p> <ul style="list-style-type: none"> • the existing dwelling must be what is termed an original dwelling, that is it existed at 1948 (1 July) or has received consent; • it must be of similar scale and mass to the original and must be no larger unless ‘it can be demonstrated that modest enlargement is required to allow the provision of essential basic amenities; • permitted development rights may be withdrawn; • later subdivision will not be allowed; • location on plot; • design quality; • adequate access and drainage

Sources: The approved Local Plans for the Kent Districts

Table 8

Kent Districts – Policies relating to re-use of buildings in the Green Belt including major complexes

Dartford	The Local Plan shows a proactive approach to the re-use of hospital sites located in the Green Belt, ie Joyce Green Hospital to have elements of educational and commercial uses introduced.
Tonbridge & Malling	An unusual approach is taken to large developed sites. They are considered under two heads, the first being those causing no harm and the second where additional development would cause harm. There is a specific policy P6/15 which deals with conversions. Wording discriminates against conversions for residential use with the alternatives preferred such as commercial or tourist use.
Tunbridge Wells	Interestingly there is a definition of a major developed site as a complex of buildings above 7,500 sq m floorspace. There is a general policy allowing for the re-use of buildings provided the use does not include any associated uses of land around the building. Some individual sites are named such as a school site in Langton Green. In that case there is encouragement to additional infill development.
Sevenoaks	There is a specific policy to permit the re-use of buildings in the Green Belt. Policy GB3A provides a three pronged approach. Proposals must satisfy the tests of creating no greater impact upon the Green Belt, the buildings must be of a permanent nature and lastly ‘their form bulk and design’ must be in keeping with their surroundings and respect local styles’. This is unusually specific and a limb of policy not stressed in the other council areas. However, whether it results in any different outcome is probably unlikely.
Gravesham	<p>The Plan contains a policy for re-use of major complexes. For other buildings the new use must not have a materially greater impact on the open character of the Green Belt. Policy RA4 takes the matter further. The criteria includes the following:-</p> <ul style="list-style-type: none"> • the proposal must not have a materially greater impact than the present on the open character of the Green Belt; • the buildings are permanent and of substantial character; • the design of the buildings are in keeping with the local styles; • any structural changes improve appearance; • no building extension <p>There is a further detailed section relating to changes of use of agricultural buildings. The overall policy appears very restrictive. For example there is an inherent presumption against re-use for residential purposes.</p>

Sources: The approved Local Plans for the Kent Districts

Table 9

Kent Districts – Policies relating to extensions and alterations to buildings in the Green Belt

Dartford	Detailed guidance in Plan. There is a general presumption against development that would result in detrimental impact on the Green Belt. Criteria include cumulative impact and the possible impact of permitted development under the General Development Order. The general limit is a one third increase over the original cubic capacity. No detailed height guidance. Small dwellings lacking basic amenities are likely to be given special consideration.
Tonbridge & Malling	Within the context of development of existing complexes there is a control on height.
Tunbridge Wells	General criteria of openness with a specific control on height (new buildings should not exceed the maximum height of previous buildings).
Sevenoaks	The Plan contains Policy H13 for replacement dwellings in the Green Belt. The general preamble emphasises the overarching importance of the open character of the area and Green Belt. This is explained to the extent that even the character of the adjoining developments are of little significance. This is an unusual approach because first, the adjoining development must be excluding a material planning consideration. The extension limit is placed at 50% based upon gross floor area of the building as at 1 July 1945 or subsequently constructed. The policy is unusually contained in the housing chapter rather than the Green Belt section.
Gravesham	<p>The extension policy in the second review of the Plan (this has not been through Inquiry) contains a specific policy. The key elements in the policy are:</p> <ul style="list-style-type: none">• the building must have been existing as at 1948 (July 1) or subsequently erected with planning permission.• overall limit on the extension of one third of the gross floor area measured externally unless ‘the increased floorspace has no adverse effect on the existing bulk and appearance of the dwelling’. There appears to be a contradiction in the wording which prohibits increases beyond one third.

Sources: The approved Local Plans for the Kent Districts

This review of policies reveals a remarkable difference of emphasis within the policies, even within the same county. Dartford emphasises the positive aspects

of Green Belt, while Sevenoaks emphasises the open character of Green Belt. The acceptable level of extensions varies: a limit of 50% in Sevenoaks, 33% in Gravesham. It can be suggested that the variations reflect local democratic debate or democratic circumstances. However, applicants may suffer from arbitrary administrative decision making, which goes to the heart of the debate in this thesis.

6.4.1 Case studies of Local Plan policy – Sheffield and Kirklees

Sheffield had a Green Belt as early as 1938 (Elson 1996). The current Unitary Development Plan carries over the longstanding concepts from the pre-war period.

Policy GE1 States:

‘In the Green Belt, development will not be permitted, except in very special circumstances where it would:

- (a) lead to unrestricted growth of the built-up area; or
 - (b) contribute towards merging of existing settlements; or
 - (c) lead to encroachment of urban development into the countryside;
- or
- (d) compromise urban regeneration.’

The interesting slant of policy in Sheffield is towards the protection, positive aspects and improvement of the Green Belt landscape. This is the second policy relating to Green Belt. Policy GE2 reads as follows:

‘In the Green Belt, measures will be taken to:

- (a) maintain and enhance those areas with a generally high landscape value;
- (b) improve poor landscapes in priority areas’ ...

The plan has priority areas for landscape improvement. The subsequent policies contain the normally restrictive policies relating to development in the Green Belt.

Policy GE5 covers infilling and replacement of an existing house on the same site. The requirement is that the replacement dwelling should not be significantly larger than the one it replaces. The term is vague. The non statutory guidance refers to enlargements to smaller dwellings being acceptable up to one third greater cubic capacity but larger dwellings being more limited due to the greater impact of additions to larger houses. There are no policies relating to the redevelopment of existing major sites in the Green Belt. The overall emphasis is on the improvement of the quality of the Green Belt and assisting in regeneration. This approach contrasts with the Kent policies except in the Dartford Council area. In the Sheffield case the appearance and quality of the Green Belt along with the concentration of development in the urban area are the paramount aims.

In the case of the Kirklees the Unitary Development Plan contains Policy D12 which covers re-use of buildings in the Green Belt. It states:

‘Proposals for the re-use of buildings in the Green Belt will be considered having regard to:

1. The degree of completeness and the permanence of the buildings and the extent of demolition and rebuilding involved; and
2. The effect of the proposal on the openness of the Green Belt, the character of the area, visual amenity, landscape and wildlife’.

Policy D8 outlines the categories of appropriate and ‘inappropriate’ development in the Green Belt. New build is categorised in accordance with national guidelines as inappropriate unless very special circumstances can be shown in connection with the particular proposal:

The Unitary Plan emphasises the regeneration of the area, the open character of the Green Belt and landscape improvement.

Emphasis differs between authorities, with the northern areas stressing the regenerative objectives of Green Belt policy. The objective of openness is consistent between Kent and northern areas.

6.5 **Green Belt development control – Replacement dwellings and extensions case studies - Southern**

Ten cases will now be considered, eight southern cases, and two northern examples. The first three are Practice cases which are then considered in the context of other decisions, focussing upon the issue of consistency. The points raised from the examination of the different policy approaches in the various Districts have been tested in the case studies. For example one raises issues concerning the size of replacement dwellings in the Green Belt. The previous section showed that the approach taken in the Sevenoaks District area is significantly more liberal than that in other areas. From a Professional Practice point this has been valuable in advising the clients. It would have been inappropriate to have taken a very strong approach pressing the authority for greater latitude in the replacement dwelling. In addition to the detailed case studies other decisions have been considered at the appeal stage to give a perspective on the way in which the Planning Inspectorate handles such appeals. In an ideal world planners would have available detailed comparable cases. This does to an extent happen in practice, in Schön’s terms typifying ‘reflection in action’ (Schön 2003 p 140). Schön values such research in terms of repertoire building research, which he argues will give academic strength to the professions

and enables the practitioner to better serve the client (Schön 2003 chapter 10). In each case the background to the matter will be explained and then conclusions outlined. The first Practice case relates to a replacement dwelling. The first case is explained in greater detail than others because it illustrates some of the practical problems facing Planners and applicants.

Site:	Annlea, Hartley, Kent
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/08/01436/FUL
Date of decision:	2008 (August)
Decision:	Local Authority granted consent
Source:	Practice archives
Appendix:	21

Description:

The first case study involves an ongoing matter for clients who wish to replace an inconvenient late nineteenth or early twentieth century dwelling with a modern property. The property known as Annlea is situated on Ash Road, Hartley within the northern part of the Sevenoaks District Council area. The couple who purchased the house thought it would be relatively easy to re-build it. They first approached the planning authority in 2005; three years later they were still awaiting a planning permission. Figure 5 shows the poor quality of the old dwelling. From the papers the most likely explanation for the poor standard of the house is that it was last occupied by a single lady who had continued to live in it following the death of her parents who ran it as a very modest smallholding. Within the curtilage there is a range of poultry or similar outhouses which become critical in this debate on the area that can be replaced in the new scheme. Annlea is situated about 3 metres back from the edge of the carriageway; this relationship may have been appropriate when originally built but now Ash Road is a main route to New Ash Green, a post war settlement. The arrangement of

rooms is particularly inconvenient with a 'wrap round' extension that takes light away from the downstairs rooms. There are two double bedrooms and one 'box room' with a floor area of 5.155m (55 sq ft). The family of four children were significantly overcrowded in the dwelling. Although the Practice was not initially involved the correspondence came over and has allowed a detailed analysis of the problems encountered by both Planning Authority and applicants. Thus there is greater description in the case study.



Figure 5. Hartley existing dwelling (Source: Practice archives)

Analysis:

The relevant policies in the Sevenoaks Local Plan are policies H13 and GB4.

The national guidance is contained in PP2.

Policy H13 states:

‘Whilst any proposals to replace or extend dwellings in the Green Belt will be assessed on their individual merits, relative to the established residential use, weight will be attached to minimising the intrusion of additional built form within the rural scene’.

The criteria seeks to ‘minimise’ the intrusion of built form, but does not state that there can be no change.

The key points to be met if a dwelling is to be replaced are:

- The existing dwelling was originally designed as such and has not been abandoned.
- As a dwelling it was built on permanent foundations.
- The existing dwelling has access to an existing road with mains water and electricity.
- The gross floor area of the replacement does not exceed original by more than 50%.
- The replacement dwelling must be well designed, sympathetic to the character of the area and sited to minimise visual intrusion into the landscape.
- The existing dwelling on the site must be removed before the new building is first occupied.
- The proposal is within the area of the existing curtilage.

The word 'gross floor area' of the 'original' dwelling is then precisely defined as follows:

'ascertained by external measurement and shall include any garage or domestic outbuilding (incidental to the enjoyment of the dwelling) within the curtilage of the dwelling, if any part of that building lies within 5m of any part of the dwelling. All habitable floorspace of the building will be included which is useable without major reconstruction'.

Whilst Policy H13 is particularly relevant there are other important policies such as GB4 and general national policies contained in PPG2. Policy GB4 seeks to encourage the use of designs and materials that maintain the open character of the Green Belt.

The principle of redevelopment of the site has been accepted. However a review of the correspondence between the applicant and the planning department reveals a lack of consistency in the opinions given to the then adviser to the clients. For example in an early exchange of letters the responsible planning technician opined that whilst redevelopment might be appropriate, account would have to be taken of two new garden rooms or summer houses constructed since the clients moved to the property. In an early letter of August 31st 2005 the authority wrote:

'I have noted the points raised in your letter and as discussed previously with Mr Lea it appears that there may be scope for a replacement dwelling in accordance with H13 of the SDLP. Significant weight may have to be given to the newly constructed outbuildings, particularly in view of the possible re-siting of the replacement dwelling. This, together with the nature and location of the original outbuildings makes it difficult to offer precise guidance as to what resulting floor area may be acceptable. I must stress that the emphasis must be on the applicant to

demonstrate a clear gain in terms of the openness of the Green Belt. In this instance I would advise that the replacement dwellings floor area should not exceed that of the original dwelling and original outbuildings’.

This was a wrong interpretation of policy. Policy H13 does not say that developments replacing existing outbuildings must produce a gain in the open character of the Green Belt. Secondly the advice contained a clear contradiction in that it refers to ‘significant weight may have to be given to the newly constructed outbuildings...’. However, it goes on to state without clarification, ‘I would advise that the replacement dwellings floor area should not exceed that of the original dwelling and original outbuildings’. It is to be noted that the lack of the apostrophe to dwellings adds to the confusion, but as there is only one dwelling on the site it is purely an omission. The applicant is left confused as to whether the outbuildings recently constructed will be taken into the calculation or otherwise.

In April 2006 the family made an application which was refused. The report which did not go to committee and was determined under delegated powers, contained several inaccuracies. The existing dwelling was described as a bungalow. Secondly outbuildings within 5m were not included in the calculation. Thirdly the writer again misapplies policy by referring to ‘no impact on the Metropolitan Green Belt’, whereas the policy refers to minimising intrusion. The main issue in the adverse report related to the inclusion or exclusion of floorspace in the calculation of the existing floor area. The floorspace acknowledged as permissible was given at 221.34m² and the proposed was 289.95m² so exceeding the 50% rule. The disappointed applicant then obtained a structural analysis of the existing outbuildings to show that they could be included in the calculation of existing floorspace. Eventually in an email of 2nd March 2007 the Planning Officer stated:

‘I would confirm that the original dwelling plus the three original outbuildings would be classed as original floorspace ...’. (Appendix 16). A subsequent email seemed to contradict the earlier opinions: ‘the Planning Officer was right in his interpretation, however over recent months there had been decisions which had not always accorded with this view’.

By 2007 the applicants were trying to agree the size of the dwelling that would be permitted, the practice was then involved. The debate had come to an impasse when the Authority wrote:

‘... I have offered consistent advice regarding replacement dwellings within the Green Belt since my first correspondence with you in August 2005. You are obviously disappointed that I have been unable to resolve the design issues relating to your proposal in order to help you achieve a scheme which complies with policy ... it is not for the Planning Department to produce a scheme for you ...’.

The authority has not given a firm view on the increase that will be allowed and a statement in the same letter raised further issue:

‘I have on numerous occasions explained that it is unfortunate that errors on the Planning Department’s part were made on one of your neighbours replacement dwellings...’

The current application observes the requirement that the increase in floorspace should be limited to 50%. The proposed new dwelling has a gross floor area of 304 sq m which is below the existing area plus 50% (including the outbuildings). The previous reasons for refusal are addressed below:

Reason 1

‘The land lies within the Green Belt where strict policies apply. The proposal would be inappropriate development harmful to the maintenance of the character of the Green Belt and to its openness. This conflicts with Policy SS2 of the Kent and Medway Structure Plan 2006 and Policy GB2 of the Sevenoaks and District Local Plan’.

PPG2 is quite clear in paragraph 3.6 that proportionate increases in buildings over the original should not be regarded as inappropriate development in the Green Belt. The policy issue is that the new dwelling should not be materially larger. In the present case the policy in the Plan sets out the definition at 50%. The proposed increase is less than this in the current scheme. In that Policy SS2 refers to the above section of PPG2 for interpretation, the reason has been met with the decreased size and mass of the proposal.

Reason 2

‘The proposed building because of its design and bulk over the existing dwelling would result in a structure out of character with the rural area in which it is located and of harm to the appearance and character of the surroundings. This conflicts with EN1 and GB4 of the Sevenoaks District Local Plan and Policy QL1 of the Kent and Medway Structure Plan 2006’.

The idiom of the design approach is a traditional cottage style with timber and tiles. However the bulk has been reduced with a set back from the main house. Whereas previously there were three gables to the front now there is only one. At the rear the reduction in mass is equally evident with a chalet style approach.

Reason 3

‘The proposed siting and scale of the new dwelling with its close proximity to the existing outbuildings will create an undesirable impact on the openness of the Metropolitan Green Belt and will therefore be inconsistent with Policies GB2 of the Sevenoaks District Local Plan and SS11 of the Kent and Medway Structure Plan 2006’.

The removal of the existing house and large outbuildings nearby will open up the front part of the site. If it can be seen this will be an improvement but with the likely landscaping views will be limited. The gap between the existing buildings that can remain will be more than the 5m mentioned in the Local Plan (Policy H13). The decision notice granting consent contains reasons for the permission which, together with the above discussion, lead to the key determining factor below.

Conclusion:

Whilst in Professional Practice the work would probably have stopped at this point the thesis encouraged further investigation in two directions. The first was to find out more about the planning history of the large properties recently constructed in the vicinity and secondly to review how similar arguments had been handled at the appeal level. In respect of the first, the planning files were inspected at the offices of the Sevenoaks District Council. Obtaining reliable information from this source is not easy. Some of the records are sketchy or difficult to determine from microfiche. The feel of the cases is not conveyed without the working file. Due to the bulk of paper produced in planning files inevitably many authorities compress the records for storage. Even in the Practice files have to be thinned which may result in the loss of some rich source material. The significance of the debate between academics who rely on purely quantitative material of development control data was well illustrated at this

stage (Brotherton 1982). The insights would not have been achieved by numbers alone. The overall conclusion is that criteria have been applied in an inconsistent way.

Key determining factor(s): scale of addition acceptable to open character of Green Belt.

Site:	Elm Villa, now Villafranche, Hartley, Kent
Local Authority:	Sevenoaks District Council
Local Authority ref:	SE/89/1996
Date of decision:	1990 (March)
Decision:	Consent granted
Source:	Practice archives & Local Authority
Appendix:	22

Description:

The first is Villafranche, the property was originally known as Elm Villa, and situated close to Annlea (Figure 6). A scheme for a replacement dwelling was submitted in 1990. The Planning Officer's report explains the 50% rule; that is extensions should not exceed 50% of the original dwelling.

Analysis:

Apparently the original dwelling had a floor area of 145.8m². The replacement dwelling had an area of 242m² (including a garage). This was 65.9% over the original. In recommending consent the Planning Officer drew attention to the distances from boundaries; presumably this was taken as an indication that the open character of the Green Belt would not be prejudiced.

Conclusion:

The size of the consent granted shows the variability of the application of policy.

Key determining factor(s): not prominent, no material impact on Green Belt.

Site:	Glenholm now Bramleys, Hartley, Kent
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/98/0685
Date of decision:	1998 (July)
Decision:	Consent granted
Source:	Practice archives and Local Authority
Appendix:	23

Description:

The third involved a more complex planning history at Bramleys previously known as Glenholm (Figure 6) just to the north of Annlea. Again it is a case of a replacement home. In 1996 a replacement dwelling was refused consent on the grounds of excessive size. The proposal was for 275m², the existing dwelling was 134m² so the increase was 105%. The 1998 proposal involved an increase to 221m² that is 87m² or 65%. Apparently a garage was within 5m of the house and was to be partly demolished.

Analysis:

The Planning Officer determined in favour of the proposal writing ‘the reduction of the garage size, the limited single storey projections (1m x 13m) and the substantial size of this plot weigh in favour of this proposal’.

Conclusion:

Again the standards were applied in a variable manner.

Key determining factor(s): Appropriate development in the Green Belt due to size.



Figure 6
Hartley

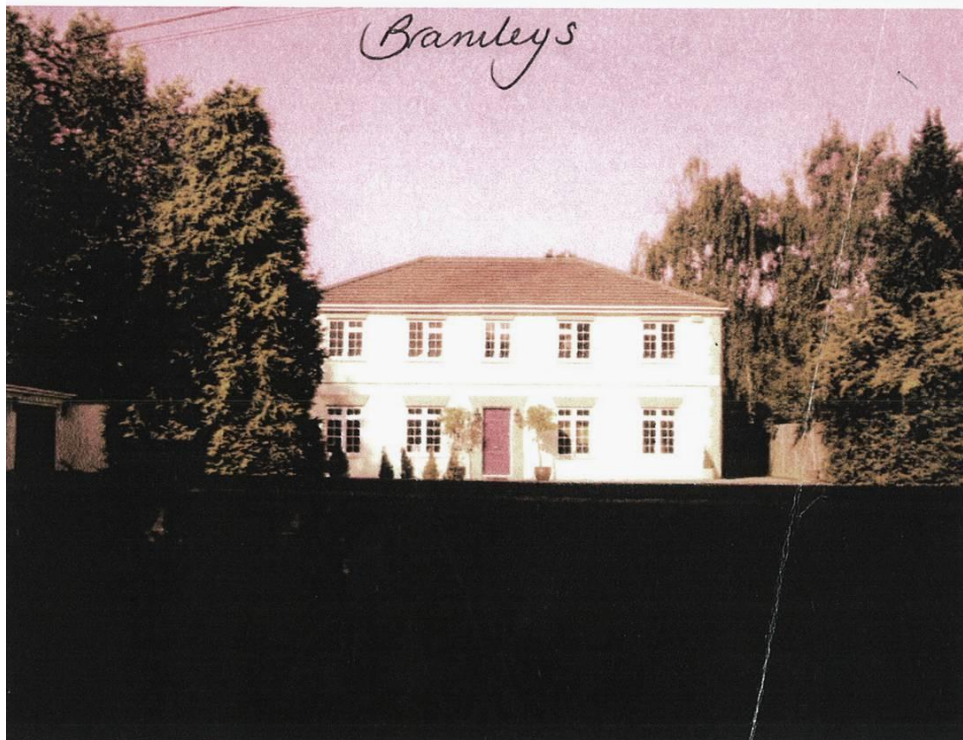


Figure 7
Hartley

The close examination of the practice of development control in this immediate area indicates that the planning authority have been generally mindful but not consistent in applying the 50% rule. The related concept of openness in the Green Belt has been assessed on the basis of the distances to boundaries and the way in which the properties relate to their sites. However it is noteworthy that the 50% rule seems to be broken in practice with two consents around 65% increased floor area. In the case currently in the Practice the applicants/clients had been criticised for any excess over 50%. The results of this review were sent to the authority in support of the much needed replacement property. Planning consent has now been granted.

The next level of review involved the appeal stage with similar cases determined by the Planning Inspectorate but over a wider area. A Compass Bureau search was obtained of appeal decisions involving both additions to dwellings and rebuilding dwellings in the Green Belt since the revised national Policy Guidance was issued in 1995. The area covered in the Compass search only covered Kent and Surrey. Two hundred and sixty three results were obtained. Of these eighty cases were in Kent and the remainder in Surrey (Appendix 24).

The Compass Bureau results for the Kent area covered cases of both replacement dwellings and additions to existing properties in the Green Belt. In the case of the first category the percentage of appeals allowed was just under nineteen percent. In the second category the percentage allowed rose to thirty one percent which is just below the overall national figure. A word search of the Compass results is not possible as the summaries given are very brief. It is interesting to compare the richness of the information available from the various sources. At the top level the Practice files contain both the factual information available and the flavour or nuances of the case. As mentioned the historic files available in the planning authorities' records are not as full, the appeal decision letters

contain a summary of the cases. The Compass Bureau summaries vary in quality but are a useful lower level of information.

The Compass summaries showed that some of the proposals involved an increase in dwelling sizes by one hundred per cent and above. None of these excessive schemes were allowed. There was consistency of approach. In other instances schemes were refused on appeal despite being below the fifty percent increase. This was due to site circumstances such as excessive density. There was clearly some variation in local policies applied by different authorities. The fifty percent rule was not standard. One interesting reference to exceptional circumstances concerned the security requirements of a foreign royal family. Five full decisions letters were obtained. One of these related to replacement dwellings, three to extensions and one concerned conditions attached to a consent already in place. All related to the Sevenoaks District Council area.

Site:	Beaumonts Farm, Edenbridge
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/03/01012/FUL
Appeal reference:	APP/G2245/A/04/1154651
Date of decision:	2005 (May)
Decision:	Application refused. Appeal dismissed.
Source:	Compass Bureau & Local Authority
Appendix:	25

Description:

The proposal involved alterations and extensions to an existing building. The decision letter referred to the floor area of the existing dwelling was 220m². The proposal was to increase by the 50% allowed under the Sevenoaks District Council Policy H14A.

Analysis:

To this extent it met with policy but the Inspector still thought it was likely to be too bulky. In the letter the word ‘openness’ or ‘open character’ of the Green Belt occurred three times.

Conclusion:

The case is interesting in the emphasis on open character of the Green Belt.

Key determining factor(s): Harm to open character of Green Belt.

Site:	White House, Underriver, near Sevenoaks
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/01/00296/FUL
Appeal reference:	APP/G2245/A/02/1083255
Date of decision:	2002 (August)
Decision:	Application refused, Appeal dismissed
Source:	Compass Bureau
Appendix:	26

Description:

The extension proposed was at Underriver near Sevenoaks. The proposal was again an extension scheme and the floor area was to be increased to 71% over and above what was termed the ‘original’ dwelling. There had been a series of extensions taking the area up to 60% over and above the original area. Again the case was dismissed.

Analysis:

Whereas in the Four Elms case the Inspector dismissed the appeal on a ‘without prejudice’ basis the Underriver case involved a clear rejection. In the earlier case

the Inspector invited a further submission. Again in the second case the word ‘openness’ occurred three times.

Conclusion:

The case again illustrate the application of policy preserving the open character of the Green Belt.

Determining factor(s): harm to open character of Green Belt.

Site:	Mill Cottage, Shoreham
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/01/01690/FUL
Appeal reference:	APP/G2245/A/02/1085942
Date of decision:	2002 (October)
Decision:	Application refused. Appeal allowed.
Source:	Compass Bureau
Appendix:	27

Description:

The third decision letter involved a minor extension to a covered walkway at Mill Cottage, Shoreham. The original dwelling had been extended by over 50 percent with the formation of the link between two parts of the property.

Analysis:

The reasoning in this decision letter is interesting and justifies inclusion in the appendices (App 27). It illustrates the debate at the core of the thesis. On the one hand the Inspector quite properly went through the standard analysis to determine whether the covered link was appropriate or inappropriate development in the Green Belt. Obviously it was not a proposal related to agriculture or other appropriate Green Belt uses. The next stage of the reasoning

involves some planning serendipity in that extensions up to 50 percent of the original may be regarded as not inappropriate development. The Inspector went on: I conclude that the proposal would represent inappropriate development that is, by definition, harmful to the Green Belt’.

This statement is a logical conclusion of the drafting of the Policy Guidance but read with the next statement in the decision letter would confuse the lay person : ‘.... the proposal would not be intrusive in its surroundings and, given its overall scale and siting, I am satisfied that the open character of the Green Belt would not be affected’.

Conclusion:

The desire of the appellants to make this modest improvement to their property was seen as ‘very special circumstances’. It is rare to obtain such a dispensation in any Green Belt case and thus noteworthy. Within the letter the term ‘open character’ occurred three times.

Key determining factor(s): Open character of Green Belt & Very Special Circumstances

Site:	Seafeld, Stansted, Kent
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/0/02781/FUL
Appeal reference:	APP/G2245/A/07/2043187
Date of decision:	2008 (February)
Decision:	Application refused. Appeal dismissed.
Source:	Compass Bureau & Local Authority
Appendix:	28

Description:

The case involving a replacement dwelling at Stansted was dismissed because the proposed dwelling was 132m² whereas the fifty percent guide would give a maximum floor area of 108m².

Analysis:

However, in the decision letter the Inspector seems to be oscillating in arguing at one point that the allowance should include the garage but in another sentence offering the appellant the possibility of extension to the full fifty percent.

Conclusion:

The overall conclusion is clear that the scheme caused harm to the open character of the Green Belt.

Key determining factor(s): Open character of Green Belt.

Site:	Haley Bank, Hartley, Kent
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/06/02781/FUL
Appeal reference:	APP/G2245/A/07/2043187
Date of decision:	2005 (January)
Decision:	Application refused. Appeal allowed.
Source:	Compass Bureau and Local Authority
Appendix:	29

Description:

The last case involved the imposition of conditions on a property at Hartley in the north of the Sevenoaks District Council area. The two conditions in dispute related to restrictions on alterations to provide space in the roof and secondly to prevent external alterations despite the permitted development rights.

Analysis:

In allowing both appeals with costs in favour of the appellants the Inspector concluded that the use of the space in the roof would not have any impact upon the open character of the Green Belt. The Council argued that rooms in the roof would bring greater activity and disturbance to the Green Belt. However the Inspector referred to his colleague's decision which allowed a door in the basement and the conclusion then reached was that personal lifestyles rather than the floorspace would determine the level of activity.

Conclusion:

The Inspector supported a more reasoned approach to Green Belt policy and referred to his colleague's comment:

'Green Belt policy should be interpreted purposively and not mechanically, so that if an increase in floorspace has no effect at all on the bulk of the building and causes no other harm to the Green Belt openness or purposes, one should question whether the scheme is in any real sense inappropriate'. The case is interesting and hence included in the appendices (App 29).

The Inspector considered the approach of the authority had been mechanistic and unreasonable. Unusually in a Green Belt case costs were awarded against the Council in favour of the appellants. It is normal for parties in planning appeals to carry their own costs so a party has to behave unreasonably for costs to be awarded.

Key determining factor(s): No harm to open character of Green Belt

6.5.1 Northern examples

Turning to the northern examples, the Practice has not had directly comparable domestic cases of enlargement of dwellings or rebuilding in Kirklees or Sheffield. The instances in these districts are of larger projects. Therefore reliance is placed on the Compass information and selected appeal decisions from Compass. The Compass Bureau search for Sheffield and Kirklees on determinations since the 1995 Policy Guidance showed nine appeal cases involving single private dwelling replacement proposals or extensions. Three of these were allowed. Thus the national average of appeals allowed has been followed. In two cases the Compass search does not give an adequate reference to the reasons for dismissal of the appeals. However, in five cases the reasons for either allowing or dismissing the appeals related to the concept of proportionality. In so far as there is a relationship to openness that second concept is implied but not evident as much as in the Kent examples. As noted previously there is a hierarchy of the quality of the material available enabling a fully reasoned and tested interpretation of the results to be made. The full case papers are only available in the Practice archives. The appeal decision letters and Inspectors' reports give a good level of information and the lowest tier of material are the summary reports from Compass.

Site:	Crows Next Farm, Flockton
Local Authority:	Kirklees Borough Council
Appeal reference:	APP/24718/A/06/2029929/AVF
Date of decision:	2007 (February)
Decision:	Application refused. Appeal allowed.
Source:	Compass Bureau
Appendix:	30

Description:

The scheme at appeal involved an orangery and porch at Crows Nest Farm situated in the Green Belt.

Analysis:

The Council relied upon a policy D11 in the Kirklees Unitary Development Plan that requires extensions in the Green Belt to remain the dominant element and that the porch extension to the front of the property should be small in scale. However the Inspector pointed out that the Policy Guidance does not mean that an extension must be small. He stated that:

‘The extension would not be small. This is however not a correct test. Nowhere in D11 or PPG is there clear policy. Policy Guidance calling for only small extensions. Limited does not imply small’.

He goes on to accept the extension would be a significant new addition but he finds at paragraph 7: ‘Furthermore the proposed extension would not have an adverse impact on the openness of the Green Belt in this location’.

Conclusion:

The clear analysis makes this a particularly interesting decision pointing to the importance of a correct application and interpretation policy. There is a clear difference between a proportionate addition and a small addition.

Key determining factor(s): Proportionality – no harm to Green Belt.

Site:	Butts Cottage, Emley Moor, Huddersfield
Local authority:	Kirklees Borough Council
Local authority reference:	200/62/918641/E7
Appeal reference:	APP/24718/A/01/1059652
Date of decision:	2001 (July)
Decision:	Application refused, appeal allowed
Source:	Compass Bureau & Local Authority
Appendix:	31

Description:

The case involved a single storey dining room extension at Butts Cottage situated in a long designated Green Belt.

Analysis:

The Council argued that the proposed extension would be too large. However the Inspector found that no harm would be caused to the Green Belt. He further found the Council had been 'reasonably generous' in their application of policy and that policy should be applied in a 'broadly consistent way' (see paragraph 7 of Appendix 31).

Conclusion:

Again the difference between proportional increases and limited increases in dwellings is illustrated.

Key determining factor(s): Proportionality and consistency of decision making.

6.5.2 Conclusions on replacement/extensions in the Green Belt

Several conclusions can be drawn. The Inspectorate have some themes in mind when dealing with Green Belt cases. The key issue is the 'openness' of the Green Belt. This theme comes through repeatedly in decision letters: to this

extent there is consistency of theme. It is evident that both authorities and applicants are well advised to seek a negotiated solution wherever possible. Some decision letters are very prescriptive, others take a much more considered and philosophical view of the application of policy: The Butts Cottage case and Haley Bank decision are illustrated in the latter approach. Decision letters portray a variety of tone, again Mill Cottage and Haley Bank show a more relaxed approach. Where a planning authority has a guide figure to limit the scope of extensions this is helpful and brings some consistency to the situation but it is surprisingly limited. It is surprising that so many appellants proceed with quite extensive schemes producing large increases in proposed dwelling sizes; this is clear from the Compass summaries. Lastly the value of this type of Repertoire or case study assessment is very considerable: this text has already been used to strengthen recommendations to clients contemplating applications.

6.6 Green Belt Development Control – conversions of large institutional complexes and major redevelopment – case studies

The second case (handled throughout by the author) involved the change of use of a large institutional site set in the Green Belt. As with the previous Green Belt Practice case of rebuilding private houses, the study starts with the facts of the particular case and in particular the questions posed, then moves to a wider assessment in the context of other decisions. The stages in the application are summarised: this background information is only available in cases handled throughout by the author.

Site:	Stacklands, West Kingsdown, Sevenoaks, Kent
Local authority:	Sevenoaks District Council
Local Authority reference:	SE/06/00824/FUL
Date of decision:	2006 (March)
Decision:	Application granted
Source:	Practice archives
Appendix:	32

Description:

Stacklands Retreat House was the headquarters for an international Charity dedicated to contemplative study. The case involves its change of use. Stacklands is set in the Green Belt near the well known Brands Hatch motor racing circuit. It was founded prior to the last war although some of the buildings were erected after the war. The accommodation comprised communal rooms plus individual study bedrooms: the latter were very dated with no self-contained facilities. The complex had become uneconomic to maintain and the charity running Stacklands had determined to change direction. The property could be used for its existing residential educational use but all the indications were that a change of use would be necessary to underpin the value. The Local Authority indicated that in principle a change of use would be accepted but not demolition and redevelopment.

Analysis:

The first application was submitted in October 2005. The key policy that had to be addressed was GB3A which broadly requires that the re-use of buildings within the Green Belt will be permitted provided the new uses do not have a materially greater impact than the present on the open character of the Green Belt. As the photograph (Figure 8) of the complex shows, there were several accretions to the property such as the oil tanks, the external boiler rooms, the covered walkway between the two front wings and the external staircase. The

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building footprint was 773 sq metres and the proposed was 735 sq metres. The net gain in openness was proposed at 38 sq metres. The wings containing the study bedrooms had an inconvenient form; the corridor was narrow and to get the stairs in so that the resultant dwellings were of reasonable form and layout required the construction of external staircases but these were within the area of the complex that is away from view of the Green Belt.

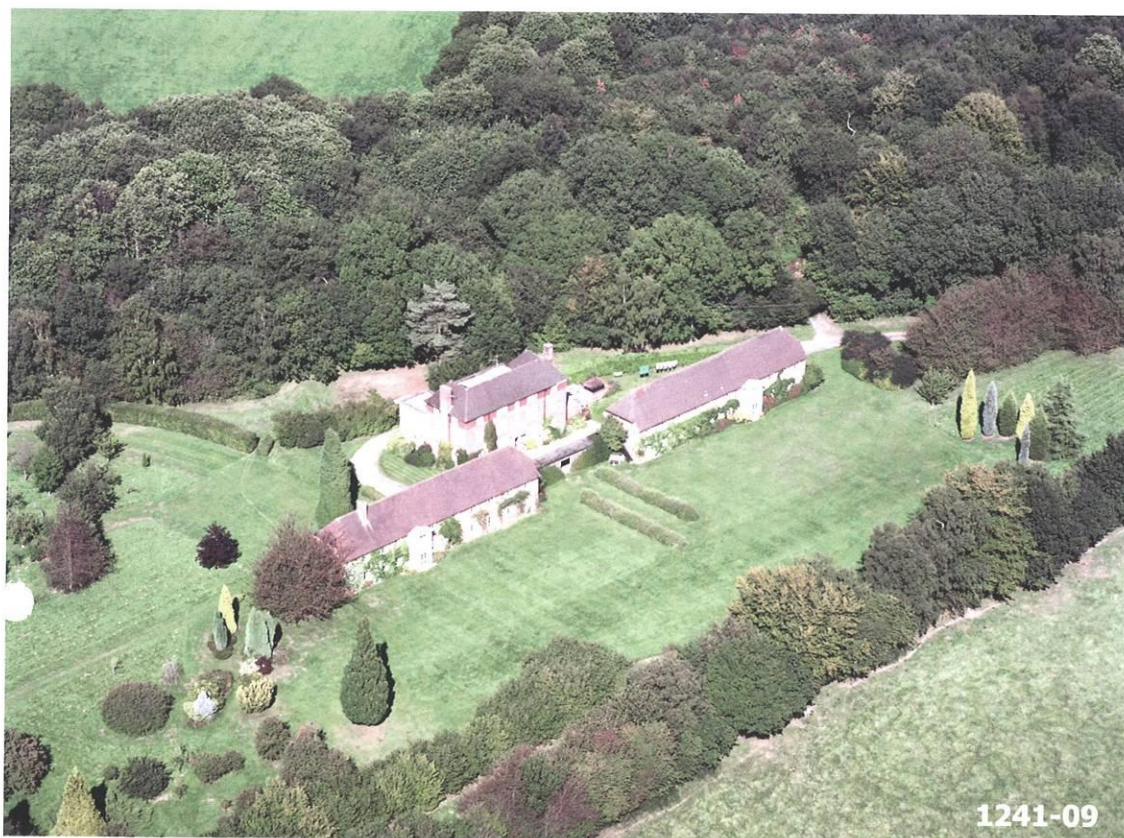


Figure 8 Stacklands

A refusal of consent was issued dated 31st January 2006. The key first reason for refusal was

‘The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The proposal would add extensions to the property which was not originally constructed for residential use. Therefore the proposal constitutes inappropriate development which is harmful to the maintenance of the character of the Green Belt and to its openness’.

Prior to the refusal the plans were amended by the removal of all windows on the roof slopes and replacement with glazed lights on the northern slopes and removal of a small extension over a single storey element of the ground floor.

A second application was submitted, and representations made to the Chief Planning Officer. Two months later after the second application was submitted the Case Officer was still raising objections but by then the Local Councillor was involved and the Chief Planner. The end result was a consent. On the basis of the consent for conversion into eight houses and six apartments the property was sold and the Charity continues its work albeit renting suitable premises for their conferences.

Conclusion:

Several issues arise from this case. The first is to test the assumption made by the authority that because the building was not a dwellinghouse some additions were inappropriate. The relevant national policy contained in Planning Policy Guidance Note two is:

‘The re-use of buildings inside a Green Belt is not inappropriate development providing:

- (a) it does not have a materially greater impact than the present use on the openness of the Green Belt and the purpose of including land in it ...’ (see Planning Policy Guidance note 2 para 3.8)

The issue was whether changes would have a ‘materially greater impact’. This was not the issue raised.

It is also relevant to consider the implications of Annex C to the Planning Policy Guidance note which deals with the future of major development sites in the Green Belt. The advisory note then states that it will be possible under some circumstances to permit total redevelopment. Indeed it goes so far as to suggest that there can be infilling within the site:

‘C3 Limited infilling at major development sites in continuing use may help to secure jobs and prosperity without further prejudicing the Green Belt. Where this is so, local planning authorities may in their Development Plans identify the site, defining the boundary of the present extent of development and setting out a policy for limited infilling for the continuing use within this boundary. Such infilling should:

- (a) have no greater impact on the purposes of including land in the Green Belt (paragraph 1.5 above) than the existing development;
- (b) not exceed the height of the existing buildings; and
- (c) not lead to a major increase in the development projection of the site.’

(see Planning Policy Guidance Note 2 para. C3)

The problem with this policy for major uses is that it only applies when the site is identified in the Local Plan. This point goes back to the wider issue of the

primacy of the Development Plan in planning control. In this case when the Local Plan was being prepared there was no resolve to find an alternative use for Stacklands. Furthermore the Charity would not have been able to fund representations to the Plan Inquiry. The case raised the following:

- Where the building is of residential character but not a private house should there be some allowance for additions to the original structure;
- The proposal fell between an Annex C (PPG2) case of a major development site in the Green Belt and a private dwelling;
- The resistance to stairwells on the north side of the two wings within the enclosed courtyard area. Is this a reasonable interpretation of policy and practice bearing in mind the policy test detailed above of no material increase in impact;
- Why the resistance to a scheme for demolition and rebuilding with a lesser or similar floor area. This was particularly relevant as a nearby institutional building had been subject to just this with a new development of private houses.

The new owner is now exploring options. The exploration of the issues arising as above are now pressing and their resolution will aid immediate professional practice and help to give an insight into the subject which should have general application away from the particular problem of Stacklands. Two other somewhat similar cases have been handled in the Practice, one in Sheffield and the other in another northern district area. The review of two other cases in the north of England but within Green Belt and a wider review of similar cases from 'Compass' results will give a contextual method similar to that used in the single

small dwelling cases. The reasons given for the consent are not consistent with policy because PPG2 states that the re-use of buildings is not inappropriate development. The justification given of very special circumstances is wrongly worded.

Key determining factor(s): Conversion of existing building/very special circumstances.

Site:	Home Farm, Dore, Sheffield
Local authority:	Sheffield City Council
Local authority reference:	05/03732/FUL
Date of decision:	2006 (January)
Decision:	Consent granted on application
Source:	Practice archives
Appendix:	33

Description:

The Practice was asked to co-ordinate a planning application for the demolition and rebuilding of a centre used by the Home Farm Trust at Dore on the edge of the Sheffield built up area within the Green Belt. The Charity provides a secure environment for adults with learning difficulties. Due to the changing regulations relating to such care facilities the Charity determined to sell the building. The funds would be used for the creation of smaller facilities at a higher standard. The property had been placed on the open market in September 2004 by specialist agents concentrating on the disposal of leisure and institutional properties. No purchaser was forthcoming. Specialist reports were prepared covering building structure, ecology, highways and landscape.

The structure of the building had some serious faults. The original building dated from the early 20th Century but an extension had been added to the front. This obscured views and reduced light. The building was on a steeply sloping

site overlooking open Green Belt land which was also subject to Outstanding Natural Beauty designation. The building had been used as a care home so the rooms were small: it would have been very difficult to have adapted to meet current retirement home standards. One of the main issues in such schemes concerns the width of corridors which should be adequate to accommodate wheelchairs and become 'social spaces'. Room sizes were too small and it had the characteristics of a 'rabbit warren'. The building clearly failed and did not have the capacity to be altered. Outside, the site was littered with various outbuildings, some of which had been used for teaching purposes and others for kitchen garden purposes. In general it was a messy and dated complex that spoilt the Green Belt. The Figure 9 shows the character of the site.

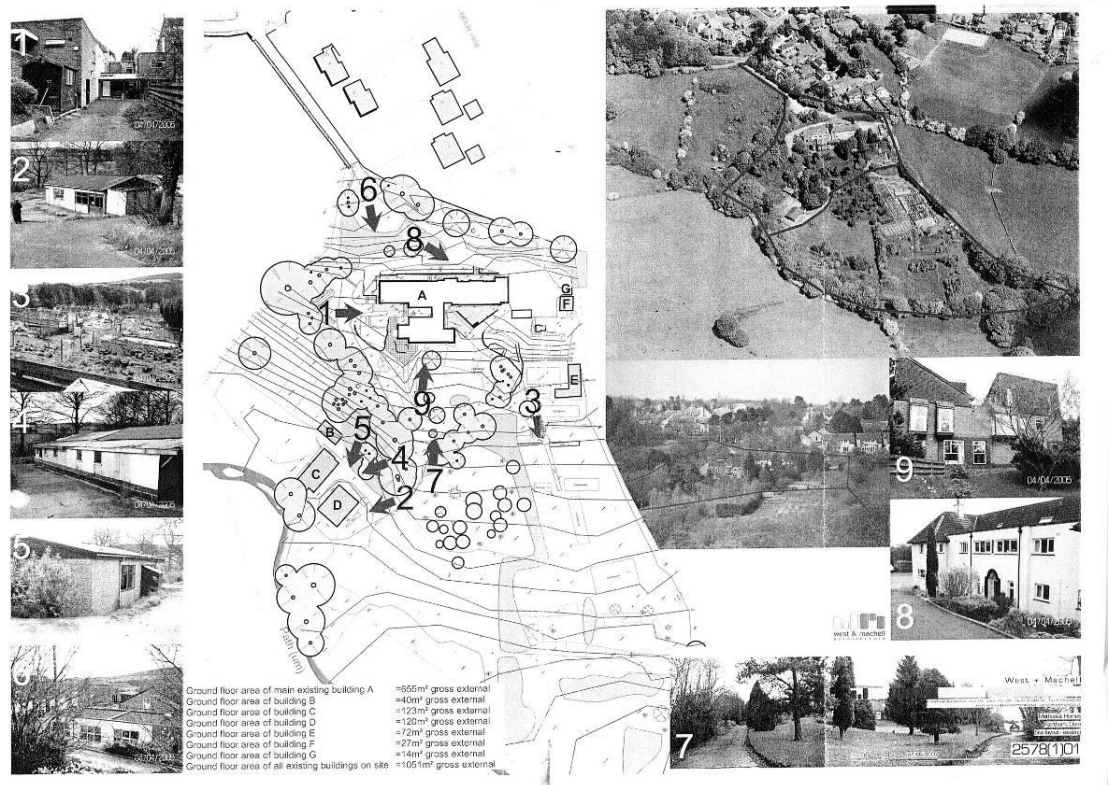


Figure 9 Home Farm Trust, Dore, Sheffield (Source: Practice archives)

The new development was proposed by Methodist Homes for the Aged (MHA Care Group).

Analysis:

The scheme was submitted for the redevelopment of an institutional complex within the Green Belt. This is covered in Annex C of PPG2. The tests were set out thus with confirmation of how the new scheme met them:

Test 1 It will have no greater impact than the existing on the openness of the Green Belt and indeed that openness can be enhanced.

Comment:

- The buildings at the moment are an amalgam of structures having grown in an ad hoc manner over the years
- The aerial photograph on the details produced by the agent shows this variety of buildings ranging from the original to the 1970s addition. The site looks messy.
- The spread of buildings over the site including the greenhouses on the right hand side of the photograph all demonstrate an untidy appearance.
- The permanent classroom type building on the left hand side extends the development well down the slope.
- The present ground cover of the buildings which qualify for consideration measures 1051 sq m. The proposed is 990 sq m.

The Landscape Master Plan shows the whole area of the site. It demonstrates the removal of the classrooms, the greenhouses, the old road and new planting. Whilst the gardening work is outside the application site the applicants have control of the larger area. They will set up an appropriate management company to care for it.

Test 2 Contribute to the achievement of the objectives for the use of land in the Green Belt. The particular uses that are relevant in this instance include.

- Retention of attractive landscapes to enhancement of landscapes near where people live.
- Improvement of damaged and derelict landscapes.

Comment:

Reference to the landscape plan and the new scheme for the site shows the very considerable improvement for the reasons set out above.

Test 3. Not to exceed the height of the existing buildings.

Comment:

The section shows the proposed building will be no higher than the existing.

Test 4 Not to lead to a major increase in the developed proportion of the site.

Comment:

The area of development will be decreased and the additional benefit is the removal of hardstanding and impedimenta.

In policy terms the major improvements to this area of Green Belt land point strongly in favour of consent.

- The proposed development is much less intensive in use
 - The site has been reduced in intensity
- The proposed building footprint would be less
 - The coverage is substantially reduced
- The proposed development should increase the openness of the because it brings the development closer to the built-up area
 - The lower buildings that currently impact adversely on the AHLV are removed
- The existing buildings are not capable of re-use without significant structural rebuilding
 - The existing buildings are not suitable for continued use as well demonstrated by the report from Bramleys
- The proposed scheme will remove an eyesore
 - The landscape master plan covers the whole area over which the applicants have control; this includes the land edged blue s well as the application site.

Conclusion:

The report to committee (Appendix 33) concluded that the scheme was in policy terms unacceptable use in the Green Belt, so was considered a ‘very special circumstance’. There is no statutory or formal definition of ‘very special circumstances’; from the Kent cases it is rarely applied. This comparison of the

Sheffield and Kent cases possibly suggests a different emphasis in application of this key concept. Further work needs to be undertaken on this issue; it was not intended as part of the thesis but is relevant to the Practice. The reasoning in the report referred to:

- a reduction in the developed areas of the site,
- significant benefits to the openness of the site by removal of ancillary buildings,
- scheme no higher than the existing ridge with a reduction in ground cover of buildings from 11,051 sq m to 990 sq m,
- improved landscape features

It concluded:

‘it is considered that the scheme demonstrates very special circumstances and justifies the redevelopment scheme that makes an improvement to the openness of the Green Belt in this location’.

Key determining factor(s): Open character of Green Belt and very special circumstances.

Site:	Wildspur Mills, New Mill, Huddersfield
Local authority:	Kirklees Borough Council
Local authority reference:	2003/62/92850/W3
Date of decision:	2004 (January)
Decision:	Application granted
Source:	Practice archives
Appendix:	34

Description:

The scheme involved producing a planning strategy for the future conversion and use of a large textile mill. Termrim Construction, entered into a contract to purchase the freehold buildings at Wildspur Mill occupied by Copley Marshall & Co. The mill was located close to a soft water supply, but recently the size of the building and location, distant from motorways had become inconvenient. Wildspur Mill was reached down a narrow road so the company wanted to relocate to a modern industrial building near motorway connections.

The application was supported by detailed geotechnical studies, ecological and highway studies, all of which were settled with the responsible Officers in the Authority. Figure 10 shows the scheme.



Figure 10 Wildspur Mills, Kirklees (Source: Termrim Ltd & Practice archives)

The ground floor cover of the original permanent mill buildings was 3,972 sq m. The proposed scheme was 2,284 sq m. However, the interesting feature of the package was that the project included fifteen new homes built in the form of a new mill and three new cottages. In all 60 new homes were consented, although the drawings showed an extra two.

Analysis:

The flexibility displayed in the discussions is remarkable with an acceptance of the new build. The final recommendation to grant consent concluded that the re-use of buildings is an appropriate form of development but the new build would be inappropriate development in the Green Belt.

Conclusion:

The key conclusion was that the package of proposals would form 'very special circumstances' based upon:

- a significant amount of the built form would be removed thus increasing the open character of the Green Belt,
- improvement of the visual character by the removal of chemical processing equipment,
- improvement of public safety by the removal of potential risks,
- improvement of the cleanliness of the water in the Dyke
- safeguard wildlife by removal of hazardous substances
- woodland and open area management plan including improvement to the footpaths

- improvements to vehicular access to the site.

Key determining factor(s): Very special circumstances including increase in open character of Green Belt and environmental improvements.

Site:	Former Sundridge Hospital, Sundridge, Kent
Local authority:	Sevenoaks District Council
Local authority reference:	SE/00/1405
Date of decision:	2000
Decision:	Consent granted on application
Source:	Practice archives
Appendix:	35

Description:

The consent granted on application related to a former geriatric hospital (previously a workhouse). The scheme involved 15 houses and apartments together with eight new build homes. Sundridge is about four miles from Sevenoaks so it is not close to regular public transport but within the Green Belt and Area of Outstanding Natural Beauty. The Practice was involved with a site adjoining the property so was able to follow the detail of the Sundridge scheme. The project involved the demolition of two detached houses, the isolation wing, a large laundry building, lift shafts and garages. In place of these eight new large four/five bed houses were constructed.

Analysis:

In coming to a favourable view the Planning Officer's report posed a series of questions. Those relevant to this subject were:

- whether the proposal is appropriate development in the Green Belt, and if not whether very special circumstances exist to justify granting planning permission
- the impact of the proposal on the openness of the Green Belt and on the landscape in the light of its designation

The debate on the first topic came to the view that the amount of new building in the Green Belt and the fact that it was for a form of development not related to acceptable Green Belt uses made the proposal inappropriate.

As previously noted in the examination of the replacement of individual dwellings one of the key concepts is the very special circumstances of a particular case. The report to committee came to this view; indeed unless there was an acceptance of very special circumstances a development could not be justified. The arguments that have resulted in the conclusion that very special circumstances existed were:

- Well established permanent buildings were demolished: the floorspace and footprint of the new buildings were approximately equivalent;
- The built form on the site would not spread beyond the existing extent;
- A building extension on the second floor would be barely perceptible from outside the site and would be offset by the removal of the bulky lift shafts.

Key determining factor(s): Open character and very special circumstances.

Site:	Former Ryarsh Brickworks, Ryarsh, West Malling, Kent
Local authority:	Tonbridge & Malling District Council
Local authority reference:	TM/03/03377/0A
Appeal reference:	APP/H2265/V/05/187599
Date of decision:	2006 (July)
Decision:	Secretary of State called in application and Granted consent for larger area
Source:	Compass & Practice archives
Appendix:	36

Description:

The application considered at the call-in Inquiry was for 768m² of business floorspace, and 91 dwellings on 2.91 hectares of the site. The Secretary of State indicated the matters upon which information was required which in practice means the reasons for making the call-in. With regard to Green Belt they were:

- 'a) Whether the proposed development is inappropriate development in the Green Belt and, if it is inappropriate, whether very special circumstances exist which clear outweigh the harm to the Green Belt caused by reason of its inappropriateness and any other harm;
- b) Whether the proposed development would harm the visual amenities of the Green Belt by reason of its siting, materials or design;
- c) The extent to which the proposed development might contribute to the achievement of the objectives for the use of land in the Green Belt as set out in paragraph 1.6 of PPG2'.

The site could be divided into two areas A & B, both proposed for development. Most of the area was shown within a Major Development Site suitable for limited infilling under a policy in the Tonbridge & Malling Local Plan. There had been debate at the previously held Local Plan Inquiry suggesting that the site should be suitable for redevelopment. At the Inquiry the Council argued whilst technically non-compliant with PPG2 nevertheless there were very special circumstances that justified redevelopment. The Secretary of State agreed with this conclusion. However, although the Council argued that what became known as area B should be developed, the Inspector and Secretary of State did not agree. The Inspector concluded against development of area B despite the existence of a large commercial building on the land.

Key determining factor(s): Open character, very special circumstances.

The review of non Practice based appeal cases in Kirklees and Sheffield showed eight instances of redevelopment schemes ranging from five (subsequently reduced to three) dwellings on a former and now derelict poultry farm up to a scheme for over one hundred dwellings. Of the eight only two were allowed. The main point raised in the cases dismissed related to harm to the Green Belt which seems to be an interpretation of an aspect of ‘openness’. Copies of three decisions were obtained for closer review. They included the two cases which were allowed.

Site:	New Dursley Poultry Farm, Holmfirth
Local authority:	Kirklees Metropolitan Borough Council
Local authority reference:	2002/60/94147/W3 & 94148/W3
Appeal reference:	APP/24718/A/03/1121567 & 1121568
Date of decision:	2003 (October)
Source:	Compass and Practice archives
Appendix:	37

Description:

The appeals were dismissed involving a project for initially five dwellings on a poultry farm which is described as occupying an elevated and isolated position in the countryside close to the Peak District National Park. The residential scheme involved the demolition of an existing small dwelling and three of the older poultry sheds by one dwelling and then at the eastern end of the site the construction of two dwellings adjacent to a disused barn which had a permission for redevelopment.

Analysis:

The Inspector dealt with the two elements of the scheme separately. He first considered the replacement dwelling and suggested that the new dwelling would be larger than the existing. He moved on to argue that this view was supported by the illustrative plan. As this was outline and the plan for illustrative purposes only this seemed a strange conclusion. Furthermore the decision letter was self contradictory in correctly recording that Planning Policy Guidance Note Two on Green Belts allows replacement dwellings subject to them not being materially larger. At no point is that qualified by the percentage figures involved.

Conclusion:

The Inspector concluded 'No information has been provided to indicate the reason for the demolition of this building'. The application should have been more detailed with an indication of the degree of change.

The basis for the dismissal of this element of the scheme seems weak. On the other hand there is no evidence of a carefully argued 'openness' case with comparable figures for the existing and proposed situation. Thus the arguments each way were weak. The western end of the site was occupied by both the

dwellings and the disused poultry shed. The obvious point was to record the total area of each and compare with the proposed dwelling.

Key determining factor(s): Scale, open character, not very special circumstances.

Site:	Folkwood School, Sheffield
Local authority:	Sheffield City Council
Local authority reference:	01/01276/FUL & 02/00809/FUL
Appeal reference:	APP/J4423/A/02/1082180 & 1091033
Date of decision:	2002 (October)
Decision:	Appeals allowed
Source:	Compass Bureau & Practice archives
Appendix:	38

Description:

The second case involved two schemes for 27 dwellings on the edge of the built-up area in south west Sheffield. To the west of the site is the Peak District National Park. The site was occupied by a disused school.

Analysis:

The proposals had been refused for three reasons, the first two were replicated in the second decision:

‘1. The Council considers that the proposed development has not proven that very special circumstances exist which would permit such a development in the Green Belt and so would lead to an encroachment of urban development into the countryside, contrary to Policy GE1 and GE3 of the Sheffield Unitary Development Plan and Planning Guidance Note 2.

2. The Council considers that the proposed development would not maintain or enhance the area of the Green Belt due to the proposed height and massing of the proposed houses which are taller than existing buildings on site and would increase the impact on the site and surrounding area and as such is contrary to Policies GE2 and GE4 of the Sheffield Unitary Development Plan.....’.

The third reason for refusal referred to in one decision the scale and massing of the scheme and in the other the fact that it did not involve infilling.

The location and circumstances of the project were very similar to the Practice case at Dore involving the redevelopment project for Methodist Homes for the Aged.

Conclusion:

The projects were accepted as forming inappropriate development, but both sides agreed that very special circumstances applied which were set out in the Statement of Common Ground (agreed between the parties):

- A less intensive form of development than the previous use;
- Creation of a much smaller footprint;
- An improvement in the openness of the Green Belt;
- Structural condition of the buildings;
- Replacement of an eyesore with a more sensitive development.

This list was varied in the Secretary of State's decision letter allowing the appeals. The Secretary of State considered wider policy issues than the Green Belt guidance and reviewed housing search sequence. On this point the scheme failed but in the final balancing act the merits overcame the problem.

- Substantial reduction in footprint in both schemes and provision of a single substantial open area between the existing playing fields and the fields to the west;
- The design of the buildings and concentration on the eastern part of the site;
- Concentration of the residential development on the eastern part of the site;
- Safeguarding the playing field through an obligation and condition.

Key determining factor(s): Open character, very special circumstances

Site:	Former Storthes Hall Hospital, Kirkburton, Huddersfield
Local authority:	Kirklees Metropolitan Borough Council
Local authority reference:	2005/60/91330/E3
Call-in reference:	APP/2718/V106/1198039
Date of decision:	2007 (January)
Decision:	Consent granted by Secretary of State
Source:	Practice archives
Appendix:	39

Description:

The third case involved a 'call-in' by the Secretary of State. The project involved a continuing care retirement community of approximately 300 units, a residential care home and central facilities.

Analysis:

The Secretary of State's letter of call-in requested further information on the relationship of the scheme to the Development Plan, the relationship of the proposal to the Policy Guidance Notes 1, 2 and 13 and other issues such as housing policy. This examination of the case concentrates on the Green Belt issues. The Development Plan is the Kirklees Unitary Development Plan which unlike the Sheffield Plan contains a policy D15 relating to Major Development Sites in the Green Belt.

Conclusions:

The Council and the applicants agreed that the development is 'not inappropriate' in the Green Belt because of this policy. Thus there was no need to find very special circumstances to justify the proposal. However some of the concepts that are relevant to defining very special circumstances are relevant to this type of case such as openness and assisting this process of regeneration.

Key determining factor(s): Not inappropriate development.

6.6.1 Conclusions on major Green Belt sites

The first detailed area of study of Green Belt cases involved redevelopment or additions to individual dwellings. Following the Practice based case study the consideration moved to review the wider context obtained from reading other application and appeal decisions. The same approach is adopted in the study of larger site redevelopments. The Compass Bureau search produced fourteen cases in the Kent Green Belt for the same study period, that is since the publication of the revised Planning Policy Guidance Note on Green Belts in 1995. However not all fourteen cases related to land within the Green Belt: two involved land on the edge of the Green Belt and one was an interesting case relating to land exchange. Of the eleven other cases five were allowed in whole or in part. One

of these was a split application and the consent related to only a small part of the whole so that in reality four major schemes were allowed. Three were ‘call in’ cases where the authority was recommending a consent but the Secretary of State determined to review the proposal. Hence only one case was a straight challenge won on appeal. As part of the background study one consent on application was reviewed as it relates to the Sevenoaks area and one Secretary of State determination (at Ryarsh, West Malling). Both are major cases selected to test the issues in this type of larger scheme. Generally the concepts applied were consistent, namely very special circumstances and to achieve the open character of the Green Belt.

6.7 Green Belt Development Control – changes in curtilages

Site:	Adjacent to Strawberry Hill Cottage, Sundridge, Kent
Local authority:	Sevenoaks District Council
Local authority reference:	310/02/37
Appeal reference:	APP/G2245/C/04/1163011
Date of decision:	2005 (April)
Decision:	Appeal dismissed, Enforcement Notice varied
Source:	Practice archives
Appendix:	40

Description:

The case involved the alleged extension of a garden into the Green Belt. The property is known as Strawberry Hill Cottage at Church Road, Sundridge some four miles outside Sevenoaks urban area but within the area of Sevenoaks District Council.

The case came about as a result of enforcement action by the District Council in connection with the use of a triangular area of land for garden purposes. The cottage was constructed under a 1966 planning permission as an agricultural dwelling on the Montreal Estates extending to some 2,000 acres on the south side of the town. On enforcement appeals it is normal to plead the case on various grounds including, as in this case, the ground that it is too late for enforcement action to be taken. A change of use of land is immune from action after ten years, but building works are immune after four years. The first ground of appeal (ground a. under the Act) relevant to the thesis was that permission should be granted.

Analysis:

The planning merits were argued on the basis that there would be little change in the character of the land. Planning Policy Guidance Note Two states that all inappropriate development is harmful to the Green Belt. Paragraph 3.12 states that changes of use are inappropriate unless they maintain the openness of the Green Belt. Therefore, the argument was put forward that changes of use are not inappropriate development per se provided they maintain openness and do not conflict with the use of the Green Belt. A condition was offered to exclude all domestic items from the land. All the Development Plan policies were considered and it was argued that the use would have no impact upon the open or rural character of the Green Belt. It is interesting that whilst the Policy Guidance excludes new buildings from the Green Belt it does not automatically exclude changes of use. By definition it means that one can argue a change of use on its merits will not adversely impact upon the Green Belt. The Enforcement Notice did not prohibit the mowing or manicuring of the grass on the area involved.

Conclusion:

In dismissing these arguments the Inspector concluded that it would be difficult to stop people placing moveable structures on the land. He also argued that it would not be possible to prevent people playing on the land.

Key determining factor(s): No very special circumstances.

Site: Oaklands, Pathlow, Stratford-upon-Avon
Local authority: Stratford-upon-Avon District Council
Local authority reference: G50/8684
Appeal reference: APP/537220/C/00/1046130 & 1046131
Date of decision: 2000 (November)
Decision: One appeal dismissed, one allowed
Source: Compass Bureau & Practice archives
Appendix: 41

Description:

The appeal against an Enforcement Notice was allowed: it covered two identical appeals, one related to the appeal by Mr Gathercole and the other by Mrs Gathercole. Only one fee had been paid it so happens by Mrs Gathercole so only one deemed planning application had been made. The case was simple and involved a change of use of a small area of 0.1 hectare at the back of their property from farmland to garden. The appellants lived in the middle one of three houses backing onto the farmland. The property was within the West Midlands Green Belt and Arden Special Landscape Area.

Analysis:

The Inspector argued that the use was outside one of the categories of development appropriate to the relevant Green Belt policies in the Structure or Local Plan. This is an argument that is at odds with the argument in the Sundridge case because there the Inspector argued that it was the actual or likely

use of the land which made it inappropriate. It is a different twist to the concept although the Inspector did not go as far as to base his decision on this argument. He did however accept that the land had remained generally open in character.

Conclusion:

In allowing the appeal the Inspector allowed the appeal on the conclusion of very special circumstances inter alia:

‘The presence of fairly extensive garden areas on two sides of the site, means that although there is a technical encroachment, the extended garden fits into the existing residential enclave in an unobtrusive manner... I am convinced that the particular circumstances and physical characteristics of the site I have described amount to very special circumstances that outweigh the presumption against inappropriate development in the Green Belt in the Development Plan and PPG2’ (see paragraphs 7 & 8 of decision letter).

The decision letter went on to refer to other appeal decisions being consistent with this decision.

Key determining factor(s): Very special circumstances, not prominent

Site:	Adjacent 1 Park Bungalow, Bury Lane, Chesham
Local authority:	Chiltern District Council
Local authority reference:	99/1203/CH
Appeal reference:	T/APP/X0415/A/99/1031225/P5
Date of decision:	2000 (February)
Decision:	Appeal allowed
Source:	Compass Bureau & Practice archives
Appendix:	42

Description:

The case relates to an appeal in connection with a garden extension to a bungalow at Bury Lane, Chesham.

Analysis:

Again the Inspector recorded the land use as being inappropriate. The reasoning on the issue of impact is at variance with the Strawberry Hill case. In this instance the Inspector accepted garden uses could maintain the open character.

Conclusion:

He found exceptional circumstances that justified allowing the appeal and concluded, inter alia:

‘Consideration of the circumstances of this case, particularly the lack of association of the site with the wider countryside and its affinity with the bungalow, together with the limited visual effects of the proposed development, leads me to conclude that there are very special circumstances... I consider that (subject to conditions) no material harm would be caused to the openness, appearance or character of the Green Belt’. (see decision letter paragraphs 6 & 7)

Key determining factor(s): Very special circumstances. No material harm to open character.

Site:	Adjoining Morley Lane, Stanley
Local authority:	Erewash Borough Council
Local authority reference:	ENF/97/156/P2978
Appeal reference:	T/APP/N1025/C/98/1010497
Date of decision:	1999 (March)
Decision:	Appeal allowed in part
Appendix:	43

Description:

The case related to a change of use to garden land of grounds around 26 Morley Lane, Stanley (Erewash). In this case the additional area proposed for garden was just under one half hectare. It was divided into two sections, the 'core area' with various manmade features such as a parking area and paved drive; in contrast to this the 'none core' area was generally open.

Analysis:

The Inspector allowed the appeal in part, namely for the core area on the grounds of very special circumstances. The physical features in the core area had become immune from enforcement action so they would remain in any case.

Conclusion:

The Inspector concluded:

'First, given that the physical features within the core area will remain I can see very little extra harm in allowing your client to use them in the normal way. Second, a larger rear garden that that approved would result in this large new dwelling better contributing to the locality's housing stock'. (see paragraph 38 of the decision letter).

Key determining factor(s): Open character on one appeal maintained but larger infringed and very special circumstances.

6.7.1 Conclusions on changes to curtilages in the Green Belt

A Compass search was undertaken of similar cases involving changes of use of land without building works for the thesis. Of approximately 118 decisions, 79 were dismissed and 39 allowed. The percentage allowed at 33% is approximately in line with the national averages over all appeal cases determined by the Planning Inspectorate and Secretary of

State in England. As found previously it is difficult to draw any firm conclusions from the listings of these decisions without the full decision letter. The degree of detail in the Compass summaries varies greatly, some give a possible insight into the main issues in the case but others are so brief that analysis is difficult.

6.8 Conclusions on Green Belt decisions

Three categories of development were considered from three levels of information, namely the detailed practice files and Council records, Planning Inspectorate appeal decisions, and lastly the Compass Bureau summaries of cases. The latter two categories were used to check the practice based conclusions. As with studies of decisions on Country Houses the material shows there are a few key determining factors in most cases and this is shown in Table 10. This shows a consistent pattern.

6.8.1 Key determining factors

In the Country House examination it was perhaps the holistic excellence of design promulgated by architects of distinction that dominated the reasoning. The open character of the Green Belt is the most common determining factor. It occurs in eighteen cases either as the reason for the granting of a consent or as an objection. There is consistency here in the approach. In the Green Belt if the openness issue is not analysed and respected the outcome is likely to be negative. This approach is consistent with the findings of other work, for example in the study of decisions on mineral cases in County Durham (Willis 1995). In the cases analysed in Durham whilst a great deal of information was presented to the planning committee the decisions revolved around a few main arguments. Apart from the key concept of 'openness', the other two main concepts were very special circumstances (featuring in fourteen of the cases) and size or proportionality a determining factor in 13 of the cases detailed.

TABLE 10
Residential development in Green Belt
Summary of key determining factors

Case	Prominence and scale appropriate	Open character increased or maintained	Within 50% rule	Very Special Circum- stances	Conversion of Buildings	Other
A. Replacement or Extension to Dwellings						
Annlea, Ash Road Hartley (A)	✓	✓	✓			
Elm Villa (A)	✓	✓	x			
Bramleys (A)	✓	✓	x			
Beaumonts, Edenbridge (D)	x	x	✓			
White House Underriver (D)	x	x	x			
Mill Cottage, Shoreham (A)	x	✓	x	✓		
Seafeld , Stanstead (D)	x	x	x			
Haley Bank Hartfield (A)	✓	✓	x			
B. Large Institutional Complexes						
Stacklands (A)				✓	✓	
Home Farm, Dore (A)				✓		
Wildspur Mill Huddersfield (A)		✓		✓	✓	✓
Sundridge Hosp. Kent (A)		✓		✓	✓	✓
Ryarsh Brickworks West Malling Kent (A/D)		✓x		✓x		

Case	Prominence and scale appropriate	Open character increased or maintained	Within 50% rule	Very Special Circumstances	Conversion of Buildings	Other
New Dursely Poultry Farm, Holmfirth (D)	x	x		x		x
Folkwood School Sheffield (A)	✓	✓		✓		x
Storthes Hall Huddersfield (A)						✓
Changes in cartilage						
Strawberry Hill Cottage, Sundridge (D)				x		
Oaklands, Stratford upon Avon (A)	✓			✓		
Adjacent 1 Park Bungalow (A)		✓		✓		
Morley Lane Stanley (A/D)		✓ _x		✓ _x		

- ✓ Considered and proposed met test
x Considered and proposed failed test

6.8.2 **Very special circumstances**

Additional work has recently been undertaken in the Practice on the ‘very special circumstances’. This concept seems to have a degree of elasticity that defies definition. The argument is raised in a variety of circumstances, for example in the Mill Cottage, Shoreham decision but also in the larger redevelopment projects such as Wildspur Mills and Sundridge Hospital. However, if on balance a planner whether at central or local government level wishes to see something allowed in the Green Belt it can be justified by ‘very special circumstances’. From the cases examined the Wildspur Mills redevelopment, the Retirement Homes at Dore, the other redevelopment projects and the curtilage adjustments were all so justified. This topic justifies further work before conclusions can be reached on a formal definition. Consistency is a matter of interpretation.

6.8.3 **Size of development and proportionality**

This determining factor is related to the open character of the Green Belt. However it is a concept that stands alone and justified close examination. The application of the concept was variable, sometimes a percentage rule was followed (say 50%) but not in all cases as well illustrated in the Sevenoaks cases.

6.8.4 **A valuable model emerges to reduce waste of resources**

The Repertoire or Case Study approach has again been validated to enable advice to be given to clients with a higher degree of confidence. Only nineteen per cent of appeals were allowed for replacement dwellings. At a simplistic level this shows a consistent pattern of rejection but it also involves a waste of resources. As this thesis has progressed it has become evident that the work is moving towards the creation of a model to better predict outcomes. Initially there was a great deal of apparently disparate material but a pattern has emerged first in the Country House work and confirmed by this subject. The key point is that in each subject area there are two or three vital policy issues to analyse. The application

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of this model and its promulgation in the profession could reduce waste. It needs to be emphasised that the project only examined three categories of residential proposals in the Green Belt. The variety of schemes is much wider but the methodology is sound and transferable to other subjects. The next chapter considers a specialist subject, Parsonages.

CHAPTER 7

PARSONAGE HOUSES FOR CLERGY OF THE CHURCH OF ENGLAND

7.1 Introduction and background

As with the chapter on Country Houses and Green Belt the overall background is first reviewed leading to the case studies. Some people have a need to live in a particular place. For example farmers or agricultural workers may have to live near or on their farm; on occasions animals will need supervision throughout the day and night. This need may justify a consent in the Green Belt or open countryside. Another group of people with special housing requirements are the clergy of the Church of England (C of E). The Church is a national institution but it serves the whole country on a Parish or local basis. Some churches or faith groups gather from a wide area so they may not have the same local needs as the C of E for a dwelling in a particular place convenient to a particular Parish Church. Again travelling people, traditional gypsies and travelling showmen have particular needs. It so happens the practice has had considerable involvement in planning advice to Churches.

The work developed from small beginnings to latterly influence national policy. As a case study of 'Repertoire research' this is a prime example of how the precedents build up a pattern, and eventually a policy note emerged from the upper reaches of the then Department of the Environment that has influenced planning policy throughout England and to an extent Wales.

To appreciate the issues the legal background to the C of E must be understood. Unlike its sister churches the Church of England is Established in Law. Parliament delegated first to the Church Assembly, and later to the General Synod, most of its legislative authority in ecclesiastical affairs. Nevertheless, ultimate legislative control remains with Parliament, for when a Measure is passed through all its stages Parliament can still debate it and must either accept or reject it. The General Synod can, without reference to Parliament, pass Canons which, when duly enacted and promulgated, form part of the Law

Ecclesiastical (which is Statute Law), but Canons cannot be embarked upon without Royal Licence and when made must receive the Royal Assent. The Sovereign can only give this on the advice of Ministers of the Crown.

The legal establishment of the C of E could be said to have been started by the Act of Submission of the Clergy in 1533. This Act required that only those Canons then in force that were not contrary to the laws of the realm or derogatory to the King's prerogative were to be continued. To firm up the powers of state, changes in the law of the church could only be made with the express power of the state. As a result of this the Church of England is inextricably bound to the constitutional settlement of the country (Church of England Assembly [Powers] Act) 1919). The end result is that the Measures (being the ecclesiastical law) and Canons (the Canon law) form part of the Statute Law of England and are made with the authority of Sovereign and Parliament. No other church or faith group operates with this legal and statutory authority.

The origin of the parsonage house probably goes back to the eighth century when there is a reference in Canon Law to an 'entire manse' (unus mansus integer) for every church. The parson's house is normally called the vicarage or rectory. There is no practical difference between the two. The terms emerged from practices in the Middle Ages. The landowners frequently appointed Rectors who lived off the rectorial lands or glebe. Gradually some churches that had been built by Lords of the time were given over to monasteries who were pleased to have the income from the lands or glebe. The Lateran Council of 1215 proposed the direct appointment of vicars who were to have the spiritual duties of oversight. The step was taken due to the poor quality of some of the monastic supervision of livings (G J Phillips 1980). The parsonage house is defined in the Repair of Benefices Building Measure 1972 and is the residence vested in the Incumbent. The word parsonage covers a wider group of properties including the

parish church; in other words all the endowments of the benefice. The Incumbent of a benefice has a life interest in the property because he or she cannot dispose of his or her interest.

The duties of an Incumbent include residence in the benefice. Absences of up to three months in one year are tolerated but beyond this clergy may face legal action through a Consistory Court.

There is thus a complex legal background to parsonage houses. The present legal situation is that a house should be available in the Parish and convenient to the church. Legally where there is no officially designated parsonage house the Incumbent may be licensed by the Bishop to live in some convenient house provided it is within three miles of the church. A Bishop's consent may in other cases be obtained for residence elsewhere but such licenses are not easily given, because of the history of absences of clergy from their duties in the 18th and early 19th Century. Indeed it is sensible that people have easy access to their Incumbent and the number of absences in the contemporary church are very very rare and have been so in the last century. For permanent residence outside the benefice for a reason not specified in the Measures or Canons the Archbishop's consent is required. Thus it can be seen that finding a suitable house is a major imperative for any Diocese. It must be remembered that it is the duty of the Diocese to house clergy. (Pluralities Act 1838 Section 36). The Incumbent must maintain the internal decorations, heat and furnish their home but not provide it in the first instance.

The selection of suitable houses is undertaken with the requirements in mind of the Church Commissioners as published in their 'Parsonages a Design Guide'. The key requirements contained in the guide seek to provide a home that will be convenient and suitable for a succession of clergy. Inevitably Incumbents have

totally varying needs, some have large families, others may be single. The main requirements are:

- A study on the ground floor of 220 sq ft
- Two separate reception rooms
- Four bedrooms, two double rooms at least
- A garden of not more than .1 hectare (one quarter acre) for reasonably easy upkeep
- Near the centre of population
- Access for parking and garaging
- Study is to be quiet, not to be below noisy bedrooms and bathrooms

A standard search form has been drawn up for general use.

7.2 **Control in practice – the emergence of precedents**

As Benefices of the Church of England are nationwide they will be covered by a wide variety of planning policies. Their problems and opportunities range from the strictly urban circumstances to the rural, Areas of Great Landscape Value and Green Belt. For many years the practice handled cases on an ‘ad hoc’ basis, making the best case for change wherever possible. Other consultants seemed to do the same. Some cases were allowed on application but others had to proceed to the appeal stage. The application and appeal cases can be divided into two categories. The first are those where there was no general policy objection such as Green Belt policy or Special Landscape Value. These simpler cases involved small practical matters such as neighbour relationships, parking and overlooking, rarely involving appeals because most of the issues could be resolved by discussion and so no general principles emerge from them. The second group are much more interesting relating to proposals against policy but due to the specialist need for the accommodation they were allowed on either application or appeal.

As part of this investigation an overview has been taken of the pattern of cases. It is interesting to note the difference in approach between authorities even dealing with the application of similar policies. For example, review of the practice records show permissions granted for parsonages in Hever, Weald, Seal and West Kingsdown all in Sevenoaks Council area. These were granted in the post war period and more recently in areas of Green Belt and sometimes subject to other rural policies as well. The applications were welcomed by the authority. On the other hand district authorities who have not dealt with this category of proposal frequently apply formal policy in a very abrupt way without any acknowledgement of special needs. In a case at Cudham in the London Borough of Bromley the pattern of decisions was a surprise to the Council and Officers. The case is progressing to application stage.

7.3 Case studies

The case studies are now examined, leading to a summary table at the end of the chapter. As the author has been involved in most of the cases they are set out to illustrate the emergence of case precedents. It was this subject that pointed the author to the emergence of a pattern so this part of the thesis reflects this journey.

Site:	Luton, near Chatham
Local authority:	Medway Council (previously Chatham Borough Council)
Local authority reference:	ME74/66 & 69
Appeal reference:	APP/5279/A/74/7030 and 7031
Date of decision:	1975 (April)
Decision:	Two appeals allowed one dismissed
Source:	Practice archives
Appendix:	44

Description:

Medway District Council (successor to former Chatham Borough Council), as it then was, refused a scheme at Luton near Chatham on rural policies. The replacement scheme involved a new Rectory in place of a nine bedroom Victorian parsonage. The sitting room alone had an area of over forty square metres and was never used except in the height of summer.

Analysis and conclusion:

In allowing the appeal the Inspector accepted the special needs of the Incumbent: as this is one of the early cases a copy is included in the appendices.

Key determining factor(s): Special need and rural policy

7.4 The start of the precedents approach and model

It was this early case that prompted the practice to consider how the problem of replacement schemes could be resolved. A series of similar results in the practice and with other consultants refined the thinking whilst not recognised as a model for procedure in practice this was the result.

A process by which the resolution of the problem progressed on a logical basis evolved. The stages are:

1. Consider suitability of the existing parsonage and grounds: assess whether it can be made suitable at reasonable cost. If not, proceed to next stage.
2. Assess whether there is a site available in church ownership which would accommodate a new parsonage and assess the likely planning reaction.

3. Consult widely with local community.
4. Assess the results of stages two and three.
5. If reasonably favourable apply for permission.
6. If refused assess the scope for an appeal and strength of the objections.
7. Consider alternative sites or houses. This may be done at stage four if the obstacles are daunting.
8. Should no such alternative be found submit appeal.

The appeal option is not entered into lightly and the wisdom of this is described below. The following table shows the results of appeal cases. The issues are noted in each case. Some of these were handled in the practice; others are known about having been referred by other consultants. As with the other subjects the key determining factors are carried forward to a Summary Table later in the chapter. Table 11 is a general compilation of the cases known about.

TABLE 11
Parsonage House appeals and key issues

Date	Location	Diocese	Key objections	Special need claimed	Result & method
1975 P	Luton & Chatham	Rochester	Rural area Highways Drainage	Yes with search evidence	I Allowed S.N.
1978	Bledlow	Oxford	Conservation issues Rural policy	Yes	R Allowed S.N.
1980	Poynings	Chichester	AONB G.L.V. Outside settlement	Yes	R Allowed S.N.
1980 P	Ringwood	Winchester	Conservation issues Residential amenity	Yes	I Allowed S.N..
1980 P	Wroxton	Oxford	Conservation Settlement policy	Yes	I Allowed S.N..
1981	Landewednack	Truro	Outside settlement AONB	Yes	I Allowed S.N.
1981 P	West Adderbury	Oxford	Extension only for study	Yes	I Allowed S.N.
1982 P	Goring	Oxford	Backland/ Amenity	Yes	I Dismissed W.P. New application allowed
1982	Goffs Oak	St Albans	Green Belt	Yes Note handling of arguments. No general precedent	I Allowed S.N.
1982	Pirton	St Albans	Green Belt Conservation Area	Yes	R Allowed S.N. Close to church
1982	St Ippolyts	St Albans	Green Belt	Yes	R Allowed S.N.

Date	Location	Diocese	Key objectives	Special need claimed	Result & Method
1983 P	Chadlington	Oxford	Settlement policy	Yes	I Allowed S.N.
1983 P	Wexham	Oxford	Green Belt	Yes	I Dismissed
1983 P	Henley	Oxford	Conservation Issues Design, Traffic	No	I Allowed
1985	Keysworth	St Albans	Green Belt	Yes	R Allowed S.N.
1986 P	Llanishen	Monmouth	Settlement Policy	Yes	I Allowed S.N.
1986 P	Milton Keynes	Oxford	Conservation Area Precedent	Yes	I Allowed S.N.
1986 P	Oxford	Oxford	Conservation Area Green Belt	Yes	I Allowed S.N.
1986 P	Romsey	Winchester	Conservation Issues	Yes	I Allowed S.N.
1987	Nacton	St Edmundsbury & Ipswich	Countryside	Yes	R Allowed S.N.
1987	Sparkwell	Exeter	Settlement Policy	Yes	R Allowed Complex case
1988 P	Titchfield	Portsmouth	Highways	No	I Allowed
1988	Cowden	Chichester	Green Belt AONB	Yes	R Allowed S.N.
1988	Fetcham	Guildford	Open land policy	Yes	H Allowed S.N.
1989	Withleigh	Exeter	Sporadic Development	Yes (but low key)	R Allowed No precedent
1990	Chapel Stile Lake District	Carlisle	Design No need	Yes	R Allowed S.N.
1991 P	Disley	Chester	Conservation policy	Yes	I Allowed S.N. Note additional Comments
1991 P	Cholsey	Oxford	Conservation	Yes	I Allowed Not on need

Date	Location	Diocese	Key objectives	Special need claimed	Result & Method
1992 P	Fletton	Ely	Traffic Residential amenity Wildlife	No	I Allowed S.N.
1992 P	Chatham	Rochester	Traffic Amenity	No	R Allowed No S.N.
1992 P	Woodborough	Salisbury	Highway safety	Yes	R Allowed
1992 P	Clewer	Oxford	Flooding	Yes	I Allowed but note rejection of need
1992 P	Wraysbury	Oxford	Flooding & Residential amenity		I Dismissed Without prejudice
1992 P	Somersham	Ely	Conservation	No	H Allowed
1993 P	Purley	Southwark	Amenity	No	H Allowed
1993 P	Bletchworth	Southwark	Green Belt	Yes	H Allowed S.N.
1994 P	Long Bennington	Lincoln	Impact on Listed Buildings Settlement boundary	Yes	H Allowed S.N.
1994 P	Thurlby	Lincoln	Amenity Listed building	No	H Allowed
1994 P	Holton	Oxford	Green Belt	Yes	I Dismissed
1994 P	Sidcup	Rochester	Listed Wall	No	R Allowed
2002 P	Penshurst	Rochester	Settlement strategy Green Belt +	Yes	R Allowed S.N.
2002 P	Catfield	Norwich	Countryside	No	R Allowed Removal of condition
2002 P	Currey Rivel	Bath & Wells	Countryside Settlement boundary	Yes	H Allowed S.N.
2002 P	Brixton	Southwark	Conservation Area Listed building	Yes	R Dismissed No S.N.
2008 P	Warlingham	Southwark	Green Belt	Yes	R Allowed No S.N.

Sources: Practice archives
Other Consultants' archives
Church Commissioners
Compass Bureau

P – Practice handled
R – Written representations
H – Hearing
I – Inquiry
SN – Special Need

7.5 Summary of Table

45 Parsonage decision letters examined of which 32 were handled in the practice. Of the 32, 5 cases were dismissed but two of these were without prejudice to new applications overcoming a particular point of concern to the Inspector. At a success rate of over 80% this is a steady pattern when compared with the national average of about 33% - 35%. When the dismissals without prejudice are excluded the pattern is about 90%. In about 25 cases the special need argument was accepted. In three cases the need argument was rejected and further reference is made to this below.

7.6 Case studies continued

Site:	Poynings
Local authority:	Mid Sussex
Local authority reference:	PN/7/79
Appeal reference:	APP/5405/A/79/08061/99
Date of decision:	1980 (March)
Decision:	Appeal allowed
Source:	Practice archives
Appendix:	45

Description:

Every case is not worthy of particular analysis but some are. For example, the Poynings case in Mid Sussex is particularly noteworthy. (Appendix 45). The scheme involved the reorganisation of four parishes. The reorganisation created travel issues and accessibility issues. The logical place for the parson to live was Poynings.

Analysis:

The key points were:

- A wealth of evidence had been placed before the Inspector that Poynings was the place for the Parsonage. (see para. 6)
- Alternative accommodation had not been found (see para. 7 – the Inspector states: ‘in the unlikely event of a dwelling becoming available it would not conform to the standards laid down by the Church Commissioners’).

Conclusion:

The conclusion was that ‘the proposal would be the most appropriate and practical way of fulfilling what I see as an essential need’ (para. 8).

Key determining factor(s): Special need, Great landscape value

Site:	Ringwood, Hampshire
Local Authority Reference:	15788 and 16837
Appeal reference:	T/APP/5235/A/80/06470 & 10064
Date of decision:	1980 (December)
Decision:	Appeals allowed
Source:	Practice archives
Appendix:	46

Description:

The next case worthy of special mention is that at Ringwood. In that case the Inspector was the former Chief Planning Inspector; he had obviously taken on a few cases after retirement from his previous position. The proposal was contrary to conservation policy.

Analysis:

He found that there would be some damage arising from such a large house as a parsonage but the need outweighed the argument.

Conclusion:

The Inspector concluded:

‘The Church is an institution which is unique in its nature and importance of the service it offers to the community ... I am therefore driven with some reluctance but with little doubt, to the conclusion that on balance the public interest would best be served by permitting the erection of the parsonage house as proposed on this site’.

Key determining factor(s): Residential separation distances & special need

Site:	Romsey, Hampshire
Local authority:	Test Valley Borough Council
Local authority reference:	TVS4464/1, 2 & 3
Appeal reference:	APP/C1760/A/85/3270/P2, 32971/P2, 39197/P2 & 39280/P2
Date of decision:	1986 (May)
Decision:	Two appeals dismissed, two allowed
Source:	Practice archives
Appendix:	47

Description:

One of the strongest statements of the exceptionality argument is recorded in a determination of appeals at Romsey in the Diocese of Winchester. The sites proposed were across the road from Romsey Abbey. The sites were all within the Romsey Conservation Area, which is classed as outstanding. The nearby Abbey Church is listed as grade 'A'.

Analysis and conclusion:

The Inspector concluded that there was bound to be some damage to the Conservation Area with any of the proposals. There were two alternative solutions before him (see para. 14). However he went on to accept the exceptionality argument:

'It is in the public interest that most institutions shall operate efficiently and effectively, but it seems to be particularly desirable that a church which exists as a witness of faith and to promote social responsibility should be enabled to do so. I therefore regard a church as deserving of sympathetic consideration, but in the case of the Church of England at Romsey the consideration ought to be more than just sympathetic. That is because the atmosphere and beauty of the Conservation Area at Romsey owes so much to the Abbey Church and what it stands for, and I think it right that the institution which has the duty of looking after the Abbey Church and of maintaining the services there shall not be unduly impeded by the exercise of policies of restraint...' (see decision letter paragraph 15).

Key determining factor(s): Special need and conservation issues

Site:	St Matthew's Road, Brixton, London
Local authority:	Lambeth Borough Council
Local authority reference:	0/00452/FUL
Appeal reference:	APP/N5660/A/02/1094649
Date of decision:	2002 (November)
Decision:	Appeal dismissed
Source:	Practice archives
Appendix:	48

Description:

On the other hand not every new parsonage is allowed on appeal. One case stands out where apparently the exceptional circumstances had been fully argued but the Inspector dismissed the arguments. The project involved a new parsonage at St Matthew's Road, Brixton Hill. The two arguments against the project related to impact upon the local Conservation Area and also upon Rush Common.

Analysis:

The Inspector found serious damage to both these conservation issues and so had to consider the exceptional circumstances put forward. These arguments are contained in paragraphs 16 & 17 of the letter. The view taken was that the argument that the existing vicarage was expensive to heat was not persuasive (see para. 16); and then the arguments for Canon Law being a relevant material consideration were dismissed (see para. 17).

Conclusion:

From discussions with the Consultant who handled the case it emerges that the attitude taken was more than surprising. On the one hand the argument is made in many cases of the need for flexibility in determining cases – that is every case

on its merits but in practice precedents are important. When they are evident, weight is attached to them; when apparently not so evident their absence is noted. The position taken by the Inspectors at Brixton and that at Romsey and Ringwood are inconsistent. It would have been entirely consistent to have acknowledged the exceptional circumstances but then concluded that these factors did not outweigh the harm that could be done to the Conservation Area. The appeal could have been dismissed accordingly but the reasoning would have been consistent.

Key determining factor(s): Conservation Area special need argument.

Site:	Clewer, Windsor and Wraysbury
Local authority:	Royal Borough of Windsor and Maidenhead Council
Local authority references:	468811 and 469396
Appeal references:	T/APP/D0325/A/90/173968/P4 and 173967/P4
Date of decision:	1992 (June)
Decision:	One appeal allowed, one dismissed
Source:	Practice archives
Appendix:	49

Description:

The evidence of the cases in the practice archives points to the generality of conclusions reached but there are some discordant decisions. For example in the Oxford Diocese cases at Clewer and Wraysbury the Inspector allowed one appeal and in principle accepted the second proposal at Wraysbury. The cases were handled at a joint Inquiry.

Analysis and conclusion:

The main issues in both cases concerned the risk of flooding. At paragraph eighteen the Inspector accepted the judgement of the Diocese in their decision making on the need for new properties but then went on in paragraph nineteen:

‘You did however advance a separate argument about the role of the Church in the community; it was your contention that the need for its clergy to have adequate accommodation was a material consideration which might outweigh other objections to the proposals. I have had some regard to this matter in reaching my decision but have given it relatively little weight’.

This can be contrasted with about twenty-five cases where the special need argument was accepted. Contrast this with the comments by the Inspector at Romsey referred to above. Thus there is a difference between the approach to the status of the appellant. In the Wraybury case it did not matter too much because there was no fundamental planning problem that had to be overcome but there were detailed design issues resulting in a dismissal without prejudice.

Key determining factor(s): Flooding and design

Site:	Wexham, Buckinghamshire
Local authority:	South Buckinghamshire District Council
Local authority reference:	SBD455/82(R)
Appeal reference:	T/APP/5133/A/82/12048/PE1
Date of decision:	1983 (June)
Decision:	Appeal dismissed
Source:	Practice archives
Appendix:	50

Description:

There is a difference between the application of policy in some cases. In the case of Wexham the appeal was dismissed. The site was in the Green Belt but the proposal involved the conversion of the stable block. It did not at that time meet the criteria of the then Buckinghamshire Structure Plan.

Analysis and conclusion:

As will be noted from the Green Belt part of the thesis the conversion of an existing structure is now not inappropriate development. At that time any conversion for non agricultural purposes was regarded as being contrary to national policy. Contrast the series of queries raised by the Inspector with the majority of cases:

‘I can also see the need for him to have a residence with a study, although I would not have thought it vital for him to have four bedrooms as well, notwithstanding that is the Church Commissioners normal standard for new parsonages of 2,000 sq ft’. He went on to suggest that there might be other suitable houses although evidence was given to the contrary.

Key determining factor(s): Green Belt, special need rejected

Site:	St Ippolyts, Hitchin
Local authority:	North West Yorkshire District Council
Local authority reference:	1/1703/81 (1077)
Appeal reference:	T/APP/5255/A/82/06749/G7
Date of decision:	1982 (November)
Decision:	Appeal allowed
Source:	Church Commissioners & Practice archives
Appendix:	51

Description:

The proposal submitted in outline involved a detached parsonage on the fringe of the village of St Ippolyts in the Hertfordshire Green Belt. The site had housing on three sides, but the village was not excluded or listed for limited development.

Analysis:

Structure Plan Policy 21 allowed for limited development to avoid loss of local elements critical to the well being of the rural area. The village is small and the Inspector concluded that it would not be likely to find a suitable house in the village.

The original vicarage at St Ippolyts was large, at 2,600 sq ft; the previous case at Wexham was 2,765 sq ft. the Authority argued against the scheme on the grounds of the Green Belt precedent, and the possibility of adapting the existing house.

Conclusion:

The Inspector in allowing the appeal considered no precedent would be created and the site would be well screened.

Determining factor(s): Green Belt, no precedent, special need

Site:	Sparkwell, Devon
Local authority:	South Hams District Council
Local authority reference:	G/49/0934/86/1
Appeal reference:	T/APP/V1125/A/87/662881/P5
Date of decision:	1987 (November)
Decision:	Appeal allowed
Source:	Church Commissioners & Practice archives
Appendix:	52

Description:

In the Sparkwell case the Exeter Diocesan authority had determined to replace the original vicarage. One appeal had been dismissed and a second appeal was allowed. In the intervening period a Local Plan Inspector considering the Ivybridge Local Plan had recommended the extension of the development boundary of Sparkwell. Contra to the general case that the parsonage was too large and expensive it had been partly restored by a local trust. Notwithstanding the fact that its costs had put off occupation for benefice purposes a parson had been found and at the time of the appeal it was occupied.

Analysis and conclusion:

The Diocesan approach was supported by the Inspector who concluded:

‘I support the view that the Diocesan Parsonages Board must be able to plan ahead, and it seems to me in the unique circumstances of this particular case that there is sufficient evidence to justify the proposed development’. The general tone of the decision letters is that the national standards set by the ‘Green Guide’ are appropriate and a base level against which schemes can be judged.

Determining factor(s): Special need

Site:	Betchworth, Surrey
Local authority:	Mole Valley District Council
Local authority reference:	MO/92/1287/PLA
Appeal reference:	T/APP/C3620/A/93/225097/P5
Date of decision:	1993 (December)
Decision:	Appeal allowed
Source:	Practice archives
Appendix:	53

Description:

The new Vicarage at Betchworth replaced a large eight bedroomed house. The site was subject to Metropolitan Green Belt policy.

Analysis:

The then Mole Valley District Plan differentiated between the application of policy to sites within and outside settlements. The then Policy C6 excluded areas of low density development from the villages. The Inspector found the site to be outside the settlement and therefore the presumption against the development applied.

The Inspector found the very particular circumstances of the case justified the development and referred to the removal of an old tin church hall and a highway improvement. The search was also mentioned in relation to other properties. Referral was also made to a precedent case at Wyke (in the Guildford Diocese) where a Green Belt parsonage had been allowed.

Conclusion:

This is a relatively rare case of consent being granted in the Green Belt for new building.

Key determining factor(s): Special need (very special circumstances) and site circumstances

7.7 Case precedents move towards ‘policy’ and practice

Notwithstanding the occasional reversal the pattern of decisions on applications and appeals pointed those responsible for such issues to try to influence national policy. Although at the start of the process there was no appreciation of such a pattern fitting into a theoretical or academic framework in fact it validates the repertoire building approach that is proposed by Schön (Schön 2003). As with

most organisations the surveyors acting for the Dioceses of the Church have their own organisation that considers common interests and issues. Meetings were held between the Church Commissioners, The Diocesan advisers and the senior staff at the then Department of the Environment (DoE). The arguments were advanced that the Canon Law requirements for clergy housing could be a material consideration under the Town & Country Planning Act that should be taken into account in the determination of planning applications and appeals. This was accepted and resulted in the then Head of Policy in the erstwhile DoE writing to all Regional Directors of Planning and Planning Inspectors advising them of this (App 54). As a result the pattern or repertoire building of cases has resulted in the acceptance of a principle. Possibly the same could have been achieved by a leading determination of the House of Lords but the approach in practice has been more gradual and less risky. It would be wrong to suggest that the principle has become a formal policy. It is still necessary to go through the search sequence to check that alternatives are not available: thus the significance should not be over-emphasised. However as a process it is interesting to follow through the pattern from random cases with disparate information leading to a pattern of cases and then the establishment of a considered framework for action and decision making. The number of abortive cases is now very small and a national pattern that has been established. The Compass results point to this. Certainly in the practice the abortive refusals or dismissals on appeal have been reduced to about twenty percent, and less if allowance is made for second applications after a dismissal without prejudice.

The next case encapsulates the approach. The pattern of decisions was referred to by one of the Inspectors involved in the Penshurst case. The case has been treated slightly differently because of its significance and involvement of the author throughout a period of some thirty years.

Site:	Penshurst, Kent
Local Authority:	Sevenoaks District Council
Local Authority reference:	SE/01/00473/FUL
Appeal reference:	APP?G2245/A/01/1073644
Date of decision:	2002 (January)
Decision:	Appeal allowed
Source:	Practice archives
Appendix:	55

Description:

The case examined in detail subsequent to the DoE ruling related to a new parsonage at Penshurst, Kent in the Diocese of Rochester. This case caused something of a national furore, as it was the first time the DoE ruling had been applied and the full case papers are available; it is examined in greater detail than some of the other cases. The site involved is shown in Figures 11, 12 and 13. Penshurst is well known both nationally and internationally. The cluster of dwellings around the village centre is small but the scene is dominated by the great mansion of Penshurst Place, home of the Sidney family since the sixteenth century. Close to the mansion is the church and the original Rectory. The latter is a Grade II property with a Queen Anne front but it is thought elements going back to an original Kentish farmhouse.

Analysis:

The village is washed over by the Metropolitan Green Belt designation as well as being in the Kent Downs Area of Outstanding Natural Beauty and inevitably a Conservation Area. It is located in a Special Landscape Area. In summary the site is as sensitive as anywhere within the country. The photographs give an indication of the atmosphere of the village. For various reasons the former Rectory had not been replaced. It had ten bedrooms with an attic floor. The grounds were unmanageable. As the Sevenoaks Local Plan was under review the

opportunity was taken to seek to include a special mention of the need for a parsonage in the policy framework.



Figure 11
Penshurst



Figure 12
Penshurst



Figure 13 Penshurst

As a result of representations the District Council itself made proposals to acknowledge the need for parsonages in communities without their own settlement boundaries. The Inspector at the Local Plan Inquiry accepted this resolution of the problem. The end result was that the planning application for the new parsonage could be made against a favourable policy background to an extent although the application was rejected for a series of reasons:

1. The site lies within the Metropolitan Green Belt where strict policies of constraint apply. The proposal would be harmful to the maintenance of the character of the Green Belt. The Council does not consider the special circumstances put forward in this case sufficient to overcome the usual presumption against inappropriate development in the Green Belt. This is contrary to policy MGB3 of the Kent Structure Plan and policy GB2 of the Sevenoaks District Local Plan.
2. The proposal, by reason of its siting, would seriously detract from the special character and appearance of the Penshurst Conservation Area.

This conflicts with policy ENV17 of the Kent Structure Plan and policy EN23 of the Sevenoaks District Local Plan.

3. The proposal would adversely affect the setting of the existing Rectory, Penshurst Place, St John the Baptist Church, the Leicester Arms and Rectory Cottages, all included in the List of Buildings of Special Architectural or Historic Interest. This conflicts with policy ENV19 of the Kent Structure Plan and policy ENV18 of the Sevenoaks District Local Plan.

The case presented in writing covered the following main points:

Historical – Research into the history of the site showed that a parson had been appointed to Penshurst shortly prior to the murder of Thomas a Beckett. There had been a historical continuity of juxtaposition of Penshurst Place, the Church, the Rectory and the community. This point was picked up in the subsequent Inspectorate decision. The costs of upkeep of the house were detailed at an average of over £7,000 per annum which was more than three times the average cost of upkeep of parsonages across the Diocese.

A key element in the case related to the detailed discussions held with seven different organisations and individuals; these were:

- District Council Officers, namely planning and conservation
- Penshurst Parish Council
- English Heritage
- National Heritage Adviser to the Countryside Commission
- Kent County Council Archaeology
- Penshurst Estate
- Local Church

The views of each body were taken into account in the eventual scheme which was the third proposal for the site. For example, the District Council wished to see the house lowered and this was done. English Heritage wrote 'design is very good... make a fine addition to the Penshurst scene'. Whilst regretting any change in Penshurst the National Heritage Adviser accepted the quality of the scheme and wrote accordingly.

The historical element was succinctly put in a village guide written by the then Lord De L'Isle of Sidney in 1970: 'there can be few villages in England where the story of many centuries is as apparent even to the casual eye as it is in Penshurst Manor and church, those two foundations of English Social History stand side by side as they have done for over six hundred years and the village clusters close at hand.

TABLE 12
Parsonage Houses summary of determining factors

Site	Area of Great Landscape value or similar designation	Green Belt	Special need	Other
Luton	✓		✓	
Poynings	✓		✓	
Romsey	✓			✓
St Matthews Brixton			x	✓
Clewer			Partly	✓
Wraysbury			Partly	✓
Wexham		✓	x	
St Ippolyts Hitchin		✓	✓	✓
Sparkwell			✓	✓
Betchworth	✓	✓	✓	✓
Penshurst	✓	✓	✓	

✓ Considered and proposal met test
x Considered and proposal failed test

Conclusion:

A significant portion of the case related to precedents and the Local Plan Inspector's conclusions which were important:-

‘ It does seem to me that location of a new Rectory in such a location ought not to present a problem in principle but simply be a matter of detailed design. Through maintenance of the historical continuity with the church and other related buildings it would seem possible to achieve an enhancement or at very least preservation of the Conservation Area.’

Significantly the Local Plan Inspector had gone on to refer to the Cowley example a well known case in Oxford Diocese.

These arguments were accepted by the appeal Inspector in allowing the appeal and he concluded that the Conservation Area would benefit from both the presence of a Rectory and the supervision it would afford to the Church. The open character of the Green Belt would not be materially altered. The policy steer from the DoE was evident in this determination.

Key determining factor(s): Green Belt Policy, special need, very special circumstances

7.8 Conclusion

As with the other subjects the detailed practice results were checked with the Compass statistical summaries for the subject. The normal printout was obtained and it listed cases since 1982. It cannot be assumed that every case has been recorded as the bureau's recording methods changed slightly over the period. Cases involving other denominations or those located in Scotland and Wales are excluded to try and establish some comparability. The legal

background in both Wales and Scotland differs. There were fifty-one cases in England listed. Of these twenty-eight were allowed totally or in substance. Most of these cases are summarised in Table 11.

Two points emerge from this result. The first is that the success rate at about fifty-five percent is above the national average of all appeals. The second is that the success rate is well below the practice result. The evidence suggests this is due to some cases not using the case study approach and this is referred to below. However the 'Repertoire' or case study approach has been justified in this subject area. It has the advantage of being clearly defined with known limits and definitions. Whilst the methodology was applied over many years in the Practice it was not 'elevated' to the status of a model or procedure. One of the results of the thesis is that there is the opportunity to place what has been happening over the years within a framework of literature and thought. It is fortunate that without consciously deciding to produce a model this has happened. As a result of the thesis the material has been reconsidered and viewed differently. Without the work over thirty years on parsonages the evidence would not have been available to further the approach of better predicting results. However there are instances such as Wexham and St Matthews, Brixton where the special needs argument has not been accepted and this represents a degree of inconsistency.

SECTION 3 – OVERVIEW

CHAPTER 8

GENERAL CONCLUSIONS AND CONCLUDING REMARKS

8.1 Introduction

This chapter takes an overall view of the material covered in the thesis; it starts with a comment on the evidence of the underlying historical tensions between certainty and freedom, then moves to answer the research questions posed in chapter one, and the two hypothetical propositions. The Practice Model summarises the approach and is explained. A section then follows on the challenges faced in the work and the changes with hindsight that could have been made leading to the overall conclusions and general reflections on the work. From a historical review it was found that there has always been a tension between paradigms of certainty and freedom. This was an interesting conclusion. Even prior to the nineteenth century legislation there had been efforts to control development in London, but developers were not always constrained by the legislative regime (as with the Duke of Bedford). With the emerging sanitary and planning legislation the tension between freedom and certainty was evident in the exchange of memoranda in 1906 between promoters of schemes and Prime Minister Campbell-Bannerman. Recently changes in the planning system aimed to bring greater certainty. However, whilst implying flexibility other issues are raised. Even the first stage in considering any proposal against the plan allows for a degree of inconsistency and when it comes to the interpretation of other material considerations there is scope for wide interpretation, and judgement comes into the process.

The historical review was closely connected to the assessment of consistency in the legal context. Indeed the legal context is vitally important. The wide scope of ‘material considerations’ was considered in *Great Portland Estates plc v. Westminster City Council (1986)* leading to the conclusion that any consideration relating to the use and development of land is capable of being a planning consideration.

This concept in turn opens the possibility of consistency becoming a desirable policy objective; it was acknowledged in *R v. East Cambridgeshire District Council (2003)*.

8.2 The research questions

The research questions were considered in three different residential typologies, namely Country Houses, Green Belt residential developments and Parsonage Houses.

8.2.1 The first research question: Is there greater consistency of outcome where there is a defined policy whether in Local Plans or National Policy?

In respect of Country Houses – the subject covered three periods, the first prior to any national policy and then the two periods with different policy guidance.

A negative answer was found to the question. The pattern did not change between the periods with and without policy. Without a policy pronouncement as subsequently set out in Planning Policy Guidance Note 7 there were favourable decisions granting consents for new Country Houses. However, the basis for decisions seems to be variable, with inconsistent handling of policy matters such as the Sunninghill decision involving a Green Belt case. The contrasting approach to the Witley Park decisions and Hurstbourne Priors illustrated totally different approaches to sustainability. The latter case, initially recommended at local level with support from the District Council seems to reflect an extreme report and handling of issues. Little consistency of handling of similar matters has been evident. The most recent Policy Note has resulted in considerable confusion between those favouring different styles of architecture. At a simplistic level there is a consistency in that the rate of refusals is far higher than for most applications and appeals. However the reasoning resulting in the

outcomes varies widely in the treatment of key concepts such as sustainability (Hurstbourne Priors and Coston are examples). Furthermore the results show little or no change of outcome whether or not there is a national policy.

Residential development in the Green Belt – A generally positive answer under this head was found from the material but there were some surprising variations particularly relating to extensions of dwellings. Green Belt policies are long established – indeed they are the epitome of the strong national policy situation. The policies come through in the decisions but even in this area of examination there were surprises. Two key policies were evident in the summary tables of determining factors, namely the need to maintain the open character of the Green Belt and the concept of very special circumstances. However the existence of national policy or local policies did not result in a particularly high level of consistency in the extension cases.

Parsonage Houses – A negative relationship was found. There is no formal published national policy but consistency of outcome is higher than in other areas of control. The pattern of decisions has established its own epistemology.

8.2.2 The second research question: From the decisions examined are the policy concepts clear in the results?

In respect of Country Houses – positive, at one level strategic policies come through in the decision letters. For example the general presumption against inappropriate development in the Green Belt and a discussion of the exceptions allowed under the two national policy guidance notes. It was noteworthy that in one instance at Dogmersfield Park (1986 Hart District Council) the general presumption in favour of development determined the favourable outcome. However the weight attached to the different policies varies. The Hurstbourne Priors case (2006 Basingstoke and Deane) was viewed as a non sustainable

project but an equally rural site at Coston was accepted (2006 Melton Borough Council).

In respect of residential development in the Green Belt – positive, the concepts came through in the decisions as with the first research question key long established policies and concepts feature strongly in the decisions. The concept of the open character of the Green Belt is the leading key determining factor (see Table 10), and the related concept of prominence or scale is also important. The concept of very special circumstances is the second most important key factor but this does not have a formal definition. Thus the clarity is more apparent than real. However the debate between size of extension as an absolute and proportionality is not clear.

In respect of Parsonage Houses – the pattern of results was achieved without formal policy but clear concepts established from decisions came through. However the letter of guidance from the DoE was a factor.

8.2.3 The third research question: Why are there so many cases determined on appeal when the national average success rate is only 30% to 35%?

The research does not answer this question: it only raises further questions. The number of appeals upheld with grants of permission was low in respect of new Country Houses and Green Belt cases. For example the material (from the Compass Bureau) showed about 12% granted for new Country Houses in the period 2000 to 2004 when the relevant policy was contained in Planning Policy Guidance 7 (see Chapter 5). Similarly the overall level of consents on appeal for replacement dwellings in the Green Belt (in Kent) was low at 19%. The material indicated a different picture for Parsonage Houses with over 50% consents granted on a broad sweep of Compass results. The thesis has only detailed the

problem and the question remains. The situation is not satisfactory and it is possible to speculate on the reasons for the results. For example, it may be due to certain classes of appeal being handled privately by appellants. Or it may be due to the complexity of the issues which are not regularly addressed by the professional advisers involved. The level of success on the larger Green Belt projects of redevelopment was higher. This may be due to the professionalism and experience associated with the larger proposals. Further work would be worthwhile involving direct approaches to the parties involved in various classes of appeals.

8.2.4 The fourth research question: Is there consistency of outcome in similar circumstances and should this form an objective of policy?

There was no absolute consistency found in any of the typologies. In respect of Country Houses – it is difficult to generalise because the circumstances differ but inconsistency was evident. However by reference to Table 4 in the Chapter 5 there are consistent themes such as the greater chance of consent when there is a restoration project involved. Consent was achieved in five such cases. The policy background was a constant although the changes in 2004 were not clear. The identity of the architect was also a key circumstance in favourable cases (in seven cases). The handling of similar circumstances varied between cases, for example the treatment of rural isolation at Hurstbourne Priors and Coston were very different; both were isolated rural cases and the issue was handled differently.

In respect of Green Belt cases – The material indicates consistent policy themes such as the open character of the Green Belt but this research question raises the issue of application of policy, obviously the outcome depends upon application and interpretation of policy. The cases indicate variable applications of policy.

For example in the category of replacement dwellings the Sevenoaks District Council admitted in the handling of Annlea that a mistake had been made in another case. The 50% rule was not followed although very large extensions were unlikely to be permitted. There was a variation in approach to intensification of use within an established residential unit, for example the intensification of Mill Cottage, Shoreham was allowed on the basis of very special circumstances but this level of exceptionality was not invoked at Haley Bank, Hartfield (see Table 10). The material indicates the generally consistent outcomes where proposals infringed upon the established key policies particularly the open character of the Green Belt but at the more detailed level there are variations of outcome.

In respect of Parsonage Houses – The pattern indicates that where there are no fundamental physical problems such as obviously poor design (such as overlooking or excess mass) and there are no alternative solutions then special need is likely to be accepted. However the material indicates some decisions that depart from the principle for example the rejection of the Church Commissioners standards at Wexham and a limited acceptance of the arguments at St Matthews, Brixton (see Table 11).

8.2.5 The fifth research question: Is there consistency of policy in the plans of the various authorities in Kent and the area of the North of England considered?

There are no policies specifically aimed at Country Houses in either the Kent or Northern areas. There is the Parsonage House policy in the Sevenoaks Plan as explained in the section above describing the Penshurst case. A specific policy is rare and when included generally takes a form similar to the Sevenoaks Policy.

Surprisingly some Green Belt policies varied in the different Districts examined as is shown in Tables 6 & 7. However the key policy of the open character is

consistent. However the districts examined contain other more local policies, for example some authorities had policies directed towards land reclamation.

8.2.6 The sixth research question: Could national policies be presented in a different way to reduce the volume of abortive appeals?

Yes it would be possible to do this. The thesis has shown that in the material studied there are some key concepts that determine many planning decisions. In the case of Country Houses apart from the references to the national policy of 'exceptionality', that is the principle of building in the countryside, the other key determining factors were outstanding design, the identity of the architect and the restoration of historic properties or parkland. The current PPS is unhelpful in that it has resulted in an apparent emphasis on a particular school of architecture; this comment could be reconsidered. The other two factors could also be included and there would be no objection to a footnote warning about the high test for such projects.

Whilst the key factor of the open character of the Green Belt comes through in the decisions it would be desirable to refine the Policy Guidance note. For example, the difference between absolute size and the proportionality of development could be clarified. A note could be added giving some percentage of appeals allowed.

Parsonage Houses are such an exceptional case that a formal policy comment is not appropriate.

8.2.7 The seventh research question: Does 'Repertoire' or the case study type of investigation assist professional practice?

This approach is valuable. This is closely related to the second hypothetical proposition. This material is essentially part of the epistemology of professional practice. The assessment of the material is sometimes conducted in a somewhat ad hoc way, perhaps due to time pressures. The number of planning appeals is an indication of the problem. The evidence of its value is that in the field of parsonage cases the methodology has advanced and the record is proven over a lengthy period. It started from a few cases, resulted in a pattern and limited policy pronouncement by the Department. The methodology established that in the three subject areas studied the key policy factors can be isolated. They were then checked against a wider information background.

8.3 Critique of the process of the research leading to the Practice Model evolution of Practice Model

The thesis has moved from the analysis of cases through to the evolution of the Model for Practice. This was not anticipated when the work started. Indeed at an early stage an approach involving many more cases had been considered. For example the approach could have involved taking key words relating to key determining factors from decisions and producing many more statistics than has been done. This approach was rejected due to the difficulty in generalising from bare statistics. The debate between Brotherton (1989) and McNamara and Healey (1984) explained in Chapter 4 was a warning away from this approach.

Considerable thought was given to the importance of replication of the approach and the research pointed towards a limited number of key factors of importance in most areas of decision making. This then pointed towards the evolution of the Practice Model. If the outcomes could be better predicted then analysis of the elements would be possible.

CHAPTER 8
GENERAL CONCLUSIONS AND CONCLUDING REMARKS

As a result of the work a Model has been evolved with a Practice note for use in the office. It is regretted that work on the criteria used in residential developments such as amenity, separation distances and built form was not

possible. It requires a separate thesis. However, the approach was and the model have been successfully applied to better anticipate outcomes in such cases.

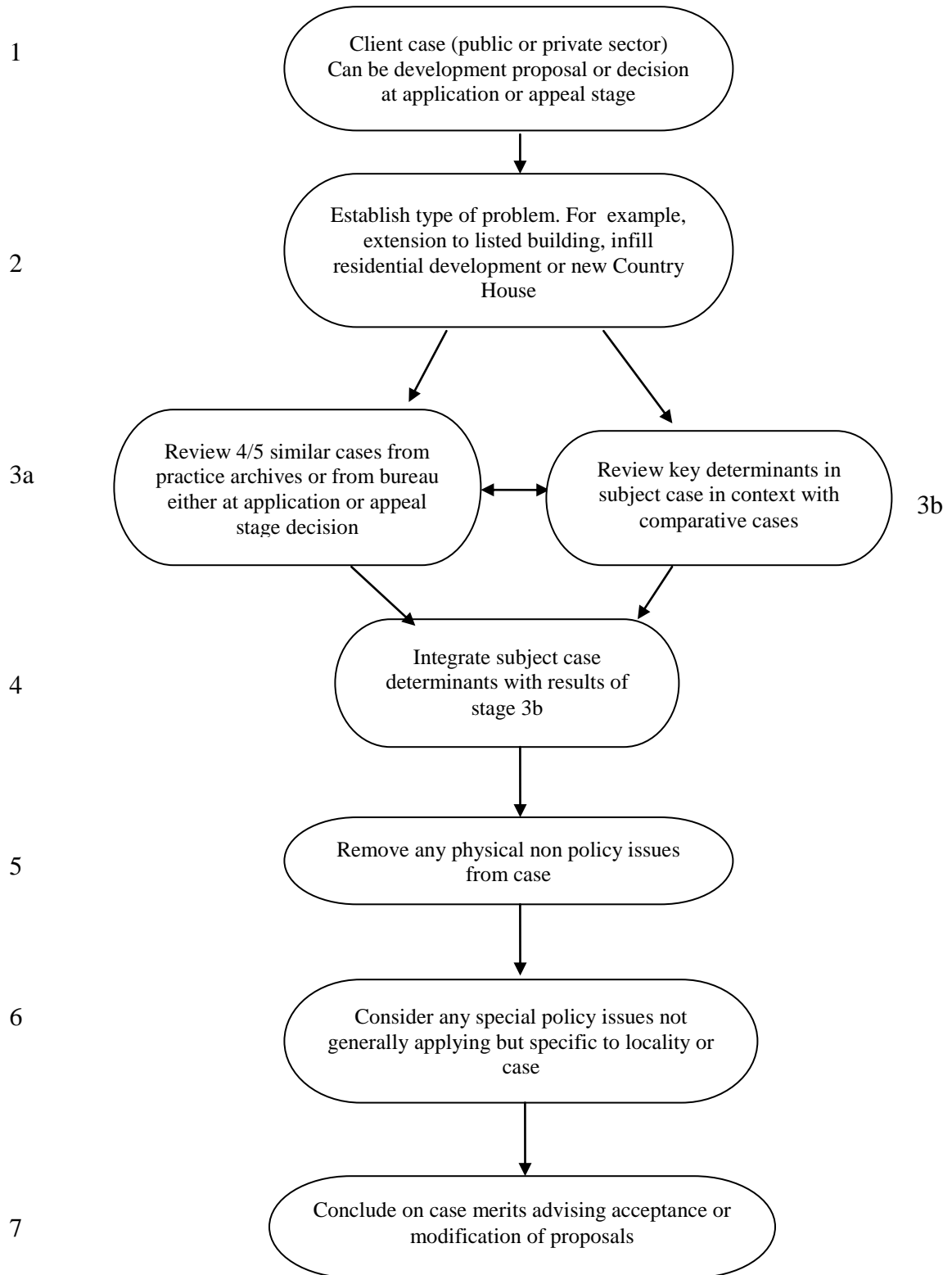


Figure 14 Model to assist in prediction of outcomes of applications & appeals

The Model is shown at Figure 14. The justification for the evolution of the Model arises from two considerations. The first is the finding that in typologies of residential development studied a few key determining factors emerged through the decisions. The second is that over the years the same approach has emerged in the assessment of Parsonage Houses. As can be seen from the Model (Figure 14) Stages 1 and 2 are very simple. Stage 3a is more time consuming because the user must obtain four or five cases on similar issues. This can usually be undertaken from Practice archives or from the Compass Bureau. The latter is costly. The Model is essentially concerned with the application of policy. Once the case analysed has been compared and integrated with the key concepts (for example in the Green Belt the concept of open character) then physical aspects or special circumstances must be removed from the debate. The conclusion can then be reached on the merits.

8.4 **Overall conclusions, the hypothetical propositions, the Model/relationship to theory**

The thesis started with two hypothetical propositions; one was that planning criteria are not applied in a particularly consistent manner in reaching decisions on applications and appeals. The second proposition was that Repertoire Building research is a worthwhile approach to better predicting outcomes.

The author considers that both propositions are valid with varying degrees of qualification. The wording of the first proposition refers to application of criteria. If it had referred to the existence of consistent criteria the answer would be negative, the proposition would fail. It has been found that in the material studied the existence and identification of the criteria are predictable if not totally consistent. For example in the case of Country Houses the criteria include outstanding design (and designer), and the advantages of a restoration project. In the Green Belt criteria include very special circumstances and open character. In

the case of Parsonages the special need is usually a key criteria. However the application of the criteria has been found to be variable and surprisingly inconsistent, with arguments illustrated in the debates about size of extensions in the Green Belt or very special circumstances.

The second proposition uses the positive finding of the existence of the criteria and suggests the validity of the case study approach which can conveniently refer to the Model (see above - Figure 14).

Whilst the thesis reviewed some five hundred decisions in various forms (appeal decision letters, Council decisions, summary decisions) the main finding is that the complexity can be reduced to a much simpler pattern. In terms of public administration until the concept of consistency as a material consideration is recognised in the courts it will have Practice implications but not have the full impact that could be achieved.

The Model to better predict outcomes of applications and appeals represents an evolution of previous work in the field. The conclusion is that whilst there is a mass of information and argument in planning matters, normally decisions come down to a few simple factors. The implications for practice are clear to concentrate on these factors and isolate them early on. There may be implications for policy as well, for example to simplify issues as far as possible.

On the theoretical side the application of Discovery Theory to the planning process is also a new approach. Initially the author tried to fit the work into a particular theory, but came to the conclusion that each theory illustrated an aspect of planning. The conclusion was that Discovery Theory best represented the process as a dynamic concept.

Overall the conclusions are innovative and valuable for practice even if the scope of the research was reduced from the early stages.

8.5 Reflections on the evolution and changes to the research, challenges, limitations, alternative approaches and impact on practice and research

8.5.1 Evolution and changes

In Paper 1 of Stage 1 the aim had been to study a wider variety of subjects. The example given in that early paper was a residential development in Cambridge. The scheme involved debates about separation distances between existing and proposed buildings, the quality of living conditions for residents in the scheme, overlooking and matters of general design quality. As the work progressed the subjects of study were reduced so these interesting issues have not been examined. This is unfortunate but the theoretical, historic and legal aspects of the subject justified considerable time leading to the detailed subjects of Country Houses, Green Belt residential development and Parsonage Houses. Similarly it had been hoped to extend the subjects studied to other generic subjects such as accommodation for travelling showmen. An alternative approach would have considered the consistency of criteria applied to issues of residential development. From a Practice point this would be valuable but the work involved would be considerable. Issues such as those raised in the early (Stage 1 Paper 1) Cambridge case study would justify a separate thesis. With hindsight the residential subject could have produced a worthwhile Practice result. However, the Model that has evolved can be replicated and the method used. The Model was not anticipated when the work started.

8.5.2 Reflections on the challenges, limitations and possible alternative approaches to the work

There have been two practical challenges in the work. The first arises from the problem of definition. In some of the literature on Country Houses proposals were described as new Country Houses when in fact they were little more than

large executive homes or the rebuilding of an existing house. The definition becomes vitally important. The other issue is the variability of complete records; in some Council files documents are clear but not always. The decision to use a qualitative approach was justified; a purely statistical approach would have been dangerous; the material requires interpretation and the application of judgement.

One of the most challenging aspects of the study has been to integrate the theories of planning with the practical work in the professional office. Paper 2 of Stage 1 required a study of theories of planning. Initially the challenge was perceived to fit the work of professional practice into one theory of planning or adopt one theory. As the work evolved the view was taken that it was not a choice between theories of planning but rather each one gave an insight into some aspect of the planning process. The conclusion had been tentatively reached at the end of Stage 1 but was affirmed in Chapter 3 of the thesis. Not only did the thesis consider theories of planning, the conclusions had to be integrated with theories of professionalism. From this work the emphasis has been placed on Discovery Theory, the most appropriate approach. Within this theory the planning process is seen as a continuous process of information gathering. The importance of these overall theoretical concepts in making sense of the large quantity of information has been revealing. It has been stimulating and brings a totally different perspective on daily practice. As far as can be found this is an original application of theory and has been a key element in the research journey.

Paper 3 of Stage 1 reviewed the research design and method. It was further developed into Chapter 4 of the thesis. The initial idea was to tend towards a quantitative approach but a review of the literature pointed away from this and towards the more qualitative emphasis. The change arose from the dangers of the use of results of planning decisions without careful analysis of the content. The emphatic exchange of views between Brotherton (198) and McNamara and

Healey (1984) detailed in Chapter 4 of the main thesis was a timely warning of the potential pitfalls. Thus the research journey resulted in the adoption of the multiple case study approach leading to the Practice Model that is considered an original contribution to practice.

As discussed in the chapter on the legal background the most effective way to establish consistency as an important objective of policy will be to obtain recognition of the concept in court decisions. Until that is achieved the Practice can use the Model and approach. However it will not achieve the full impact of consistency as an important material consideration. Thus, to summarise the work has produced an original insight into the relationship of economic theory and planning practice, an original Model to simplify the mass of data from decisions and the opportunity to establish the concept of consistency legally.

8.5.3 **Implications for the relationship between academic work and practice**

The relationship between the professions and the universities has been a matter for long debate. Whereas in the medical world professional training has been university based for many years this is not the case in the surveying profession. A degree based entrance level evolved in the latter part of the twentieth century. As was postulated in the early part of the thesis research activities are an important element in the development of those professions that have not had centuries of university based education. The thesis has explored material and pointed to patterns and issues that are inherent but not obvious. Some surprises have been found, for example the lack of analytical work on 'very special circumstances' in the context of decisions in the Green Belt. More work is needed on this subject. Similarly analysis would be worthwhile of the concept and application of good design criteria. Schön argues that with more research the departments of professional schools will be increasingly autonomous and

‘that there will be a reduction of the status differential between the research disciplines and the professional schools leading to a reduction in the dilemmas of the schools of the minor professions’.

The research journey hopefully has a wider illustrative value for overlap of research and practice. This would encourage a continuing relationship between university and practice: it may involve new approaches in both types of organisation. The issues raised in this thesis and their resolution will have impacts on individuals, communities and the economy. Some clarification of policy to make policy application clearer could save costs to public and private sectors.

As stated above (Section 8.5.3) the product of the work is an innovative application of theory (Discovery Theory), a Practice Model to simplify the amount of information and an opportunity to establish a legal concept that in turn relates to the first two matters.

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