

RTPI SE Autumn Legal Update

“Material Considerations” in Planning

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Landmark Chambers, 7th October 2019

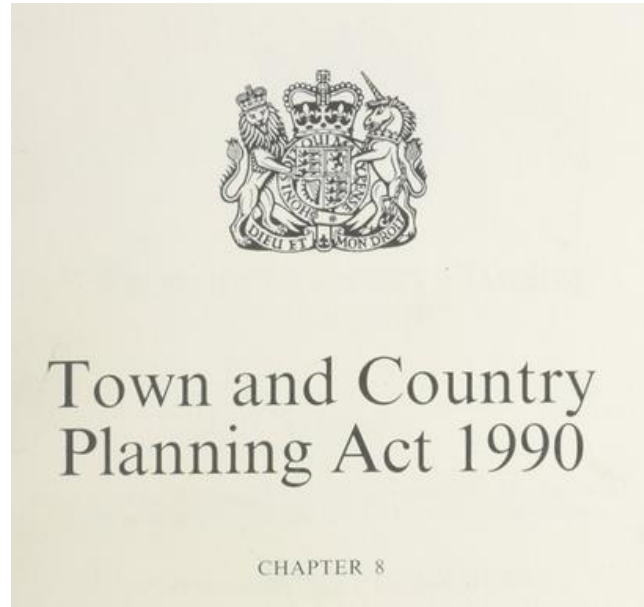


“Material considerations in planning”

1. Key legal principles.
2. A pop quiz.
3. Wright v Forest of Dean in the Supreme Court.



OMCs in the statutes:



- S.70(2) TCPA 1990:

“In dealing with an application for planning permission or permission in principle the authority shall have regard to—

- (a) the provisions of the development plan, so far as material to the application,
- (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
- (aa) any considerations relating to the use of the Welsh language, so far as material to the application;
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.”**

OMCs in the statutes:



- S.38(6) PCPA 2004:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless **material considerations** indicate otherwise.”

Material to what?

- **3 tests** - Viscount Dilhorne in *Newbury District Council v Environment Secretary* [1981] AC 578:
 1. For a **planning purpose**.
 2. Must **fairly and reasonably relate** to development permitted.
 3. Must not be so unreasonable that no reasonable planning authority could have had regard to it.

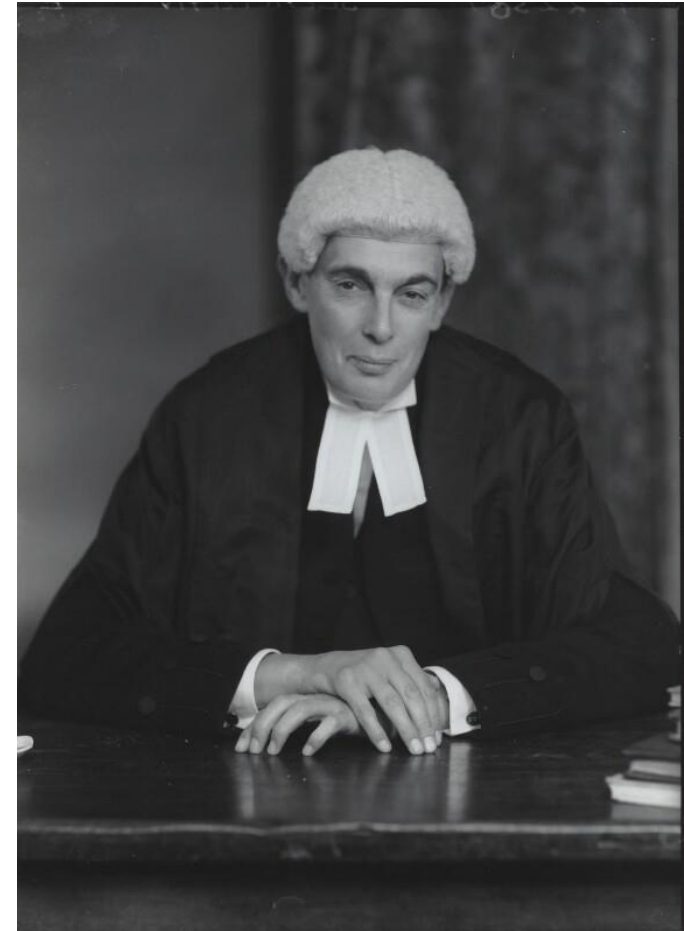


What is a “planning purpose”?

- A planning purpose is one which relates to the...

“character of the use of land”

Lord Scarman in *Westminster City Council v Great Portland Estates Plc* [1985] A.C. 661.



“Character of the use of land” - Pop quiz

ROUND 1

- Planning application for: hot food takeaway.
- Consideration: proximity of a secondary school.

Material? or Immaterial?

“Character of the use of land” - Pop quiz

ROUND 1

- Planning application for: hot food takeaway.
- Consideration: proximity of a secondary school.



aterial or Immaterial

R. (Copeland) v Tower Hamlets LBC [2010] EWHC 1845 (Admin)

“Character of the use of land” - Pop quiz

ROUND 2

- Planning application for: Motorway service station.
- Consideration: Commitment to use locally sourced food.

Material? or Immaterial?

WELCOMEBREAK

“Character of the use of land” - Pop quiz

ROUND 2

- Planning application for: Motorway service station.
- Consideration: Commitment to use locally sourced food.

Material

or

Immaterial?



“Character of the use of land” - Pop quiz

ROUND 3

- Planning application for: Housing.
- Consideration: Use of local building firms.



Material? or Immaterial?

“Character of the use of land” - Pop quiz

ROUND 3

- Planning application for: Housing.
- Consideration: Use of local building firms.



Material or **Immaterial**

Verdin v. Secretary of State for Communities and Local Government [2017] EWHC 2079 (Admin)

What about off-site



?

- Planning permission “cannot be bought or sold”.

- Office at one end of the town cannot fund swimming pool at the other end.

R. v Westminster City Council Ex p. Monahan [1990] 1 Q.B. 87.

- Sainsbury’s offer to pay £1mil for off-site infrastructure to enable a separate site to be available for industrial use + Tesco offer of off-site park and ride facility = material.

R. v Plymouth City Council Ex p. Plymouth and South Devon Cooperative Society (1994) 67 P. & C.R. 78.

- Tesco’s £6.6mil for link round around Witney = material.

Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759

- Court is after “a **real connection**”, aka “some connection with the proposed development which is not *de minimis*”.

“A real connection” - Pop quiz

ROUND 4

- Planning application for: Extension of Royal Opera House.
- Consideration: Office block scheme.

Material? or Immaterial?



“A real connection” - Pop quiz

ROUND 4

- Planning application for: Extension of Royal Opera House.
- Consideration: Office block scheme.

Material

or

Immaterial



R v Westminster City Council ex parte Monahan [1990] 1 QB 87

Wright v Forest of Dean - background

- Resilient Energy apply to FoD for planning permission for a “community scale” wind turbine.
- To be run by a “community benefit society” + annual donation of 4% of turnover to local community.
- Nearby similar scheme had spent donation on:

Church maintenance, village handyman,
defibrillators, waterproof clothing for school group,
lunch club...



Wright v Forest of Dean



National Planning Policy Framework

97. To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. They should:
- have a positive strategy to promote energy from renewable and low carbon sources;
 - design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts;
 - consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources;¹⁷
 - support community-led initiatives for renewable and low carbon energy, including developments outside such areas being taken forward through neighbourhood planning; and

Wright v Forest of Dean – High Court

- Dove J:
 - Beyond being of some benefit to the local community, as recognised or defined by the local people administering the fund, there is no limitation on how the money might be used.
 - Re NPPF §97: policy cannot make a consideration material if as a matter of law it is not.
 - The community donation is an untargeted contribution of off-site community benefits which is **not designed to address a planning purpose**.
 - There is **no real connection** between the development of a wind turbine and the gift of monies to be used for any purpose which appointed members of the community consider their community would derive benefit.



Wright v Forest of Dean – Court of Appeal

- Hickinbottom LJ:
 - Scheme not essentially different from a “commercial” scheme.
 - DECC guidance states that community benefits are “separate from planning process” and “not relevant” to granting PP.
 - Community involvement only material if it satisfies Newbury criteria.
 - Dove J right to find that donation is untargeted contribution of off-site community benefits which is not designed to address a planning purpose +
 - no real connection between the development of a wind turbine and the gift of monies to be used for any purpose which appointed members of the community consider their community would derive benefit.



Wright in the Supreme Court

- Heard on 22/23 July 2019 - 1st Supreme Court case heard in Cardiff.
- Judgment awaited.
- Implications if the appeal were to succeed?
- E.g. If the community donation in Wright **IS** material, then what about donations offered by any other kind of local business?
- Refuse permission if donation not high enough?
- Watch. This. Space.



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