**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2020] UKUT 75 (LC)**
**UTLC Case Number: LCA/278/2019**

**LAND COMPENSATION ACT 1961**

***COMPENSATION – PLANNING PERMISSION – certificate of appropriate alternative development – "limited infill in a village" – conflict with the development plan – material considerations – open countryside – Jodrell Bank Telescope - Conservation of Habitats and Species Regulations 2017***

**AN APPEAL FROM THE REFUSAL OF A CERTIFICATE OF APPROPRIATE ALTERNATIVE DEVELOPMENT**

**BETWEEN:** **WILLIAM BUCKLEY** **Appellant**

**and**

**CHESHIRE EAST BOROUGH COUNCIL** **Respondent**

**Re: Land opposite Back Lane,**
**Chelford Road,**
**Somerford,**
**Congleton,**
**Cheshire**

**Judge Elizabeth Cooke and A J Trott FRICS**
**27 January 2020**
**Royal Courts of Justice**

Mrs Pamela Chesterman of BLM Solicitors for the appellant
Simon Bird QC for the respondent, instructed by Geldards LLP

The following cases are referred to in this decision:

*Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610

*Fletcher Estates (Harlescott) Limited v Secretary of State* [2000] AC 307

*Rooff Limited v Secretary of State* [2011] EWCA Civ 435

## Introduction

1. The appellant's field in Somerford has been compulsorily acquired in order to provide land for the construction of the Congleton Link Road, which is now well under way. He seeks compensation on the basis that he would have obtained planning permission for the construction of five new detached houses on the site. He has a certificate of appropriate alternative development, given in accordance with section 17 of the Land Compensation Act 1961, which states that permission would have been granted for a number of agricultural or outdoor uses but not for new houses. This is his appeal from that certificate.

2. We heard the appeal on 27 January 2020 at the Royal Courts of Justice. The appellant was represented by his solicitor, Mrs Pamela Chesterman, and the respondent by Mr Simon Bird QC; we are grateful to them both. We heard expert evidence from Mr Neil Casselden MRTPI, an Associate Director of Fisher German LLP, for the appellant and from Mr Peter Hooley BTP, who is the respondent's Planning and Enforcement Manager. They have helpfully produced a Joint Statement of matters that they agree, dated 10 January 2020.

3. The appeal fails; we determine that the certificate represents all the forms of development for which planning permission could reasonably have been expected to be granted. In the paragraphs that follow we describe the land and its surroundings; we set out the law, and examine the certificate and the relevant policies. Then we consider the issues in the appeal.

## The appeal site

4. Somerford lies to the north-west of Congleton; to the east and south-east its built-up area merges with Congleton, while to the west and north it is bounded by open fields. The appeal site is on the north-western edge of Somerford. In describing the site we take matters as they stood on 2 January 2019, which is agreed to be the relevant valuation date.

5. The site is a field (pasture), of 0.8 ha, on the west side of Chelford Road, with a frontage of 170m, long enough for five new detached houses to be built along the road. Its depth tapers from 75m (south) to 25m (north). On the other side of the road is a large area where planning permission has been granted for 170 new homes. To the south of the site there is a single line of houses fronting the western side of the road, with fields further to the west. To the north, properties are scattered; there is a house known as Oaklands; 200m beyond that is Radnor Grove Farm, and there is a barn between the two. To the west of the appeal site, and to the north-west and south-west beyond the existing houses and the farm, are open fields.

**6.** A low stone wall separates the site and the road, and there is an uninterrupted view of the countryside across the site from the road. By agreement with the parties we have not undertaken a site visit. They have provided very helpful photographs from Google Street View, from 2011 and it is agreed that nothing changed between then and the relevant valuation date.

**The law**

7. We can summarise the law very briefly because there is no dispute about it. Section 14 of the Land Compensation Act 1961 ("the 1961 Act") provides that, in assessing the value of land that has been compulsorily acquired, it may be assumed that planning permission was in force at the relevant valuation date for appropriate alternative development. Appropriate alternative development is development for which planning permission could reasonably have been expected to be granted on an application decided on the relevant valuation date or at a later date, on the assumptions set out in section 14(5) – namely the familiar "cancellation/no scheme" assumptions.

8. Section 17 of the 1961 Act enables either party to apply to the local planning authority for a certificate stating what, if anything, is in the authority's opinion appropriate alternative development in relation to the acquisition, together with a general indication of the conditions or obligations to which planning permission for that development could reasonably have been expected to be subject.

9. Section 17(5) states that the certificate must "identify every description of development (whether specified in the application or not) that in the local planning authority's opinion is, for the purposes of section 14, appropriate alternative development in relation to the acquisition concerned". That means that where a form of development is not listed as one for which permission would be granted, it follows that it is the authority's opinion that permission would not be granted for such development; but there is no need for the certificate to set out all the forms of development for which permission would be refused.

10. The appellant applied for such a certificate on 15 February 2019. The certificate given in response was dated 15 April 2019. The appellant is dissatisfied with it and appeals to the Tribunal under section 18 of the 1961 Act, under which the Tribunal is to consider the matters to which the certificate relates as if the application had been made to it in the first place, and it may confirm the certificate, vary it, or cancel it and issue a different certificate in its place. In doing so the Tribunal is to apply ordinary planning principles (*Fletcher Estates (Harlescott) Limited v Secretary of State* [2000] AC 307 and *Rooff Limited v Secretary of State* [2011] EWCA Civ 435).

11. Turning then to planning principles, section 70 of the Town and Country Planning Act 1990 ("the 1990 Act") states that in deciding an application for planning permission:

> "… 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".

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") says:

> "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."

13. Accordingly, in considering the appellant's application for a certificate of appropriate alternative development we must decide whether it conflicts with the development plan. If it does, then it should be refused unless material considerations indicate otherwise.

**The certificate and the relevant policies**

14. The certificate dated 15 April 2019 states that planning permission would be granted, if the land were not proposed to be acquired, for the following descriptions of development:

- "Agriculture or forestry, such as agricultural buildings that are commensurate with the scale of functioning agricultural activities undertaken on site or as part of a larger agricultural holding;
- Outdoor recreation, such as small scale stables/livery/manege;
- Public infrastructure;
- Essential works undertaken by public service authorities or statutory undertakers; or
- other uses appropriate to a rural area."

15. The certificate goes on to state that planning permission for such development would be subject to a number of conditions, for example requiring the local planning authority's approval for building layout, landscaping and so on.

16. The reasons given for the authority's decision are as follows:

> "1. The residential development proposed in the application would not comprise an appropriate form of development in the Open Countryside and would therefore be contrary to Policy PG 6 of the Cheshire East Local Plan Strategy and Policy H1 of the Somerford Neighbourhood Plan.
>
> 2. The residential development proposed in the application would impair the efficiency of the Jodrell Bank Radio Telescopes contrary to Policy SE14 (Jodrell Bank) of the Cheshire East Local Plan Strategy and Policy PS10 (Jodrell Bank Radio Telescope Consultation Zone) of the Congleton Borough Local Plan First Review 2005.
>
> 3. Given that the land is located in the Open Countryside, the descriptions of development referred to in section 1 of this certificate comprise the only development that would be permitted in accordance with Policy PG 6 of the Cheshire East Local Plan Strategy."

17. In the light of the law as set out above, the Tribunal is not bound by those reasons when making its own decision on the appeal.

18. It is not in dispute that there is an up-to-date development plan for this area, and that it comprises the Cheshire East Local Plan Strategy (2017) ("the CELPS"), the Somerford Neighbourhood Plan (February 2018) ("the SNP") and the saved policies of the Congleton Borough Local Plan (2005) ("the CBLP"), and that the relevant policies are those referred to in the certificate (paragraph 16 above). We look at them in detail below.

19. The National Planning Policy Framework ("the NPPF") is a material consideration in the determination of planning applications. The version relevant to this appeal was issued in July 2018. The CELPS and the SNP were prepared in the light of the previous version, issued in 2012; it is not suggested by either party that either is inconsistent with the 2018 version.

20. Paragraph 11 of the NPPF provides that plans and decisions should apply a presumption in favour of sustainable development, so that development proposals that accord with an up-to-date development plan should be approved without delay. Because there is an up-to-date development plan in this case, the presumption in favour of sustainable development is relevant only to development that accords with that plan; where development does not accord with the development plan, the fact that it would be a sustainable development is not an argument in favour of its being granted.

**The issues in the appeal**

21. It will be clear from what we have said above and from the statutory provisions that planning permission for development on the appeal site must be refused unless either:

    a) it would have been in accordance with the development plan or

    b) failing that, there are material considerations that indicate that planning permission would have been granted.

22. In view of the legal principle set out at paragraph 11-13 above, two areas of policy determine this appeal, namely the policies relating to development in the open countryside, and the need to protect the Jodrell Bank Telescope. We look at them in turn. We then comment briefly on the Conservation of Habitats and Species Regulations 2017 ("the Habitats regulations") which, in the circumstances, do not require further exploration.

*Appropriate development in the open countryside*

23. The site is a field. It is outside the "settlement boundary" of Somerford as identified in the CBLP; in the no-scheme world it adjoins and is part of a wide area of farmland. It is bordered by a road, without a footpath, on which the national speed limit applies. Across the road, by contrast, planning permission has been given for a number of new developments, including one on the triangle of land directly to the south-east of the site. It

is not in dispute that the respondent has a more than adequate housing supply for the next five years.

24. Policy PG2 in the CELPS sets out the settlement hierarchy for the Borough of Congleton, listing first principal towns (Crewe and Macclesfield), key service centres, local service centres, and then "other settlements and rural areas." For the latter the stated policy is:

> "In the interests of sustainable development and the maintenance of local services, growth and investment in the other developments should be confined to proportionate development at a scale commensurate with the function and character of the settlement and *confined to locations well related to the existing built-up extent of the settlement*." (emphasis added)

25. It is not in dispute that the site lies within "other settlements and rural areas". Policy PG6 reads, so far as relevant, as follows:

> "1. The Open Countryside is defined as the area outside of any settlement with a defined settlement boundary.
>
> 2. Within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted.
>
> 3. Exceptions may be made:
>
> i. Where there is the opportunity for limited infilling in villages; the infill of a small gap with one or two dwellings in an otherwise built up frontage elsewhere; affordable housing, in accordance with the criteria contained in Policy SC 6 … or where the dwelling is exceptional in design and sustainable development terms."
>
> ii. to vi. [other exceptions not relevant and not relied on here.]
>
> 4. The retention of gaps between settlements is important…
>
> 5. The acceptability of such development will be subject to compliance with all other relevant policies in the Local Plan. In this regard, particular attention should be paid to design and landscape character so the appearance and distinctiveness of the Cheshire East countryside is preserved and enhanced."

26. It is not in dispute that the site lies in the open countryside. It is a field, and adjoins fields to the west; it lies outside any "settlement boundary" defined in the development plan. Equally it is not in dispute (as Mr Casselden expressly agreed in cross-examination) that PG2 places rural areas at the bottom of the settlement hierarchy, and that PG6 then follows

on from that by setting out the policy that applies to land outside settlement boundaries. It is not the case that PG2 adds to PG6.

27. Accordingly we have to determine whether the development that the appellant wants to carry out is consistent with or in conflict with PG6.

28. It is not suggested that the development falls within paragraph (2), which permits only "development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area", and therefore the question is whether it falls within one of the exceptions set out at paragraph (3)(i).

29. Paragraph 3(i) sets out four different exceptions that may (not will) be made. Clearly the second one, "the infill of a small gap with one or two dwellings in an otherwise built up frontage elsewhere" is not relevant to what the appellant wants to do and the site and its proposed development are far too large to fit that description. The other three exceptions are:

- limited infilling in villages;
- affordable housing, in accordance with the criteria contained in Policy SC 6
- where the dwelling is exceptional in design and sustainable development terms.

30. The experts' evidence, cross-examination, and submissions at the hearing focussed on whether the proposed development could amount to limited infilling in a village.

31. The appellant's position on this point, so far as we can understand from his statement of case and from Mrs Chesterman's skeleton argument, can be summarised as follows. First, there is no definition in any of the policy documents of a "village", nor of "limited infilling", and a village may fall outside a settlement boundary. It is argued that the proposed group of five houses is "limited", and lies within a village because it borders on the built-up area of Somerford. Mr Casselden refers in his report to the "limited infill" exception only in his criticism of the respondent's statement of case, where he comments that there is no definition of "village" or of "limited" and says that since the site lies in a gap near the end of a ribbon development it could be reasonably described as both within a village and limited.

32. For the respondent it is argued that the site is not in a village and the proposed development would not amount to limited infilling. Mr Hooley provided useful detail about the rural character of the site, including the fact that there is no footpath leading to it from the houses to the south, and that the road is subject to the national speed limit (60 mph). There is a road sign at the site frontage warning of cattle crossing. He refers to the CELPS glossary which defines infill development as "The development of a relatively small gap between existing buildings".

33. We are persuaded that the site does not lie in a village. The Court of Appeal in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610 has said that whether an area is a village is a matter of planning judgment. In our view the term "village" implies, as Mr Hooley says, an area with a focus of habitation around amenities such as a pub or shops. By contrast the site lies at the point where the built-up area of Somerford stops, and marks the beginning of the open countryside outside the settlement. It lies outside, and is (because of the road) quite separate from, what is going to be quite a dense area of housing. There is ribbon development to the south of the site, but not to the north. If Somerford is a village, the site lies clearly outside it; and it is not part of any village outside Somerford.

34. Moreover the proposed development cannot possibly be described either as "limited" or as "infilling". The site has a frontage of 170 metres; it is, to put it informally, quite a big field. We note (although we are not bound by) a recent decision of a planning inspector (Application 17/6399M relating to land at Pickmere, on appeal from a decision of the respondent) that development in a gap with a frontage of 70 metres could not be described as limited infilling.

35. Mrs Chesterman in her skeleton argument characterises the site as "surrounded on three sides (save the highway running along the frontage) by residential albeit ribbon development and residential land"; we think that that is a misdescription. True, there is ribbon development to the south. But to the north and west there is farmland, and the residential buildings to the north are widely spaced. The site is farmland and is part of a much wider area of farmland. We agree with Mr Hooley's view that the term "limited infilling" is apposite for a gap in a built up area, surrounded by buildings. This development, by contrast, is as Mr Hooley puts it an urban extension, or ribbon development, not an infill.

36. Accordingly we find that the proposed development is not limited infilling in a village.

37. Turning to the remaining exceptions in paragraph (3)(i), the proposed development is neither affordable housing nor a dwelling that is "exceptional in design and sustainable development terms". We were puzzled by Mrs Chesterman's criticism of the respondent for failing to mention these exceptions in its certificate; the respondent was under no obligation to list exceptions that it was not minded to permit. The respondent does not appear to want to construct affordable housing, nor a building that is exceptional in design or sustainability terms, and so it is difficult to understand why this criticism is made. If it is now being suggested that the appellant is interested in these exceptions it is for him to explain what it is that he wants to build and why it would be right for an exception to be made – we reiterate that exceptions are not automatic. They "may" be made. We have heard no argument as to why affordable housing would be any more appropriate than the houses that the appellant wants to build. It would doubtless be of greater density than the five detached dwellings proposed, and so would block the view of the countryside from the road even more than would the proposed development and would extend with a greater density the ribbon development that currently exists to the south of the site. As to a dwelling that is exceptional in design or sustainability, we have been given no idea of what might be proposed or of why it might, exceptionally, be permitted.

38. We conclude that the proposed development does not fall within the first of the exceptions set out in paragraph (3)(i) of PG6, and that none of the other exceptions there listed should be permitted. Accordingly the proposed development is in conflict with policy PG6 in the CELPS.

39. Policy H1 of the SNP says:

> "New housing development should:
>
> 1. Minimise encroachment into the open countryside;
>
> 2. Not involve the loss of high grade agricultural land;
>
> 3. Avoid significant visual impact on locally sensitive landscapes;
>
> 4. Maintain the rural character and setting of Somerford; and
>
> 5. Be supported by adequate infrastructure …"

40. In view of the conflict with policy PG6 we do not need to say much about this further policy, save to say that the proposed development would encroach into the open countryside, would have a visual impact in cutting off the view of the countryside to the west from the road, and cannot be said to maintain the rural character and setting of Somerford. Accordingly we find that it is in conflict with this policy too. We note that Mr Casselden agreed, in cross-examination, that that is the case.

*The impact on Jodrell Bank*

41. Policy SE14 of the CELPS reads as follows:

> "1. Within the Jodrell Bank Radio Telescope Consultation Zone, as defined on the Proposals Map, development will not be permitted if it:
>
> i. Impairs the efficiency of the telescope; or
>
> ii. Has an adverse impact on the historic environment and visual landscape setting of the Jodrell Bank Radio Telescope.
>
> 2. Conditions will be imposed to mitigate identified impacts, especially via specialised construction techniques.
>
> 3. Proposals should consider their impact on those elements that contribute to the potential outstanding universal value of Jodrell Bank."

42. Policy PS10 of the CBLP states:

> "Within the Jodrell Bank Radio Telescope consultation zone … development will not be permitted which can be shown to impair the efficiency of the Jodrell Bank Radio Telescope."

It is not in dispute that the site lies within the consultation zone, defined by the Town and Country Planning (Jodrell Bank Telescope) Direction 1973 ("the 1973 directive"), which requires a local planning authority to consult the University of Manchester (which operates the telescope) before granting permission for development within the zone. The telescope was, as at the relevant valuation date, a candidate UNESCO World Heritage Site

43. The telescope suffers from electro-magnetic interference from development nearby, and that there is increasing concern about the cumulative effects of that interference. The interference from local development now exceeds the level regarded as acceptable for radio astronomical measurements by the International Telecommunications Union, although important scientific work is still done at Jodrell Bank. All additional development causes harm. As a result the respondent gives greater weight to interference with the telescope than it has done in the past (particularly at times when there was a housing need to be met), and is not swayed by what we might call "*de minimis* arguments". In view of the fact that the respondent has a more than adequate housing supply for local requirements, any benefits from further development are outweighed by any harm to the telescope – hence the categorical "will not be permitted" in the policies quoted above.

44. The statutory consultation required by the 1973 directive was carried out in this case and an objection was made. Professor Simon Garrington of the University of Manchester said that the impact on the telescope would be "relatively minor" but that "there is already significant development close to the telescope" and that "the cumulative impact of this and other developments is more significant than each development individually".

45. Mr Hooley has referred us to a number of recent planning decisions where permission was refused on the basis of the harm to the telescope, including developments smaller than this one.

46. The appellant makes the following points:

    i. The statutory consultee has provided a standard form response, and objects on principle rather than being based on an objective analysis of actual harm and whether it can be mitigated. The response identifies the harm to the telescope as being "relatively minor", and therefore the appellant argues that it will be outweighed by the benefits of development, particularly in light of the recognition in the NPPF that housing development can play a key role in supporting rural services.

    ii. He says that the objection from Jodrell Bank is simply a consultation response and carries no more weight than any other response. The local planning

authority remains free to determine the matter in accordance with section 38(6) of the 2004 Act.

iii. He points out that Jodrell bank made the same objection to application 16/1922C in 2017 and yet permission was granted. He says that the planning authority's different approach "can only be described as irrational bordering on maladministration".

iv. Furthermore the appellant questions whether there was any obligation to consult in relation to Jodrell Bank because there had been a previous consultation in relation to the same site in 2014.

47. As to the first point, Mr Hooley explains that although the response is in standard form it nevertheless has substance. However minor the impact, there is a cumulative effect. And the policies are clear: development that impacts upon the telescope "will not be permitted". We do not accept that this is just a consultation response like any other; the telescope has a special status both by virtue of the requirement to consult, and in the policies themselves.

48. We understand the frustration caused by the grant of planning permission to nearby development despite the objection made by the Jodrell Bank consultee. The difference is of course that that development responded to housing need (even though, as the appellant points out, the CELPS was in draft at that stage and did not yet form part of the development plan). In that case the benefits actually did outweigh the harm. That is not the case in respect of the proposed development on the site. The respondent's position is not irrational and cannot by any stretch of the imagination be described as maladministration.

49. Finally the appellant questions whether consultation was in fact required. A planning application was made in 2014 for the building of 14 houses on the site. The University was consulted but did not respond. The application was refused. Accordingly the present application does not fall within the only possible relevant exception in the 1973 directive, namely paragraph (A)(4) of the Second Schedule which refers to a case where there has been a previous consultation in relation to an application for a development that is not materially different, and to which "the University have informed the local planning authority in writing that they have no objection". That is not what happened and accordingly consultation was required – whether or not the appellant is right to say that the University failed to respond because it had no objection.

50. In the light of the consultation response made to this application and of the clear words of the two policies quoted above the respondent had no choice but to find that the development was in conflict with the development plan.

51. The appellant has suggested that suitable mitigation measures could be put in place; we agree with the respondent that that would involve placing quite stringent restrictions on the day-to-day life of the people living in the new houses and would not be practicable.

52. We find that the proposed development would have been in conflict with the development plan because of the terms of Policy SE14 of the CELPS and PS10 of the CBLP.

*Other material considerations.*

53. The proposed development is therefore in conflict with the development plan, being incompatible with the policies for the open countryside and being harmful to the Jodrell Bank Telescope. Mr Casselden conceded as much during cross-examination. Are there any material considerations that nevertheless indicate that permission should be granted?

54. Neither Mrs Chesterman nor Mr Casselden engaged with this important aspect of the analysis. Both engaged in general arguments in favour of the development, rather than in addressing first the development plan and then the question whether there are other material considerations. As a result, neither in the legal argument nor in the expert evidence is there any aspect of the situation that is identified as a material consideration that we can consider. Doing the best we can with the general arguments offered, in case we are able to regard any of them as material considerations, we can summarise the appellant's case as follows.

55. It is argued that the site is in a sustainable location (meaning that it satisfies the three objectives – economic, social and environmental – set out in the NPPF), and will not cause any identifiable harm. It is said that the NPPF advocates a pragmatic and flexible approach, and that the decision of the Court of Appeal in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610 supports this. Mrs Chesterman suggests that the respondent in this case has applied policies relevant to the green belt rather than to open countryside that is not green belt.

56. The decision in *Braintree* rested upon the interpretation of paragraph 55 of the NPPF, and the meaning of "isolated homes in the countryside". It is of no assistance on the point we have to consider, which turns upon what we regard as unambiguous policies in the development plan. *Braintree* lends no support to the idea that the development plan is to be regarded as a broad-brush framework, or that (as Mr Casselden sought to argue in cross-examination) the exceptions listed in PG6 are merely examples and that other exceptions are possible.

57. We see no substance in the idea that the respondent took an approach that would be appropriate to land in the green belt rather than in the open countryside. The respondent's approach is based squarely on the development plan.

58. It is also argued that the refusal of planning permission for this site is inconsistent with the recent permissions given for extensive development – 370 houses altogether – nearby, across the road within the settlement boundary, and in particular the development of 170 homes directly south-east of the site in the "triangle".

59. The argument that refusal of planning permission for this site would be inconsistent with the grant of permission for large developments nearby is an argument that, again, ignores the structure of the plan-led system and leads to a result that is contrary to the law. The point of the development plan is to identify where development can take place. The idea that development nearby must therefore be permitted if it does not do much harm is incoherent and runs directly contrary to the purpose of the plan.

60. Mr Casselden in his report starts not from the development plan but from the NPPF, in which paragraph 170 states that planning policies and decisions should "enhance the natural and local environment" and should recognise "the intrinsic character and beauty of the countryside". He says that this "is a high-level broad-brush requirement" and argues that there is a need to strike a balance between delivering beneficial development in the countryside and protecting its important features. He says that development in the countryside is not a "no go area". He argues that no identifiable harm can arise from the development and that it is in a sustainable location. He takes the view that landscape impact would be relatively minor. He argues that policies PG2 and PG6 should be read in the context of "encouraging the most sustainable patterns of development". In cross-examination Mr Casselden explained that he took the view that the list of exceptions in PG6 is not exhaustive. We find it difficult to derive any assistance from Mr Casselden's analysis, which does not engage with the requirements of the law.

61. At its highest the appellant's case is that the development is a *de minimis* extension of what has already been permitted; the destruction of a view does not matter; the detail of the development plan is not to stand in the way of a broad-brush approach, and an apparent conflict with the development plan does not matter, provided the development is sustainable and would not do much harm. That is a misstatement of the law and a misunderstanding of the plan-led system. Generalised arguments that take the form "it's so small it doesn't really matter" carry no weight; and as we have observed above the notion that the development plan is an imprecise document to be approached with a broad brush is not legally correct.

62. In the absence of any realistic suggestion that there are material considerations indicating that the development should be permitted despite being in conflict with the development plan, we find that permission must be refused.

*The Habitats regulations and the great crested newts.*

63. Had that not been the case, we would have had to go on to consider the implications of the Habitats regulations. This did not form part of the reasons for the terms of the certificate given by the respondent, presumably because the certificate was for outdoor or agricultural use only and therefore did not raise any issues for the habitats of wildlife. Had we been minded to grant a certificate that permitted residential development we would have had to ask at this stage (in the light of regulation 55 of the Habitats regulations) what would be its impact on a European Protected Species, namely great crested newts, because there is a pond on adjacent land. We note that the up-to-date photographs with which we have been provided, which show the site in the real world and not the no-scheme world, are labelled with an indication that "newt mitigation" is now in place.

64. We have not been provided with the information that we would need in order to make a judgment about the impact of the proposed development on any nearby newts (we infer from those photographs that there are some), and the possibility of mitigation (which appears to be in place in the real world). But since there is no question of our deciding that a certificate should be given for residential development the matter does not arise and we give it no further consideration.

**Conclusion**

65. The proposed development is in conflict with the development plan and there are no material considerations that would lead us, considering afresh the application for a certificate under section 17 of the 1961 Act, to certify that permission would be granted for development in the form that the applicant wants to carry out.

66. There is no challenge to the positive aspects of the certificate given on 15 April 2019 and we adopt the provisions of that certificate as to what would be permitted and the conditions attached. Accordingly, for all the reasons given above, we confirm the certificate already given, and the appeal fails.

67. Section 17(10) of the 1961 Act provides that in assessing the compensation payable to the appellant, there must be taken into account any expenses reasonably incurred by them in connection with the issue of a certificate under section 17, including expenses incurred in connection with an appeal under section 18 where any of the issues are determined in their favour.

68. The section 18 appeal has been unsuccessful and we have confirmed the certificate of appropriate alternative development issued by the local planning authority. We therefore direct that the appellant's expenses reasonably incurred in connection with the section 17 certificate shall exclude any expenses incurred in respect of the section 18 appeal.

Judge Elizabeth Cooke AJ Trott FRICS

18 March 2020