Once more, with meaning

When the American lexicographer Webster was discovered by his wife in the arms of their maid, his wife said "I am surprised". "No, no, my dear" Webster replied. "I am surprised, you are astonished".

I wrote in my last column that the meaning of words is especially important when dealing with planning matters (as opposed to the importance of the visual when dealing with design or pedantry when dealing with an indiscretion). Here are a few more appeal and court decisions that cast further light on the (sometimes amusing, never straightforward) meanings that the planning system throws up from time to time and the efforts made by some planners to ignore dictionary definitions (and common sense).

Is a go-kart track an amusement?

The answer apparently is, only if it is enclosed by a clear boundary. An East Sussex planning authority had decided that an existing go-kart track did not comply with the definition of an amusement park contained in paragraph B.2 of Part 18 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, or GPDO, as an enclosed area of open land providing public entertainment. But the appeal inspector determined that a a discontinuous low brick wall and wire fencing not only formed the boundary of the site but also fulfilled the function of 'a means of enclosure'.

You must lie upon the daisies and discourse in novel phrases of your complicated state of mind,
The meaning doesn't matter if it's only idle chatter of a transcendental kind.
– W S Gilbert, Patience, 1881

When is a transport route not a highway used by vehicular traffic?

The answer is when it's a railway track. The generally accepted definition of a highway in planning terms is land over which members of the public have a right to pass and repass. It therefore includes roads, cycle paths and bridleways, but not railway lines. This is useful to know because the GPDO does not allow a fence adjacent to (ie bordering) such a route to be more than a metre high, but would not apply to rail lines.

When does a planning permission crystallise?

Here the definition of crystallisation (made or becoming definite) depends entirely on the type of permission. It is generally accepted that a full planning approval is safeguarded by making a start on site, which may simply be a nominal commencement. Case law has also established that for permitted development, the right to develop also crystallises on commencement, even when the pd rules are later changed (useful to know when the rules are being changed regularly); while the right to develop is established in cases of prior approval when it is actually granted, or is deemed to be granted in default, regardless of whether any work begins.

When is a phone kiosk an advertisement site?

My dictionary defines a kiosk as "a public telephone box". These days they are less box and more telephone (ie with open sides) but still have a clear function. To refuse permission, as many local authorities now do, on the grounds that there is too much advertising seems both pedantic and unrealistic - the public benefit of both advertising and a pay phone is surely reasonable. But the Planning Inspectorate is reportedly overwhelmed by appeals against numerous refusals made on the grounds of location and therefore the alleged intrusion of advertising material that is on the kiosk into its surroundings. Despite a clear High Court ruling in December 2010 (Infocus Public Networks Ltd v SSCLG as then reported in Martin Goodall's blog) that the existence of advertising material on a telephone kiosk should not be a material consideration, local authorities continue to issue refusals and the matter has again been referred to the High Court. At the time of writing there is no new ruling: I will return to this in a later column.

When is a brownfield site no longer brown?

Answer: when it is green. Here we must look at the 'small print'. The previously developed land definition in the NPPF excludes land "where the remains of the permanent structure or fixed surface structure have blended into the landscape" (the draft revised NPPF omits the additional words "in the process of time" so the blending could effectively be immediate). The site of a historic isolation hospital in the Green Belt near Barnsley, closed in the 1960s, was refused redevelopment permission because the site had been given over to vegetation. And permission was refused for a new home on the site of a house, also in the Green Belt, which had been demolished by government order in 1941 because the site now has the appearance of a field.

When is a caravan truly a caravan?

The answer is when it is capable of being removed. This means that it could be moved quite easily to somewhere else entirely, not that it could be moved on a track (an appeal in respect of a goat shelter on a bed of sleepers that could be moved from one side of the field to another was unsuccessful), but that it could be lowered onto its wheels, or a trailer, and transported elsewhere, even if this meant the removal of a fence. So the Peckham resident who had a caravan lifted onto the roof of a single-storey extension so that he

had "somewhere to go and relax", was instructed to take it away and lost his enforcement notice appeal. But a chalet-style caravan in north London that had arrived on a trailer, was not fixed to the ground, had services that were easily uncoupled and was enclosed by a fence that was removable, was allowed even though it was occupied independently.

So What constitutes a separate dwelling?

(dictionary definition: parted, severed or disconnected accommodation). In planning terms, separation does not always take place with disconnection. In the north London case above, the caravan was occupied by a family member who relied on the main house for laundry and meals, so the use was ancillary to the house. Conversion of a detached garage at a house in Essex to be used as a granny flat was allowed until it was later let to tenants with no family connection; but would have been accepted without formal tenancy agreements, as for a case which retained the conversion as bed and breakfast accommodation that was therefore part of the host property.

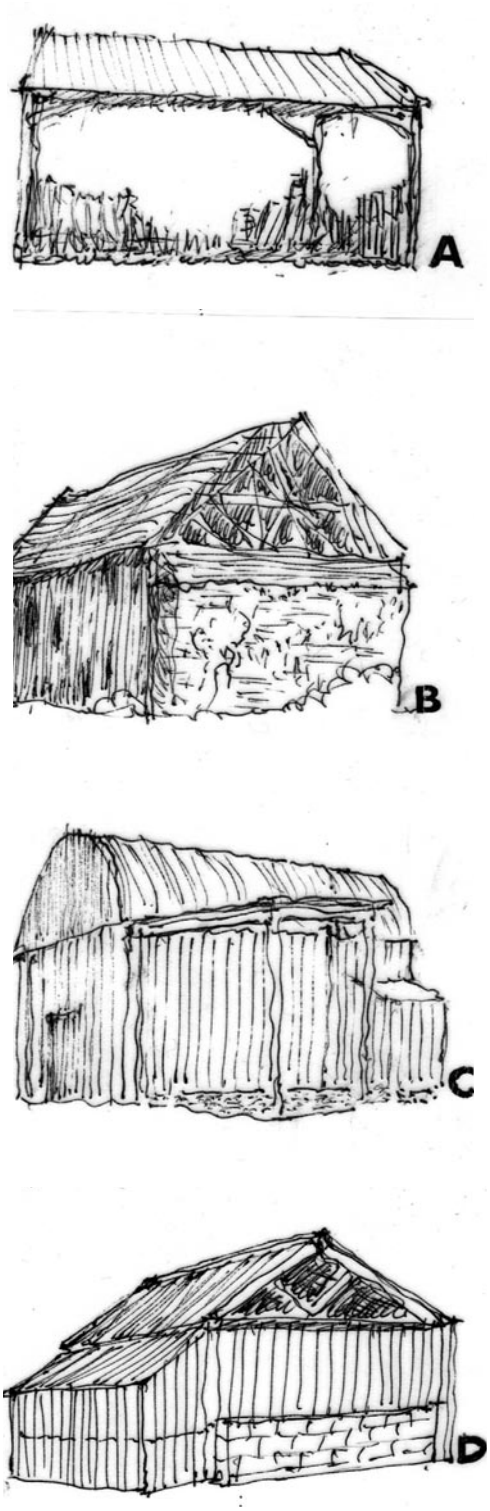
And in Kingston-upon-Thames a permission obtained under the GPDO for a new independent outbuilding for the home-owners' parents but without full bathing and cooking facilities, eventually became a separate dwelling by installing those facilities internally later on (therefore not requiring planning approval) thus allowing a pd change of use.

While a large rear extension in Berkshire that had effectively been de-coupled from the main house leaving an 85cm gap - with its only access through the house - was deemed by an appeal inspector to be an unauthorised extension (GPDO Class A), not an outbuilding (Class E).

When is an isolated home not isolated?

This was the subject of a recent Court of Appeal ruling and related to paragraph 55 of the NPPF, which states that "planning authorities should avoid new isolated homes in the countryside". A proposal to alter a pair of barns near Ipswich, including some demolition and partial conversion, had been refused using this paragraph. But a judge has ruled that "isolated" should be given its ordinary meaning of "far away from other places, buildings, or people" rather than simply "remote from services and facilities" as claimed by the local authority. Although the barns were clearly in the countryside, they were surrounded by several other agricultural buildings, so not considered to be isolated. The proposal was allowed.

(Furthermore the judge pointed out that the NPPF only suggests avoidance of isolated homes, not prohibition; and anyway the purpose of the paragraph overall is to encourage the location of housing where it will enhance the vitality of rural communities - and this can often be done by locating homes near to them. I have been unable to find an equivalent to paragraph 55 in the draft revised NPPF, although its paragraph 72 encourages, for specified tenures, housing development "on land which is not already allocated for housing…adjacent to existing settlements".) Which prompts me to ask



When is a barn not a barn that can be converted to a dwelling?

According to a number of recent appeals and court cases, mostly related to the GPDO, probably when it's no longer capable of being used as a barn (see illustrations).

A. Because it had been mostly destroyed by fire, this barn consisted of a steel frame, nominal roof and concrete pads. There was in effect no building left that could be converted, so an appeal inspector ruled that permitted development rights for conversion to a dwelling were not available.

B. Two separate houses were proposed under Class Q of the General Permitted Development Order, but an appeal inspector found that the building was very dilapidated, with little structural integrity, failed external sheet panelling, a partially collapsed roof and extensive surrounding overgrowth suggesting that it had not been used for some time. Reconstruction would effectively amount to a rebuild, not a conversion.

C. The conversion of a substantial barn in Suffolk included some side and rear extensions that the local authority deemed incompatible with a conversion. But the appeal inspector disagreed, pointing out that the Local Plan only referred to substantial reconstruction of the original building and could not be used to prevent new extensions.

D. The creation of two dwellings from a Gloucestershire barn which had a pitched roof of sheet steel on timber purlins, blockwork walls up to 90cm with timber planking above and a lean-to mono-pitched addition was allowed by an appeal inspector because most of the existing structure was to remain (with new over-cladding) and it was therefore a conversion, not a reconstruction as claimed by the local authority.

And finally, What is agritecture?

The answer is, according to Bouygues Immobilier, its architects and the French National Institute of Agricultural Research, a building (usually a large apartment block) which comprises substantial garden balconies and small trees on every level - also described as "a climatic hero" and an "inhabited tree". More invented words later… ■