

ROGERS

More meanings of words without knowledge

Who is this that darkeneth counsel by words without knowledge? Job ch.38, v.2

In the last issue of this venerable publication I listed several vague terms - all often used by planners when making decisions - that are effectively meaningless when they don't specify what precisely is meant in the context of the issue being determined. The most commonly used being: amenity, undesirable, beautiful, in keeping, dominant, and subservient.

For example, in the case of Kensington & Chelsea RLBC and Mia Carla Ltd [1981], Donaldson LJ said: "It is too late to suggest the word 'intensification' should be deleted from the language of planners, but it has to be used with very considerable circumspection...it has to be clearly understood that 'intensification' that did not result in a material change of use was merely more of the same." So simple intensification that did not alter the character of a use would not be taken as a material change and should therefore be allowed. This is one of the many poorly understood and badly used terms in planning. You cannot have 'intensification' if a use remains in the same Use Class unless it can be shown clearly that where you start from is materially different from where you are now.

Other words may have an equally vague, or wider, meaning which can be critical when dealing with planning policy, especially when they are not defined in legislation (or maybe in the NPPF's Glossary). Such terms include 'curtilage' - which I have dealt with extensively in previous columns - and 'dwelling'.

Strangely, dwelling is a word that in planning terms has only been defined by the Courts but includes a wide range of circumstances where the definition varies according to other factors. Examples include bedsitters, flats, hostels, houses, tied cottages and holiday homes. Generally a dwellinghouse for planning purposes is a building or part of a building that comprises private residential accommodation as defined by Class C of the Use Classes Order. So not tents, motor homes or even, in most circumstances (ie when moving), caravans.

Gravesham Borough Council v Secretary of State

for the Environment and O'Brien (Michael W) (1984) is the planning case that defined what is required to make a building a dwellinghouse. The High Court held that a dwelling's distinctive characteristic is the ability to provide the facilities needed for day-to-day private domestic existence. A building does not stop being a dwellinghouse if it is occupied only seasonally, intermittently or by different people.

As often happens in planning law, the case did not hinge upon the meaning of dwelling, or the kind of residence, but on whether a small holiday chalet containing a living room, kitchen and bedroom (but no bathroom or internal WC) could benefit from permitted development rights. When the chalet was extended, the council had served an enforcement notice claiming that the holiday chalet was not a dwellinghouse, but the Courts determined that whether a building is a dwelling is a matter of fact when it provides day-to-day living accommodation.

The corollary to this is that not every case has to be determined by only, or even primarily, having regard to the way the building is used, nor is the duration or frequency of the use relevant. If the building has acquired the characteristics of a dwelling, its description, in that case as a "weekend and holiday chalet" with a restriction on its use in the winter, could not deprive it of the facilities for living that it had as its essential character and it was therefore a dwelling.

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Then there is the difficult and often contradictory question of whether a shipping container (which might of course be converted into a dwelling) is a building. As Mike Hyde of the Independent Consultants' Network has pointed out: "Sticking a shipping container in a field or a garden" is not development as defined in the Planning Act - ie is not a "building operation" as listed in s55(1A) - demolition, rebuilding or structural alterations - except possibly "other operations" if carried out by a builder.

Finally, GOV.UK has a list of vague or general words to avoid. Some examples are impact (unless talking about a collision!), key (unless it actually unlocks something), robust (unless talking about a sturdy object) and combat (unless military - use solve or fix or similar). More about this in a later column. ■

It is obvious that 'obscenity' is not a term capable of exact legal definition; in the practice of the Courts, it means 'anything that shocks the magistrate'.

— Bertrand Russell, 1928

