KINGS
CHAMBERS

Thinking About Planning

Thursday 9th October

Anthony Crean QC

The Fly

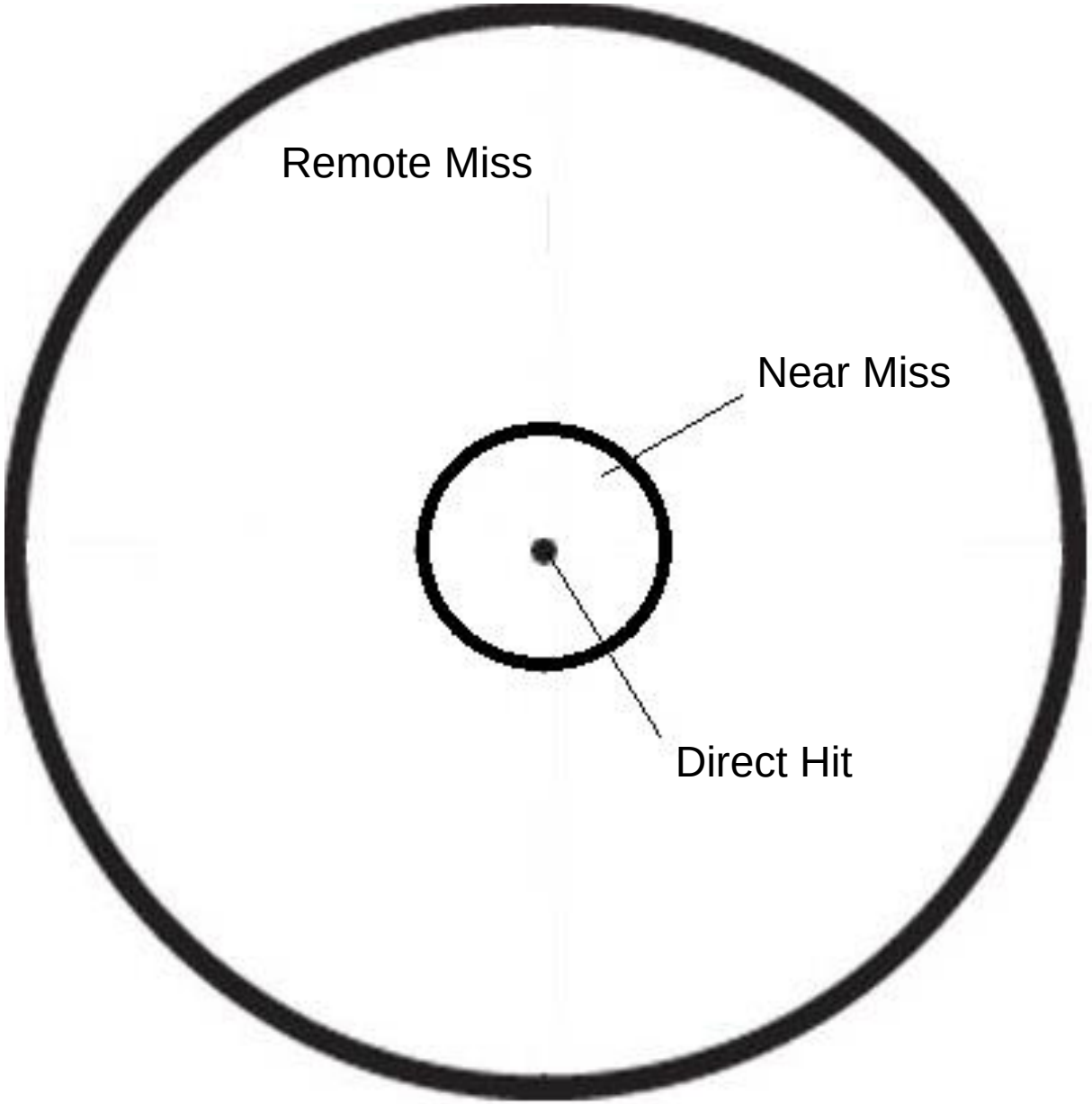
Little Fly
Thy summer's play,
My thoughtless hand
Has brush'd away.

Am not I
A fly like thee?
Or art not thou
A man like me?

For I dance
And drink & sing;
Till some blind hand
Shall brush my wing.

If thought is life
And strength & breath;
And the want
Of thought is death;

Then am I
A happy fly,
If I live,
Or if I die.



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Secretary of State for Communities and Local Government and another (Respondents) -v- Welwyn Hatfield Borough Council (Appellant)

Contrast Mr Beesley's position. His was a deliberate, elaborate and sustained plan to deceive the council from first to last, initially into granting him a planning permission and then into supposing that he had lawfully implemented it and was using the building for its permitted purpose. His conduct throughout was calculated to mislead the council and to conceal his wrongdoing. As necessary features of his deceit he omitted to register any member of the household for the payment of council tax for the period 2002-2006, contrary to section 6 of the Local Government Finance Act 1992, and he failed to comply with a number of the requirements of the Building Regulations (SI 2000/2531) with regard to the construction of the dwelling. Whether this conduct (and that of his father-in-law with whom he secretly constructed the house) was or was not susceptible to prosecution under the general criminal law cannot be the determining question here. On any possible view the whole scheme was in the highest degree dishonest and any law-abiding citizen would be not merely shocked by it but astonished to suppose that, once discovered, instead of being enforced against, it would be crowned with success, with Mr Beesley entitled to a certificate of lawful use to prove it.

C-258/11 Peter Sweetman, Ireland, Attorney General, Minister for the Environment, Heritage and Local Government -v- An Bord Pleana, Opinion of Advocate General

"…an Appropriate Assessment… implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the Appropriate Assessment of the implications… for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects."

"The test which that expert assessment must determine is whether the plan or project in question has 'an adverse effect on the integrity of the site', since that is the basis on which the competent national stage is noticeably higher than laid down at the first stage. That is because the question (to use more simple terminology) is not 'should we bother to check' (the question at the first stage) but rather 'what will happen to the site if this plan or project goes ahead; and is that consistent with "maintaining or restoring the favourable conservation status" of the habitat or species concerned"…

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The Queen on the Application of An Taisce (The National Trust for Ireland) -v- The Secretary of State for Energy and Climate Change & NNB Generation Company Limited

In order to achieve this very high level of protection for special areas of conservation an equally stringent approach is required at the screening stage when the competent authority is deciding whether an "appropriate assessment" is required: see paragraph 70 of the Opinion of Advocate General Kokott [2004] ECR 1-7405. It is for this reason that in a case falling within the Habitats Directive an "appropriate assessment" must be carried out unless the risk of significant effects on the site concerned can be "excluded on the basis of objective information." Reading the *Waddenzee* judgment as a whole, it is clear that significant effects can be excluded on the basis of objective evidence if "no reasonable scientific doubt remains as to the absence of such effects."

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Commercial Estates Group Ltd -v- SOSCLG & Charnwood Borough Council, David Wilson Homes & Thurcaston Park Trust Ltd [2014] EWHC 3089 (Admin)

I reject that submission for a number of reasons, which can be shortly stated. First, there is no reason why words used in the context of European Guidance relating to a legal concept which has its origins in a European Directive should have the same meaning as when used in the context of decisions of the common law courts developing common law concepts over time. Second, the unlikelihood of the words having the same meaning when originating in such different jurisdictions is greatly increased by the fact that the European Guidance relates to public law concepts and procedures whereas The Wagon Mound (No. 2) related to the private law torts of nuisance and negligence. The context and application of the words are not even similar: the common law torts of negligence and nuisance are concerned with the risk of injury or damage to persons or property, the requisite standard of care to be displayed towards others who may be affected, and the allocation of responsibility if such injury or damage occurs; the European Guidance is concerned with the likelihood of future development, its likely impact on the environment and its regulation, which is different and gives rise to different legal and policy considerations.

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