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# Green Belt issues:

# Recent developments

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# NPPF Paragraphs 87 to 89

[87] As with previous Green Belt policy, **inappropriate development is, by definition, harmful** to the Green Belt and should not be approved except in **very special circumstances**.

[88] When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

# NPPF Paragraphs 87 to 89

[89] A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- buildings for agriculture and forestry;
- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;…

# NPPF Paragraphs 87 to 89

- the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

# Paragraph 89: issues recently considered by the Courts

- Is "*appropriate development*" deemed not harmful to the Green Belt, or must "*actual*" as well as *"definitional"* harm be considered?

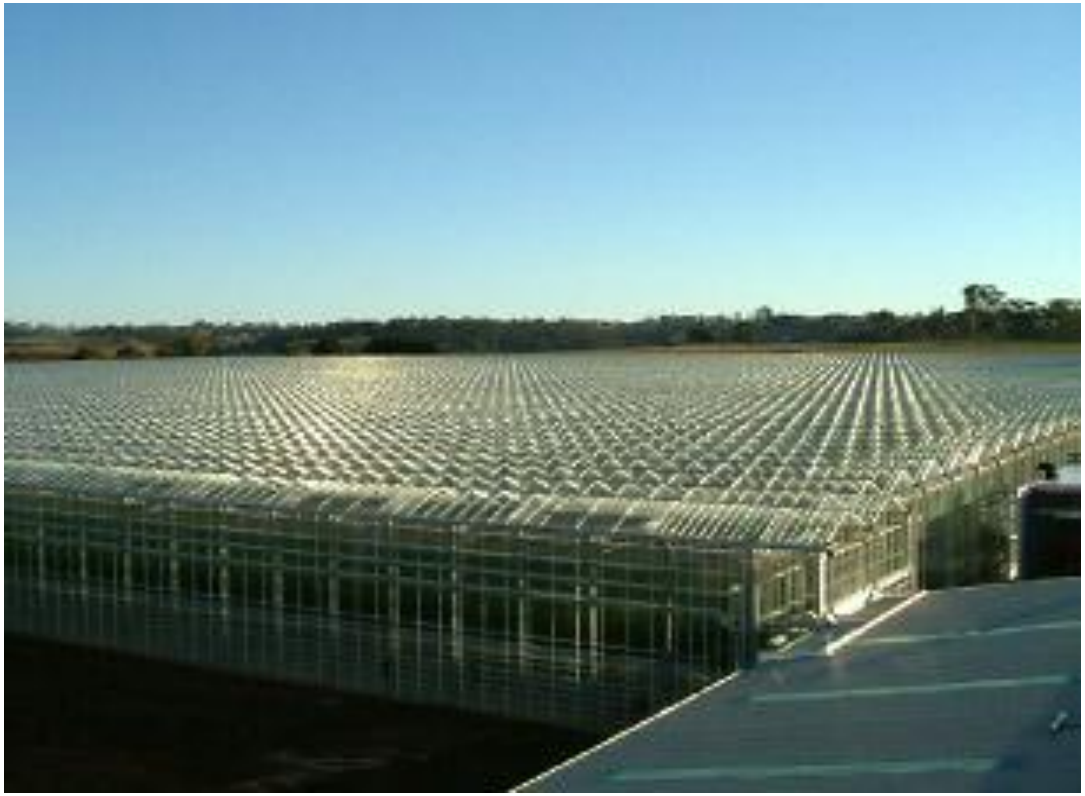
- Do the exceptions in para. 89 NPPF permit a material change of use, or only the operational development of constructing a new building?

- Is a "*volumetric*" approach to be taken to the "*openness*" criterion in the sixth exception in para. 89 NPPF, or is visual impact also relevant?

# *Lee Valley Regional Park Authority v Epping Forest District Council*

[2016] EWCA Civ 404

*22 April 2016*



# *Lee Valley Regional Park Authority v Epping Forest District Council*

Appellant argues: even where the proposed building is in principle appropriate, so there is no "*definitional harm*", it does not follow that there is no *"actual harm"* to the openness of the Green Belt

Rejected by Court of Appeal. Lindblom LJ:

"[17] I think it is quite clear that "build*ings for agriculture and forestry*", and other development that is not "*inappropriate*" in the Green Belt, are not to be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt."

[25]: appropriate development is deemed not harmful to the Green Belt

# *Lee Valley Regional Park Authority v Epping Forest District Council*

"[26] Establishing the status of a proposed development – inappropriate in the Green Belt of appropriate – **remains only the first step for the decision-maker** … development that is not inappropriate, because it is within one of the exceptional categories in paragraphs 89 and 90 and thus not potentially harmful to the Green Belt *"by reason of inappropriateness"*, may still be unacceptable for other planning reasons."

## *LB Bromley v SSCLG*

[2016] EWHC 595 (Admin) *15 February 2016*

Previously developed land in use as a livery business. Planning permission granted on appeal for 9 residential units and a new barn and workers dwellings for the livery business – this would involve a material change of use

Inspector applies the sixth exception of para. 89 NPPF (brownfield land)

LPA brings statutory challenge on the ground that applications that involve material changes of use cannot be appropriate development

## *LB Bromley v SSCLG*

I.e. is argued that the six para. 89 exceptions (pursuant to which the construction of a new building will not be inappropriate development) are confined to operational development comprising new buildings and do not permit any material change of use

Alternatively, the six exceptions only permit a material change of use if it is to a use specified in para. 89 (e.g. agriculture, forestry)

## *LB Bromley v SSCLG*

Argument rejected by the Court (David Elvin QC):

"[47] …in my judgment, providing the new buildings fall within the use and other restrictions of the applicable indent of paragraph 89 the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be appropriate development."

LPA's alternative argument also rejected (at [50])

## *Turner v SSCLG*

[2016] EWCA Civ 466 *18 May 2016*

What is the relationship between openness of the Green Belt and visual impact?

***Timmins*** at first instance: Green J (at [78]): "there is a clear conceptual distinction between openness and visual impact … it is therefore **wrong in principle** to arrive at a specific conclusion as to openness by reference to visual impact"

***Lee Valley***: Lindblom LJ (at [7]) cites Green J in ***Timmins*** for the proposition that "[t]he concept of "openness" … means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact"

# *Turner v SSCLG*

***Turner***: appellant argues for "**the volumetric approach**": the sole criterion of openness for the purpose of the sixth exception in para. 89 NPPF is **the volume of structures comprising the existing lawful use of a site compared with that of the structure proposed by way of redevelopment of that site**

Appellant contends that the Inspector therefore erred by having regard to a wider range of considerations, including the factor of visual impact

## *Turner v SSCLG*

Appellant's arguments rejected by Sales LJ

"[14] …The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.

[15] The question of visual impact is implicitly part of the concept of "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF..."

## *Turner v SSCLG*

"[16] The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But **it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself**"

## *Turner v SSCLG*

"[25] The openness of the Green Belt has a spatial aspect as well as a visual aspect, and **the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt** as a result of the location of a new or materially larger building there. But, as observed above, **it does not follow that openness of the Green Belt has no visual dimension**"

## *Turner v SSCLG*

The approach taken by Green J at first instance in ***Timmins*** rejected by the Court of Appeal:

"[18] In my view, Green J went too far and erred in stating the propositions set out above. This section of his judgment* should not be followed"

*[67] to [78]

# *R (Lensbury) v Richmond-Upon-Thames BC*

[2016] EWCA Civ 814 *11 August 2016*

Proposed development at Teddington Lock, in Metropolitan Open Land ("MOL")

LPA accepts that if application were approached as an application for development in the Green Belt, would not be "*appropriate development*" and "*very special circumstances*" test would apply

LPA did not consider VSC test

# *R (Lensbury) v Richmond-Upon-Thames BC*

LPA submits that policy 7.17 of the London Plan (on MOL) allows the LPA, in producing its own development plan, to fill in the detail of what is to be "*appropriate development*" in MOL

Thus, applying the LPA's development plan policy on protection of MOL, the proposed development can be regarded as "*appropriate development"* and the VSC test does not apply

# *R (Lensbury) v Richmond-Upon-Thames BC*

Court of Appeal rejects the argument:

"[31] …Policy 7.17, at subsection B, is in clear and unqualified terms. The protection to be afforded to the MOL is to be equivalent to, and no less than, the protection afforded to the Green Belt in national policy."

"[36] …the Council failed to appreciate that the planning application was for development which was inappropriate in the context of MOL and therefore failed to ask itself the critical question, whether very special circumstances existed which justified the grant of planning permission."

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