

The Revised NPPF – Green Belt

James Maurici QC

The changes proposed – a summary



1. Sets criteria for meeting the “*exceptional circumstances*” for change to GB boundaries (paras 136 – 137);
2. Allows neighbourhood plans to amend detailed GB boundaries once need for GB change demonstrated through a strategic plan (para. 135);
3. Provides/clarifies that the following are not to be regarded as inappropriate development:
 - a) affordable housing on rural exception sites in development plans (para. 144f) [NB here no apparent limitation re impact on openness or GB purposes];
 - b) affordable housing where built on brownfield land in the GB and there is no *substantial* harm to openness (para 144g);
 - c) material changes of use of land for the purposes of outdoor sports and cemeteries where there would be no harm openness or conflict with GB purposes (para 145e);
 - d) Development under a Neighbourhood Development Order (para 145f) provided preserve openness and not conflict with GB purposes.

Exceptional circumstances 1 - background

- NPPF presently provides for GB boundary changes only in “*exceptional circumstances, through the preparation or review of the Local Plan*” (para. 83).
- EC undefined. Several recent cases considered EC in NPPF:
 - (1) ***Gallagher Homes Limited v Solihull MBC*** [2014] EWHC 1283 (Admin) per Hickinbottom J. – case concerned challenge to extension of GB to include sites being promoted for housing:
 - EC test unchanged from previous policy by present NPPF;
 - EC test the same whether proposal is to extend or diminish extent of GB;
 - “*it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary*”;
 - “*once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration*”

Exceptional circumstances 2 - background



- On appeal in **Gallagher** CA added ([2015] J.P.L. 713) “*the fact that a particular site within a council’s area happens not to be suitable for housing development cannot be said without more to constitute an exceptional circumstance, justifying an alteration of the Green Belt by the allocation to it of the site in question*”.
- And presumably reverse is true – site should not be removed from GB simply because suitable for housing.

Exceptional circumstances 3 - background

- (2) ***Calverton Parish Council v Nottingham City Council*** [2015] EWHC 1078 (Admin) 99 Jay J. held (at [20]) that: *““Exceptional circumstances” remains undefined. The Department has made a deliberate policy decision to do this, entrusting decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case.”* As result of draft revised NPPF this no longer the case ... no longer undefined.
- (3) ***R. (Luton BC) v Central Bedfordshire Council*** [2015] 2 P. & C.R. 19 CA held at para. 54 that the VSC test *“is a stricter test than that in para. 83 in respect of changing the boundaries of the Green Belt in the local plan”*. How much stricter the CA did not say, the EC test never been easy to satisfy, even if VSC is stricter.

Exceptional circumstances 4 – new criteria



- Para 136: *“Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic plan-making authority should have examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of the plan”* and will take into account whether the strategy:
 - a) makes as much use as possible of suitable brownfield sites and underutilised land;
 - b) optimises the density of development, including whether policies promote a significant uplift in minimum density standards in town and city centres, and other locations well served by public transport; and
 - c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

Exceptional circumstances 5 – new criteria

- Para 137 *“Where it has been concluded that it is necessary to release Green Belt land for development, plans should”*:
 - give first consideration to land which has been previously-developed and/or is well-served by public transport; and
 - *“ ... set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.”*
- Most authorities in assessing if EC under existing NPPF would have considered these matters as set out in paras. 136 and 137 anyway. Does it add anything new? Maybe last point above re off-setting does?

Exceptional circumstances 6 – the rhetoric

- PM speech on launch of draft revised NPPF
 - *“too many local authorities and developers have been taking a lax view of what “exceptional” means. They’ve been allocating Green Belt sites for development as an easy option rather than a last resort” !!!*
 - and having referred to revised EC tests in para. 136 says *“[i]n the handful of cases where land does not have to be removed, council and developers will have to find ways to offset the impact”* (emphasis added).
- Con Doc *“The framework maintains the strong protections of the Green Belt and retains a high bar before Green Belt land may be released”*.

Other matters



- 1] Affordable housing on BF land – wider than proposal previously made to allow starter homes – now as con doc says *“all residential developments that contribute to meeting an identified local affordable housing need can use brownfield land”* so long as *“not cause substantial harm to openness”*. NB PM’s speech *“I’d rather see an ugly, disused power station demolished and replaced with attractive housing than a wood or open field concreted over – even if the former is in the Green Belt and the latter is not”*.
- 2] In allowing material changes of use for sports and cemeteries draft revised NPPF is reversing effect of existing NPPF, as explained by CA in ***R (Timmins) v Gedling Borough Council*** [2015] P.T.S.R. 837 – this was a change from PPG2 and possibly always unintentional.

Where are we left on Green Belt?



1. Strong protection for GB remains, and usual strong rhetoric abounds;
2. Likely to be more focus in examinations on whether EC test met, and offsetting a further issue?
3. Changes to definition of “*inappropriate development*” mostly minor;
4. Affordable housing on brownfield land opens up a new possibility;
5. VSC test though unchanged;
6. GB going to largely continue to be an impediment to meeting acute housing needs;
7. WMSs and PPG (see para. 34 Ref ID: 3-034-20141006) stating unmet housing need alone unlikely to constitute VSC likely to remain (not though to be incorporated into NPPF);
8. On this (i) national policy does not say that it never be VSC can even alone see: ***Doncaster MBC v SSCLG*** [2016] EWHC 2876 (Admin); and (ii) in any event it can be a VSC when considered as part of a wider set of factors that together make up VSC see: ***R (Smech Properties Ltd) v Runnymede District Council*** [2016] JPL 677
9. Ray of light? Recent Howard of Effingham appeal decision – S/S allows replacement secondary school and nearly 300 homes in Surrey green belt