HIGH COURT GREEN BELT
CASE-LAW UPDATE

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THE STRUCTURE OF THE LECTURE

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SECTION 1 - INTRODUCTION

• LEGAL CONTEXT:
  – NPPF – PUBLISHED IN 2012
  – CONTINUATION OF PREVIOUS POLICY: PPG2
  – CONTINUING UNCERTAINTY

• COMPETING POLICY OBJECTIVES:
  – INCREASING HOUSING SUPPLY & COMPLETIONS
  – PRESERVING GREEN BELT

• COMPETING VOICES:
  – CPRE POLL: 64% AGREE GREEN BELT SHOULD BE PROTECTED
  – IPSOS MORI POLL: 80% OF PUBLIC BELIEVE THERE IS A NATIONAL HOUSING CRISIS AND AN URGENT NEED FOR NEW HOMES

SECTION 2 – THE NPPF CHAPTER 9

• THE MAIN SOURCE OF GREEN BELT POLICY IN ENGLAND – NPPF (MARCH 2012).

• NPPF CHAPTER 9 DIVISIBLE INTO THE FOLLOWING ISSUES:
  – [NPPF 79 – 80]: PURPOSES OF GREEN BELT POLICY
  – [NPPF 81 – 86]: PLAN MAKING
  – [NPPF 87 – 92]: DECISION MAKING
SECTION 2 – THE NPPF CHAPTER 9

• KEY POINTS IN RELATION TO THE PURPOSES OF THE GREEN BELT:
  – NPPF 79 – 80
  – FUNDAMENTAL AIM: PREVENT URBAN SPRAWL
  – HOW: BY KEEPING LAND PERMANENTLY OPEN
  – ESSENTIAL CHARACTERISTICS OF THE GREEN BELT
    • OPENNESS
    • PERMANENCE
  – FIVE PURPOSES
    • CHECK UNRESTRICTED SPRAWL OF LARGE BUILT UP AREAS
    • PREVENT MERGER OF NEIGHBOURING TOWNS
    • SAFEGUARD COUNTRYSIDE FROM ENCROACHMENT
    • PRESERVE SETTING AND SPECIAL CHARACTER OF HISTORIC TOWNS
    • ASSIST URBAN REGENERATION BY ENCOURAGING RECYCLING OF DERILICT AND OTHER URBAN LAND

• KEY POINTS FOR PLAN MAKING:
  – NPPF 81 – 86
  – ONCE GREEN BELT DEFINED, LPAS SHOULD LOOK FOR OPPORTUNITIES WHICH ARE COMPLIMENTARY
  – GENERAL EXTENT OF GREEN BELT ALREADY ESTABLISHED
  – NEW GREEN BELTS ONLY IN EXCEPTIONAL CIRCUMSTANCES
  – GREEN BELT BOUNDARIES SHOULD BE ESTABLISHED IN LOCAL PLANS
  – ONCE ESTABLISHED, GREEN BELT BOUNDARIES SHOULD ONLY BE ALTERED IN EXCEPTIONAL CIRCUMSTANCES
  – INTERPLAY OF GREEN BELT BOUNDARIES AND THE PROMOTION OF SUSTAINABLE DEVELOPMENT
  – SPECIAL CONSIDERATION FOR VILLAGES

• CUMULATIVE PICTURE IS CLEAR: PERMANENCE AND PROTECTION
SECTION 2 – THE NPPF CHAPTER 9

- KEY POINTS FOR DECISION TAKING:
  - NPPF 87 – 92
  - “AS WITH PREVIOUS GREEN BELT POLICY”
  - INAPPROPRIATE DEVELOPMENT IS BY DEFINITION HARMFUL AND SHOULD NOT BE APPROVED EXCEPT IN VERY SPECIAL CIRCUMSTANCES
  - SUBSTANTIAL WEIGHT SHOULD BE GIVEN TO ANY HARM
  - VERY SPECIAL CIRCUMSTANCES ONLY EXIST IF HARM IS CLEARLY OUTWEIGHED BY OTHER CONSIDERATIONS
  - CONSTRUCTION OF NEW BUILDINGS IS INAPPROPRIATE DEVELOPMENT (THUS IS BY DEFINITION HARMFUL)
  - ONCE ESTABLISHED, GREEN BELT BOUNDARIES SHOULD ONLY BE ALTERED IN EXCEPTIONAL CIRCUMSTANCES
  - CERTAIN LIMITED EXCEPTIONS: AGRICULTURE; FORESTRY; OUTDOOR SPORT/RECREATION; CEMETERIES; EXTENSION OR ALTERATION TO BUILDINGS; INFILLING; PDL
  - CAVEATS TO MANY OF THE EXCEPTIONS: “AS LONG AS IT PRESERVES OPENNESS”

SECTION 3 – RECENT CASE LAW

- KEY LEGAL ISSUE 1 – OPENNESS
  - DEFINITIONAL UNCERTAINTY
  - NATURE OF ASSESSMENT: QUANTITATIVE AND/OR QUALITATIVE
  - EXPRESSED IN TENSION BETWEEN VOLUME AND VISUAL IMPACT
- KEY LEGAL ISSUE 2 – VERY SPECIAL CIRCUMSTANCES
  - NO HARD AND FAST GUIDANCE – ALWAYS A MATTER OF PLANNING JUDGMENT
  - ROLE OF NEED FOR HOUSING/OTHER DEVELOPMENT
- KEY LEGAL ISSUE 3 – INAPPROPRIATE DEVELOPMENT
  - DEFINITIONAL UNCERTAINTY
  - RELEVANCE OF PREVIOUS GUIDANCE – PPG2
- KEY LEGAL ISSUE 4 – DECISION MAKING
  - ERRORS ARISING FROM DEFINITIONAL UNCERTAINTY
  - POLICY STATEMENTS ON WEIGHT
  - DISGUISED CHALLENGES TO PLANNING JUDGMENT
SECTION 3 – RECENT CASE LAW

• KEY LEGAL ISSUE 1 – OPENNESS
  – TURNER V SSCLG [2016] EWCA CIV 466
  – R (OAO SAMUEL SMITH OLD BREWERY (TADCASTER)) V NORTH YORKSHIRE CC [2017] EWHC 442 (ADMIN)
  – GOODMAN LOGISTICS V SSCLG [2017] EWHC 947 (ADMIN)
  – CENTRAL BEDFORDSHIRE COUNCIL V SSCLG [2017] EWHC 1952 (ADMIN)
  – SMITH V SSCLG [2017] EWHC 2562 (ADMIN)

(1) TURNER V SSCLG [2016] EWCA CIV 466

• RESIDENTIAL DEVELOPMENT IN GREEN BELT: REPLACEMENT OF CARAVAN AND STORAGE YARD WITH 3 BED BUNGALOW
• INSPECTOR UPHELD REFUSAL: NO INCREASE IN VOLUME BUT BUNGALOW WOULD HAVE GREATER IMPACT ON OPENNESS THAN EXISTING DEVELOPMENT
• UPHELD IN HIGH COURT, APPEAL DISMISSED BY COURT OF APPEAL
  – OPENNESS NOT LIMITED TO VOLUME
  – OPEN-TEXTURED WORD
  – VISUAL IMPACT IMPLICITLY PART OF OPENNESS
  – SEE VISUAL ASPECTS TO THE 5 PURPOSES
  – “GREENESS IS A VISUAL QUALITY”
• SEPARATION OF VISUAL IMPACT FROM OPENNESS WAS AN ERROR OF LAW IN TIMMINS V GEDLING BC [2014] EWHC 654 (ADMIN)
(2) R (OAO SAMUEL SMITH OLD BREWERY V NORTH YORKSHIRE CC [2017] EWHC 442 (ADMIN))

- Extension to limestone quarry in green belt granted by minerals planning authority
- Explained Turner
- No requirement to take into account visual impact in every case: depends on circumstances of individual case, even if openness in play
- Re Findlay [1985] AC 318
- Decision maker has a margin of appreciation – challenge only on conventional public law grounds

(3) GOODMAN LOGISTICS V SSCLG [2017] EWHC 947 (ADMIN)

- Strategic rail freight interchange in green belt
- Application of Turner and Samuel Smith
- Visual impact was an obviously material consideration which ought to have been taken into account
- Intrinsic part of developer’s case at inquiry
- Visual impact was an intrinsic part of assessment of severity of harm
- Accordingly, irrational here not to consider visual impact
- However, decision to refuse planning permission would inevitably have been the same
(4) CENTRAL BEDFORDSHIRE COUNCIL V SSCLG [2017] EWHC 1952 (ADMIN)

- EXPLANATION OF GOODMAN (ALSO HOLGATE J.)
- VISUAL HARM IMPACT MAY INTENSIFY THE HARM TO OPENNESS IN SPATIAL (VOLUMETRIC) TERMS
- GOODMAN CONSIDERED THE INVERSE: CAN AMELIORATION IN VISUAL IMPACT MITIGATE SPATIAL HARM. HELD IT COULD NOT.
- GOODMAN CHALLENGED BY LPA ON BASIS OF [37] IN HEATH & HAMPSTEAD SOCIETY V LB CAMDEN [2007] EWHC 997 (ADMIN)
- VISUAL IMPACT CANNOT BE USED TO DEMONSTRATE NO IMPACT: IMPERCEPTIBLE DEVELOPMENT MAY STILL HAVE SPATIAL IMPACT
- CHALLENGE DISMISSED – NO ERROR BY INSPECTOR

(5) SMITH V SSCLG [2017] EWHC 2562 (ADMIN)

- CONVERSION OF COMMERCIAL BUILDING IN GREEN BELT INTO TWO RESIDENTIAL DWELLINGS
- RE-USE IS AN EXCEPTION TO INAPPROPRIATE DEVELOPMENT IF OPENNESS PRESERVED
- INSPECTOR: DOMESTIC PARAPHERNALIA AROUND BUILDING WOULD IMPACT ON OPENNESS: E.G. BIN STORAGE AND PARKING. THEREFORE INAPPROPRIATE DEVELOPMENT.
- CHALLENGE BY DEVELOPER – DOMESTIC PARAPHERNALIA NOT NEW BUILT FORM, THUS NOT RELEVANT TO ASSESSMENT OF OPENNESS AND IN ANY EVENT, INEVITABLE CONSEQUENCE OF APPROPRIATE CHANGE OF USE
- HELD: OPENNESS NOT CONFINED TO VISUAL IMPACT ARISING FROM BUILDINGS; EVEN IF VISUAL IMPACT OF DOMESTIC PARAPHERNALIA IS NOT PART OF DEVELOPMENT, THAT DID NOT MEAN IT WAS TO BE IGNORED.
SECTION 3 – RECENT CASE LAW

- **KEY LEGAL ISSUE 2 – VERY SPECIAL CIRCUMSTANCES**
  - R (OAO SMECH PROPERTIES LTD) V RUNNYMEDE BC [2016] EWCA Civ 42
  - BROWN V EALING LBC [2017] EWHC 467 (ADMIN)

(6) **R (OAO SMECH PROPERTIES) V RUNNYMEDE DC [2016] EWCA Civ 42**

- MIXED USE DEVELOPMENT IN GREENBELT
- DRAFT LOCAL PLAN: GB LAND = 79% LAND IN LPA’S AREA
- OFFICER’S REPORT Miscalculated NEED
- PERMISSION GRANTED ON BASIS OF VERY SPECIAL CIRCUMSTANCES
- JUDGE AT FIRST INSTANCE DISMISSED CHALLENGE – CLEAR ERROR IN OFFICER’S REPORT BUT DECLINED TO QUASH AS PERMISSION WOULD STILL HAVE BEEN GRANTED
- HUNSTON V SSCLG [2013] EWCA Civ 1610 APPLIED
- APPEAL DISMISSED: JUDGE ENTITLED TO CONCLUDE THAT DECISION WOULD HAVE BEEN THE SAME
- NOTEWORTHY FOR APPLICATION OF HUNSTON – PROPOSED 200 HOMES WOULD MAKE A SIGNIFICANT CONTRIBUTION; SIGNIFICANT NEED; IMPACT ON OPENNESS UNUSUALLY LIMITED BECAUSE OF DILAPIDATED BUILDINGS; SUSTAINABLE SITE.
(7) BROWN V EALING LBC [2017] EWHC 467 (ADMIN)

- FOOTBALL CLUB TRAINING FACILITY ON METROPOLITAN OPEN LAND ("MOL") WITHIN A GREEN BELT
- CHALLENGE ON BASIS OF LOSS OF OPEN SPACE AND LOCAL AMENITY
- CHALLENGE DISMISSED
- PROPER APPROACH TO DECISION MAKING:
  - FOLLOWING CONCLUSION INAPPROPRIATE DEVELOPMENT, IDENTIFY HARM TO GREEN BELT AND MOL
  - WEIGH THAT HARM AND OTHER HARM AGAINST BENEFITS TO DETERMINE WHETHER VERY SPECIAL CIRCUMSTANCES MADE OUT
- HERE VERY SPECIAL CIRCUMSTANCES: COMPELLING NEED FOR DEVELOPMENT; LACK OF ALTERNATIVE BROWNFIELD SITES; BENEFITS TO LOCAL COMMUNITY; AND PROPOSED MITIGATION.

SECTION 3 – RECENT CASE LAW

- KEY LEGAL ISSUE 3 – INAPPROPRIATE DEVELOPMENT
  - TANDRIDGE DC V SSCLG [2015] EWHC 2503 (ADMIN)
  - R (OAO LEE VALLEY REGIONAL PARK AUTHORITY) V EPPING FOREST DC [2016] EWCA CIV 404
  - LB BROMLEY V SSCLG [2016] EWHC 595 (ADMIN)
  - R (OAO BOOT) V EMBRIDGE BC [2017] EWHC 12 (ADMIN)
  - R (OAO TATE) V NORTHUMBERLAND CC [2017] EWHC 664 (ADMIN)
  - DARTFORD BC V SSCLG [2017] EWCA CIV 141
(8) TANDRIDGE DC V SSCLG [2015] EWHC 2503
(ADMIN)

- REPLACEMENT BUILDING EXCEPTION – NOT CONFINED TO REPLACEMENT OF SINGLE BUILDING
- APPROPRIATE TO HAVE REGARD TO VOLUME OF ALL BUILDINGS BEING REPLACED – I.E. CUMULATIVE ASSESSMENT INCLUDING VOLUME OF OUTBUILDINGS
- IMPORTANT TO CONSIDER RELATIONSHIP BETWEEN BUILDINGS
- NEED TO AVOID A “GENERAL IMPACT” APPROACH
- PREVIOUS GUIDANCE OF PPG2 RELEVANT DESPITE NEW WORDING BECAUSE NOT IMPLICATION OF NEW CATEGORY; RATHER INTERPRETATION OF SUCCESSOR CATEGORY

(9) R (OAO LEE VALLEY REGIONAL PARK AUTHORITY) V EPPING FOREST DC [2016] EWCA CIV 404

- AGRICULTURE EXCEPTION TO INAPPROPRIATE DEVELOPMENT
- DEVELOPMENT WHICH WAS NOT IN PRINCIPLE “INAPPROPRIATE” TO THE GREEN BELT WAS “APPROPRIATE” FOR THE PURPOSES OF GREEN BELT POLICY
- NO DISTINCTION BETWEEN DEFINITIONAL AND ACTUAL HARM
- NO GENERAL TEST THAT DEVELOPMENT IS APPROPRIATE PROVIDED IT PRESERVES OPENNESS AND DOES NOT IMPACT ON PURPOSES
- AGRICULTURE EXCEPTION UNQUALIFIED BY EFFECT ON OPENNESS
- ONCE DEVELOPMENT IS APPROPRIATE, OPENNESS IS NO LONGER AN ISSUE
(10) LB BROMLEY V SSCLG [2016] EWHC 595 (ADMIN)

- CHANGE OF USE AND INAPPROPRIATE DEVELOPMENT
- REDEVELOPMENT OF LAND
- LPA ARGUED THAT CONSTRUCTION OF NEW HOUSES INVOLVED A MATERIAL CHANGE OF USE THEREFORE ERROR BY INSPECTOR TO TREAT AS APPROPRIATE DEVELOPMENT WITHIN SIXTH BULLET
- HELD: UNNECESSARY TO GLOSS NPPF 89 EXCEPTIONS – READ NATURALLY AND IN CONTEXT OF TCPA 1990
- NO RESTRICTION ON CHANGE OF USE, SAVE IN FOURTH BULLET; THUS CHANGE OF USE BY ITSELF DID NOT RENDER DEVELOPMENT INAPPROPRIATE

(11) R (OAO BOOT) V ELMBRIDGE DC [2017] EWHC 12 (ADMIN)

- SPORTS FACILITIES EXCEPTION – SUBJECT TO OPENNESS CAVEAT
- WORDING OF LOCAL PLAN POLICY HAS NO BEARING ON INTERPRETATION OF NPPF
- IF A NEW DEVELOPMENT CAUSED HARM TO THE OPENNESS OF THE GREEN BELT, EVEN LIMITED HARM, IT COULD NOT BE APPROPRIATE DEVELOPMENT WITHIN THIS EXCEPTION
- ACCORDINGLY, EVEN IF LEVEL OF HARM DID NOT BREACH LOCAL PLAN POLICY, THAT DID NOT OBViate BREACH OF NPPF PARA. 89
(12) R (OAO Tate) v Northumberland CC [2017] EWHC 664 (Admin)

- Limited infilling in village exception
- Claimant argued village needed at least one of: a clear core; boundaries; evolution of housing types and styles; basic services; highway frontage; or population between certain levels
- Held: definition of a village is essentially subjective and there is no need to have one of the claimant’s factors – reviewable only on ground of irrationality. Here decision not irrational.
- Notwithstanding this, decision quashed for failure to give reasons as the issue of “limited infill” was a material consideration and central to ultimate grant

(13) Dartford BC v SSCLG [2017] EWCA Civ 141

- PDL in green belt
- Change of use of land within residential curtilage of farm in green belt
- LPA case – all private residential gardens excluded from PDL – rejected by inspector
- No conflict between principle of protecting green belt and encourage re-use of brownfield land
- PPG2 could be relevant – see Turner and Timmins – however this could not take away from clear words of NPPF
- NPPF was a key public document which public should be able to rely on without a paper chase
SECTION 3 – RECENT CASE LAW

- **KEY LEGAL ISSUE 4 – DECISION MAKING**
  - WORKINGHAM BC V SCOTT [2017] EWHC 294 (QB)

(15) WORKINGHAM BC V SCOTT [2017] EWHC 294 (QB)

- UNAUTHORISED CHANGE OF USE IN GREEN BELT – ENFORCEMENT NOTICE ISSUED
- GRANT OF INJUNCTION TO LPA TO PROHIBIT CONTINUED UNLAWFUL USE OF LAND
- WIDESPREAD SUPPORT FOR DEFENDANT’S BUSINESS DID NOT CIRCUMVENT GENERAL PUBLIC IMPORTANCE IN ENFORCING PLANNING CONTROL IN THE GREEN BELT
- ISSUES OF PLANNING POLICY AND JUDGMENT WERE FOR THE LPA AND WERE NOT TO BE REVIEWED IN THESE PROCEEDINGS BY THE COURT
SECTION 4 – CONCLUSION

- PREDICTED REVISION OF NPPF IN EARLY 2018
  - CONTINUATION OR CLEAN BREAK?
  - SPECTRE OF PPG2?
  - HOUSING LAND SUPPLY IN SE ENGLAND (AND BEYOND) – IS THERE A NEED TO RELEASE LAND?
    - HOUSING CRISIS
    - METHODOLOGY
    - CONFLICT WITH PERMANENCE OF GREENBELT
    - NEW LOCAL PLANS: E.G. GUILDFORD; NORTHUMBERLAND
  - CONTINUING DEFINITIONAL UNCERTAINTY