

HIGH COURT GREEN BELT CASE-LAW UPDATE

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THE STRUCTURE OF THE LECTURE



1. INTRODUCTION
2. NPPF PARAS. 79 – 92: THE CENTREPIECE OF GREEN BELT POLICY
3. RECENT CASE LAW
 - A. INAPPROPRIATE DEVELOPMENT
 - B. OPENNESS
 - C. VERY SPECIAL CIRCUMSTANCES
 - D. DECISION MAKING
4. CONCLUSION


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
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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
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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 DERELICT AND OTHER URBAN LAND



SECTION 2 – THE NPPF CHAPTER 9

- 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
- [14] – [18] OF JUDGMENT
 - 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
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(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
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(4) CENTRAL BEDFORDSHIRE COUNCIL V SSCLG [2017] EWHC 1952 (ADMIN)

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- EXPLANATION OF GOODMAN (ALSO HOLGATE J.)
 - [32] – [39]
 - 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
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(5) SMITH V SSCLG [2017] EWHC 2562 (ADMIN)

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- 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: OPENESS 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.
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SECTION 3 – RECENT CASE LAW

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- 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

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- 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)

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- 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.
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SECTION 3 – RECENT CASE LAW

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- 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
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**(8) TANDRIDGE DC V SSCLG [2015] EWHC 2503
(ADMIN)**

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

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- 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
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**(10) LB BROMLEY V SSCLG [2016] EWHC 595
(ADMIN)**

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

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- 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 OBLVIATE BREACH OF NPPF PARA. 89
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**(12) R (OAO TATE) V NORTHUMBERLAND CC
[2017] EWHC 664 (ADMIN)**

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- 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
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(13) DARTFORD BC V SSCLG [2017] EWCA CIV 141

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- 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
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SECTION 3 – RECENT CASE LAW

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

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

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- 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
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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
 - CONFLCIT WITH PERMANENCE OF GREENBELT
 - NEW LOCAL PLANS: E.G. GUILDFORD;
NORTHUMBERLAND
 - CONTINUING DEFINITIONAL UNCERTAINTY

