

Planning High Court Challenges 2018:

Green Belt

Zack Simons

19th November 2018

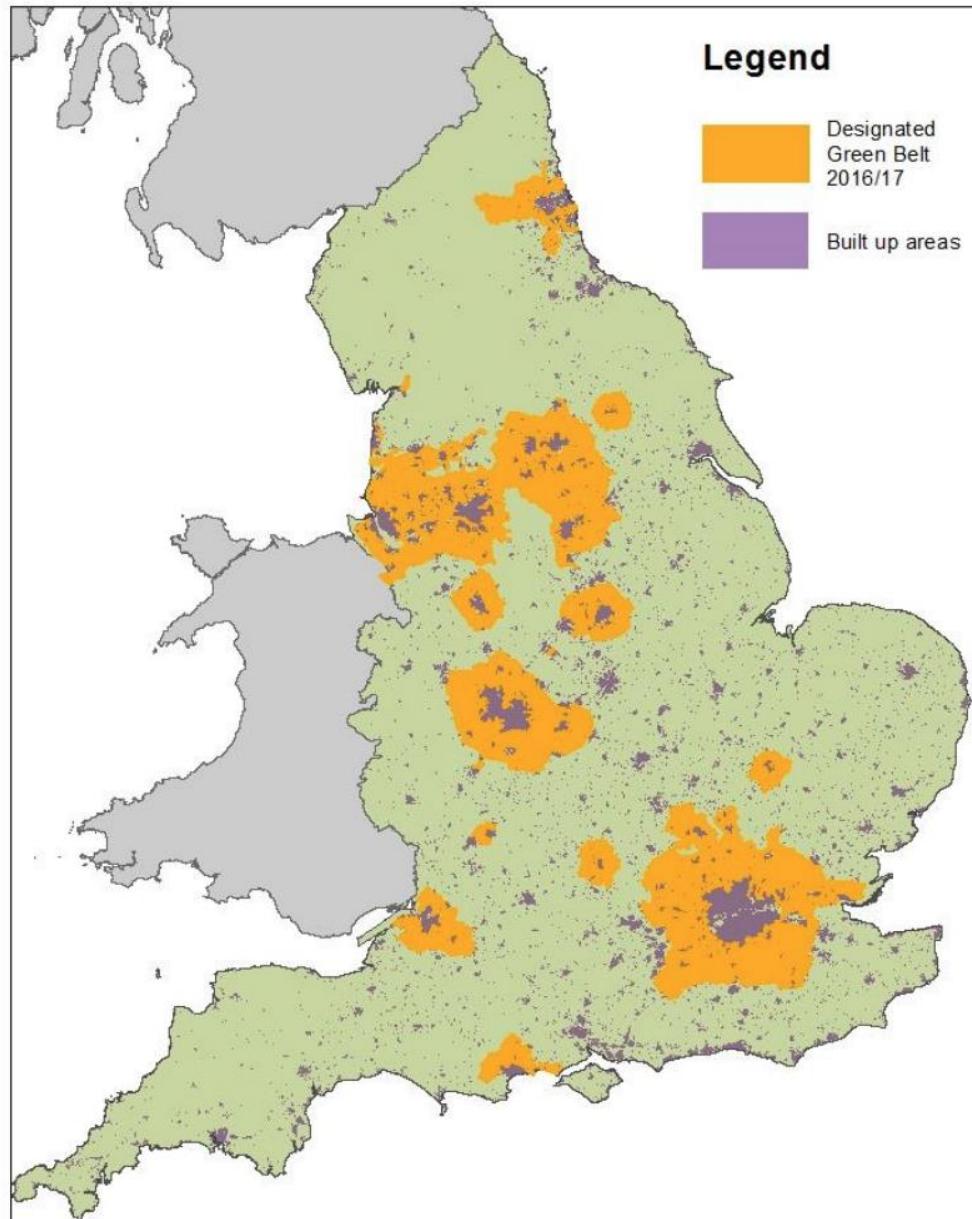
Law Society

Green Belt update

- Openness: Samuel Smith.
- Inappropriate development - material changes of use.
- Reasons in GB: Oakley and Dover.



Extent of Green Belt as at 31st March 2017



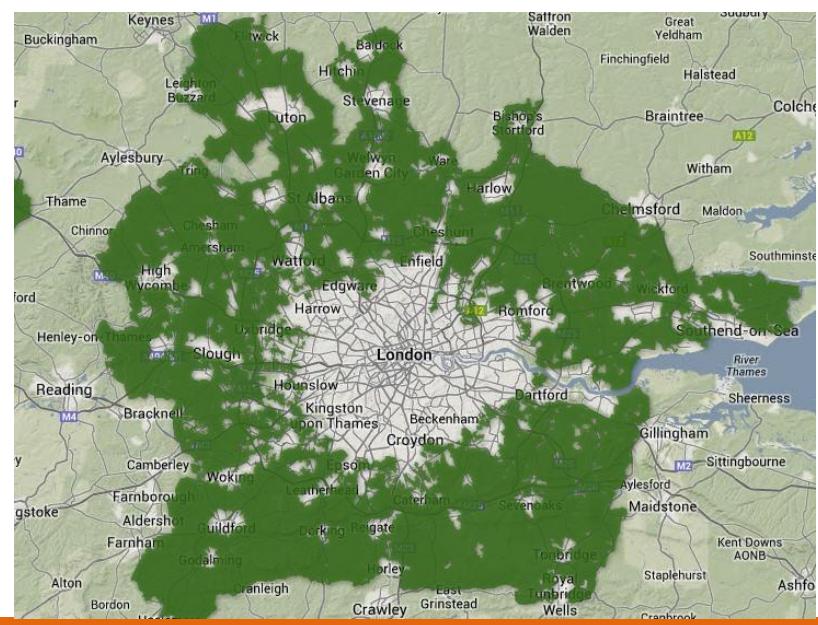
Landmark
Chambers

Green Belt now

- In England:
 - 14 GBs, covering 1.634 million Ha = **13%**.
 - Mostly farmland.
 - About $\frac{1}{4}$ open to the public.
 - In 2016/17, GB decreased by 790 Ha = 0.05%.
 - CPRE in “State of the Green Belt 2018” report that the rate of the loss of Green Belt is increasing although figures are hotly contested
 - MHCLG figures suggest loss of 0.2% between 2009/10 and 2016/17 (although that is still 4,780 hectares)

Green Belt now

- Metropolitan GB:
 - c. 516,000 Ha
 - Touches on 68 local authority areas.
 - Three times bigger than Greater London.
 - Larger than Trinidad and Tobago.
 - Twice the size of Luxembourg.



TM on 5.3.18:
Origin of the Green Belt



"That's why the answer to our housing crisis does not lie in tearing up the Green Belt. Barely 13 per cent of this country is covered by such a designation, but it serves a valuable and very specific purpose.

[...] the defining characteristic of Green Belt land is not its beauty or its greenness, but its openness. Green Belts exist not to preserve landscapes but to prevent urban sprawl. That is what they were created for in the 1950s and that is the valuable purpose they still serve today.

[...]

Planning rules already say that Green Belt boundaries should be changed only in “exceptional circumstances”. But 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.”

Origin of the Green Belt



"That's why the answer to our housing crisis does not lie in tearing up the Green Belt. Barely 13 per cent of this country is covered by such a designation, but it serves a valuable and very specific purpose.

[...] the defining characteristic of Green Belt land is not its beauty or its greenness, but its openness. Green Belts exist not to preserve landscapes but to prevent urban sprawl. That is what they were created for in the 1950s and that is the valuable purpose they still serve today.

[...]

*Planning rules already say that Green Belt boundaries should be changed only in “exceptional circumstances”. But 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.”

!!!

- Duncan Sands MP, Minister for Housing and Local Government:

"I am convinced that, for the well-being of our people and for the preservation of the countryside, we have a clear duty to do all we can to prevent the further unrestricted sprawl of the great cities."

- Circular 42/55

"[...] checking the unrestricted sprawl of the built-up areas, and safeguarding the surrounding countryside against further encroachment.

The minister is satisfied that the only really effective way to achieve this object is by the formal designation of clearly defined Green Belts around the areas concerned."



MINISTRY OF HOUSING AND LOCAL GOVERNMENT
WHITEHALL, LONDON, S.W.1

SIR,

3rd August, 1955

GREEN BELTS

1. Following upon his statement in the House of Commons on April 26th last (copy attached), I am directed by the Minister of Housing and Local Government to draw your attention to the importance of checking the unrestricted sprawl of the built-up areas, and of safeguarding the surrounding countryside against further encroachment.

2. He is satisfied that the only really effective way to achieve this object is by the formal designation of clearly defined Green Belts around the areas concerned.

3. The Minister accordingly recommends Planning Authorities to consider establishing a Green Belt wherever this is desirable in order:

- (a) to check the further growth of a large built-up area;
- (b) to prevent neighbouring towns from merging into one another; or
- (c) to preserve the special character of a town.

4. Wherever practicable, a Green Belt should be several miles wide, so as to ensure an appreciable rural zone all round the built-up area concerned.

5. Inside a Green Belt, approval should not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings for purposes other than agriculture, sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area.

6. Apart from a strictly limited amount of "infilling" or "rounding off" (within boundaries to be defined in Town Maps) existing towns and villages inside a Green Belt should not be allowed to expand further. Even within the urban areas thus defined, every effort should be made to prevent any further building for industrial or commercial purposes; since this, if allowed, would lead to a demand for more labour, which in turn would create a need for the development of additional land for housing.

Openness

1988

- PPG2:

"The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness."
- PPG2 policy **not fundamentally changed** in NPPF1 : see e.g.
 - *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2015] P.T.S.R. 274
 - *Turner v Secretary of State for Communities and Local Government* [2017] 2 P. & C.R. 1
- Or in NPPF2.



National Planning Policy Framework

13. Protecting Green Belt land

133. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
134. Green Belt serves five purposes:
 - a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Samuel Smith Old Brewery (Tadcaster) v North
Yorkshire CC [2018] EWCA Civ 489



Samuel Smith: facts

- Permission granted to extend Jackdaw Crag Quarry, a magnesian limestone quarry in GB near Tadcaster.
- Officer's report found:
 - Development preserved the openness of the Green Belt.
 - Did not *expressly* consider the visual dimension of openness when considering harm to the GB (albeit had considered landscape impact separately).
 - Considered openness in purely spatial terms.

- That was a **legal error**.
- Lindblom LJ held that:

“Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects of the openness of the Green Belt, and, if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.”

- 1) Visual impact may be an aspect of Green Belt “openness” (following Sales LJ's judgment in Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466).
- 2) A realistic § 90 NPPF assessment will often have to include the likely perceived effects on openness, if any, as well as the spatial effects.
- 3) Whether there will be visual as well as spatial effects on openness depends on the facts and will be for the decision-maker to judge.

- 4) But the policy requires the decision-maker to reach a judgment on that question one way or the other. Focussing only the spatial aspects of built development may be a legal error.
- 5) “Preserve” in NPPF does not mean leave entirely unchanged. It means avoid harm to openness (**N.B. *Boot v Elmbridge***).

Inappropriate Development - Material Changes of Use



- 146(e) of NPPF 2018:

“material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)”.

Response to ***Timmins v Gedling BC.***

- Material changes of use not limited to the examples given but must (i) preserve openness and (ii) not conflict with GB purposes.

Inappropriate Development - Material Changes of Use

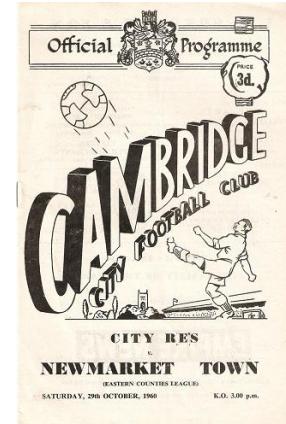


- On whether MCUs preserve openness / GB purposes:
 - Generally, listed categories of development must be *capable* of meeting those requirements, so *inherent* elements of those listed categories are not contrary to them:
Europa Oil and Gas v. SSCLG [2013] EWHC 2643 (Admin).
 - However, NB *Smith v. SSCLG* [2017] EWHC 2562 (Admin) on domestic “paraphernalia”.

Duty to give reasons in GB

Oakley v South Cambridgeshire DC

- CCFC applied for permission to erect 3,000 seat stadium on historic waste tip south of Cambridge in Sawston, within GB.
- LPA's OR recommended refusal, citing:
 - Inappropriate development.
 - Additional harm re landscape and lack of sustainable access.
 - No VSCs.
 - LPA's committee granted permission against OR's advice.
 - No reasons given in minutes or otherwise. Resolution noted departure from dev plan. **NB** contemporaneous notes of c'tee meeting did not disclose reasoning.



Duty to give reasons in GB

- In *Dover v CPRE* at [57], Lord Carnwath confirmed “**special circumstances**” of *Oakley v South Cambs* which gave rise to need for reasons as:
 - 1) widespread public controversy,
 - 2) departure from development plan and Green Belt policies, and
 - 3) members' disagreement with the officers' recommendation.
- *Dover* said to have the same features (AONB = Green Belt).
- So reasons now likely to be required at common law for grants of permission in the GB on (i) appropriate vs. inappropriate and (ii) VSC balance.



zsimons@landmarkchambers.co.uk