

Green Belt in the Courts

The meaning of the NPPF explored

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Themes



- Relevance of pre – NPPF 2018 caselaw;
- NPPF: Digest of Decisions, Alistair Mills – Landmark website;
- Plan making – Exceptional Circumstances;
- Inappropriate / Appropriate Development;
- The weighted balance – very special circumstances
- Reasons

Exceptional Circumstances (1)

- Old para 83, New para 136;
- Now ‘fully evidenced and justified’;
- Any GB alteration – addition or deletion (***Carpets of Worth Ltd v. Wyre Forest DC*** (1991) 62 P & CR 334) (and see tests in 135 for new GB);
- Role of strategic policies (need for changes) v. non-strategic policies including neighbourhood plans (detailed boundary changes) (NPPF 136).

Exceptional Circumstances (2)

- What is capable of being EC is qu of law – (***Gallagher Homes Ltd v. Solihull BC*** [2014] EWHC 1283 (Admin), Hickinbottom J);
- More than general planning concepts to justify an alteration (***Gallagher***).
- Suitability for housing development? That alone insufficient – (***Calverton PC v. Nottingham CC*** [2015] EWHC 1078 (Admin) Jay J);
- Relevance of sustainability (84/138) – pdl/ public transport first – offset/compensatory measures (see also ***Calverton*** and ***IM Properties Development Ltd v. Lichfield DC*** [2014] EWHC 2440 (Admin))

Inappropriate Development Definition



- Old 89 – 91; New 145 - 147;
- Overall approach – ***Fordent Holdings v. SSCLG*** [2013] EWHC 2844 (Admin), *HHJ Pelling QC*; and ***Timmins v. Gedling*** [2015] EWCA Civ 10
- All development inappropriate unless falls within the defined exceptions;
- Exceptions in 89/145 and 90/146 are each a ‘closed list’;
- But note specific changes to the ‘closed lists’ brought about by new NPPF 2018 (which render some specific examples in ***Fordent*** and ***Timmins*** out of date)

Inappropriate Development

Construction of New Buildings (1)



- construction of new buildings inappropriate UNLESS fall within listed exceptions in 145;
- 145 (b) Appropriate facilities in connection with outdoor sport, outdoor recreation, cemeteries, burial grounds and allotments, but subject to openness/purposes conflict test (wording clarified to reflect CA in ***Timmins v. Gedling***);
- 145 (e) limited infilling in villages – note interpretation of ‘villages’ – ***R (Tate) v. Northumberland CC [2017] EWHC 664 (Admin)***.

Inappropriate Development

Construction of New Buildings (2)



- 145 (f) - Affordable housing 'under policies set out in the development plan' (inc rural exception sites) – see ***R (Robb) v. S.Cambs DC*** [2017] EWHC 594 (Admin) re need for compliance;
- note change to NPPF (145 (g) re: pdl – new specific exception for affordable housing outside development plan policies;
- Definition of pdl/ agricultural buildings exception – see ***R (Lee Valley Regional Park Authority) v. Broxbourne BC*** [2015];
- Definition of pdl – residential gardens 'in' urban areas – see ***Dartford BC v. SSCLG*** [2017] Civ 141

Inappropriate Development Material Change of Use (1)



- All other forms of development inappropriate UNLESS fall within listed exceptions in 146;
- All exceptions in 146 must meet requirement of preserving openness and not conflicting with GB purposes – Listed categories of dev't must be *capable* of meeting those req'ts, so *inherent* elements of those listed categories not contrary to those requirements – ***Europa Oil and Gas v. SSCLG [2013] EWHC 2643 (Admin)***;
- List includes mineral extraction, engineering operations, local transport infrastructure with req't to be in GB, re-use of buildings (see ***Baynham v. SSCLG [2017] EWHC 3049 (Admin)***, ***Smith v. SSCLG [2017] 2562 (Admin)***) and development brought forward under Community Right to Build Order or Neighbourhood Development Order.

Inappropriate Development

Material Change of Use (2)



- Importantly NPPF 2018 list also specifically includes at 146e **material changes of use** omitted from the 2012 NPPF list (though previously national GB policy for many years): “*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*”. Apparently a response to ***Timmins v Gedling BC*** [2015] PTSR 837
- Note sensible impact re NPPF 81/141, cf ***Fordent***, para 23);
- Material changes of use not limited to the examples given but must meet the general rubric in 146 of preserving openness and not conflicting with the purposes of including land in the GB.

Inappropriate Development

Material Change of Use (3)



- Note binary approach – ***R (Boot) v. Elmbridge BC*** [2017] EWHC 12 (Admin)
– “any harm” to openness or GB purposes means exception does not apply;
- Cf Approach to “valued landscapes” - ***Preston New Road Action Group v. SSCLG and others*** [2017] EWHC 808 (Admin)
- See also ***Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC*** [2018] EWCA Civ 489 on GB policy and openness.

Inappropriate Development Consequences



- Old 87 - 88; New 143 – 144;
- Inappropriate development is “by definition harmful” – need for very special circumstances;
- Substantial weight to any harm to the Green Belt – 143 - 144;
- Balance – must ‘clearly outweigh’ potential GB harm and ‘any other harm resulting from the proposal’ -144 wording to reflect ***Redhill Aerodrome Ltd [2014] EWCA Civ 1386***;
- Tilted balance in para 11 does not apply – see fn 6 – unless vsc balance passed.

Very Special Circumstances



- ‘Stricter test’ than para 83/136 re: exceptional circumstances – see ***R (Luton BC) v Central Bedfordshire Council [2015] EWCA Civ 537, para 54, Sales LJ***;
- All factors which tell in favour of the grant can go to making up vsc, which may or may not suffice. It is not necessary to go through the process of considering whether a factor is or is not a very special circumstance: ***R (Lee Valley Regional Park Authority) v. Broxbourne BC [2015] EWHC 185 (Admin)***; ***SSCLG v. Redhill Aerodrome Ltd [2014] EWCA Civ 1386***.

Duty to give reasons?

- Will usually be common law duty to give reasons when granting permission for development in the Green Belt against officer advice: ***Oakley v. S.Cambs DC [2017] EWCA Civ 71, Dover DC v. CPRE (Kent) [2017] UKSC 79;***
- Will need to be clear whether development considered appropriate or inappropriate;
- Will need to show balance applied properly in light of requirement for very special circumstances.

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THE END

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