

# Planning for Development in the Green Belt: Practical Issues

**Paul Brown QC**

# Development in the Green Belt has never been easy...



The core policy approach:

- The Government attaches great importance to Green Belts
- The fundamental aim is to keep Green Belt land “open”
- Inappropriate development is by definition harmful, and should only be approved in “very special circumstances”
- VSC will only exist where the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed
- Substantial weight should be given to the harm to the GB

# Key Hurdles in the Policy Framework (1)



## “Inappropriate development”

- Closely defined list (now NPPF paras 145, 146)
  - ***Timmins v Gedling Borough Council*** (CA): list is exhaustive
- Some things (e.g. agricultural buildings) are appropriate by definition
- But others can only be “appropriate” if they preserve openness and do not conflict with purposes
  - ***West Lancashire v SSCLG***: the policy affords “no latitude” to decide that the development does affect openness, but that the extent of that effect is not sufficiently significant to raise planning concerns
  - Followed in ***R(Boot) v. Elmbridge***

## Key Policy Hurdles (2)

### “Openness”

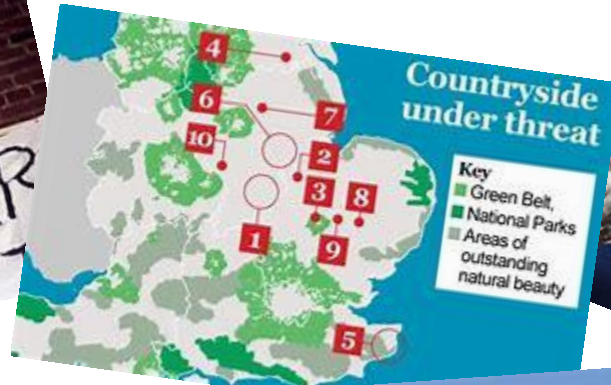
- Generally understood to mean the absence of built development
  - Capable of applying to 2-dimensional development such as hardstanding
- But also covers uses on that land
  - Even temporary uses such as parking can have an adverse effect
- Note the scope for subjective assessment here ...

## Key Policy Hurdles (3)

### “Very special circumstances”

- The deck is stacked:
  - Inappropriate development is harmful by definition
  - Substantial weight must be given to any harm to the GB (both harm by definition and other harm)
  - The benefits must clearly outweigh the harm
- The test is highly subjective:
  - Harder to predict outcomes
  - LPAs much less at risk of an award of costs

# The Political Dimension



.. there are (rarely) any votes for development in the Green Belt

## More Recent “Mood Music” (1)

- **2014 WMS (and subsequent changes to PPTS)**
  - subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
- **9 July 2015 Circular, 17 Dec 2015 WMS (and subsequent changes to the PPG)**
  - unmet housing need is unlikely to amount to very special circumstances capable of outweighing the harm caused by inappropriate development in the Green Belt.

## “Mood Music” (2)

- **The Reigate and Banstead Local Plan intervention..**

“Fundamental to the National Planning Policy Framework and to this Government’s planning reforms is the idea that local authorities, and the communities who elect them, are in charge of planning for their own areas.

The Secretary of State will consider exercising his statutory powers of intervention in Local Plans before they are adopted where a planning inspector has recommended a Green Belt review that is not supported by the local planning authority.”



# Trends in Recent Appeal Decisions: Gypsy and Traveller Cases (1)



- **7 of 10 appeals allowed**
- **Factors which have contributed to VSC in successful cases:**
  - Need and Absence of Alternative Sites (7 cases)
  - Educational and other needs of the children (6 cases)
  - Health of adult occupiers (3 cases)
  - Risk that the Appellant would have to resort to unlawful encampment (2 cases)
  - Keeping an extended family together (1 case)
  - Absence of any certainty that the plan process will provide (1)
  - Emerging Plan recognising need for GB release and allocating the appeal site (1)

# Trends in Recent Appeal Decisions: Gypsy and Traveller Cases (2)



- **In 3 of 10 appeals, VSC not established**
- **Factors not considered to constitute VSC included:**
  - Need and absence of alternative sites (3)
  - Benefits for health hand education of children (2)
- **But note:**
  - In one case, additional conflict with floodplain and prospect that the Local Plan would identify site within 3-4 yrs
  - In second, application included a transit pitch for which no VSC, and this could not be severed
  - In two cases, temporary permissions were granted
- **In some cases, visual impact and impact on openness may be so severe unlikely ever to pass the test**

# Trends in Recent Appeal Decisions: Housing Cases (1)



- **10 appeals, 6 successful**
- **Of which, 3 were single-unit schemes where personal circumstances were key**
  - Agricultural worker
  - Applicant with a rare terminal medical condition
  - Extensions to an existing dwelling providing accommodation for 6 adults requiring supported living
    - Personal circumstances
    - Business of value to the character of the community
    - Equality implications of the Equality Act 2010

# Trends in Recent Appeal Decisions: Housing Cases (2)



- **3 successful appeals, from 24-350 dwellings**
- **Factors contributing to VSC:**
  - Absence of a 5YHLS (all)
  - Provision of Affordable Housing (2 cases)
  - Enabling development to improve existing college (1 case)
  - Enhancement of existing heritage assets (2 cases, tho' limited weight in 1)
  - Enhancement to beneficial GB uses and/or local footpath network (2 cases)
  - Visual enhancement of GB (1 case)
  - Remediation of an existing waste site and biodiversity improvements (1)

# Trends in Recent Appeal Decisions: Housing Cases (3)



- **4 unsuccessful appeals (3-280 dwellings)**
- **Factors not regarded as amounting to VSC (even tho' no 5YHLS)**
  - Provision of 2 dwellings and reduction in traffic and mud on local road
  - Provision of 24 houses and an argument that the site was less visually intrusive than other GB sites
  - Provision of 212 dwellings, recovery of a Bronze Age barrow cemetery from beneath an office building, biodiversity and sustainability benefits of POS (but also harm to AONB)
  - Provision of 280 houses, employment floorspace and improvements in cycleway network

# Trends in Recent Appeal Decisions: Industrial and Employment Uses (1)



- **5 appeal, 2 successful**
- **1 continuation of motorcycle and motor vehicle activities**
  - Employment of 27FTE employees, growth of local business and 30 ad hoc staff given substantial weight, added to spin-off benefits for other local leisure facilities and enhancement of driving skills = VSC
- **1 waste facility allowed**
  - Need to support waste recycling targets, absence of other suitable sites, the proximity of the site to sources of waste and the environmental benefits of replacing artificial fertilisers with compost = VSC

# Trends in Recent Appeal Decisions: Industrial and Employment Uses (2)



## The unsuccessful appeals

- **1 waste facility**
  - Employment of 4 people, environmental benefits of safe storage and re-use of Green Waste plus absence of impact on flooding were not VSC
- **1 timber and fencing builder's merchant**
  - Employment of 13 people and risk of closure of the business because of absence of alternative sites not VSC
- **1 Storage barn and seminar room for education of vets**
  - Inspector not satisfied it was essential for this to be at the location proposed

# Trends in Recent Appeal Decisions: Cemeteries and Crematoria



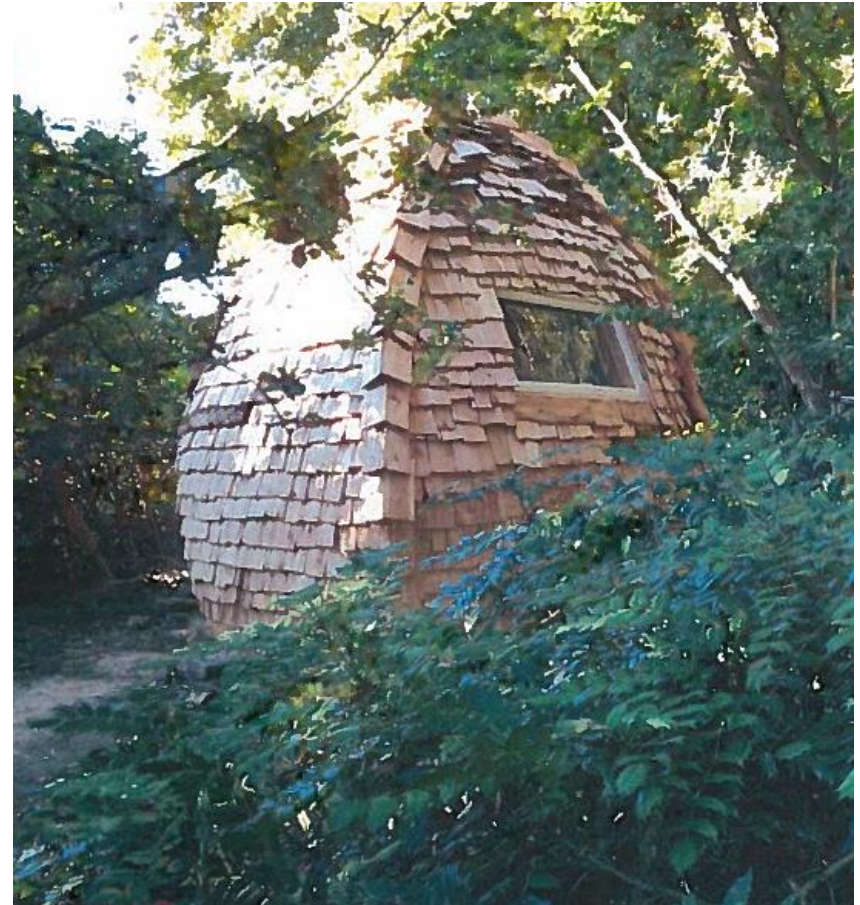
- **3 applications (one a “beauty contest”): 1 successful, 2 not**
- **VSC in the successful case:**
  - Need for a crematorium
  - Need for a countryside location
  - Sustainability benefits/accessibility for the population it would serve
- **The unsuccessful cases: matters that were not VSC**
  - Landscape improvements which could be achieved without the crematorium
  - “Unsatisfactory emotional burden” of mourners travelling for more than 30 minutes (cf *Timmins* for other views on this)
    - NB Inspector not satisfied need was a great as claimed



## Trends in Recent Decisions: The Eccentric



**“Considerable weight is given to the visual interest of the building by reason of its fairly unique and quirky design”**



## Practical Tips (1): Appropriate or Inappropriate?



- For LPAs, critical to the analysis
- For developers, critical to the chances of obtaining permission. So – can you bring your development within the definition of “appropriate” development, e.g.
  - Proportionate extension or alteration of a building
  - Provision of facilities for outdoor sport, recreation, cemeteries, which preserve openness
  - Replacement of a building with one not materially larger
  - “limited in filling in villages”
  - Limited infilling or redevelopment of previously developed land, if (a) no impact on openness or no substantial harm to openness and help meet affordable housing need
  - Re-use of buildings of permanent and substantial construction

## Practical Tips (2): Appropriate development



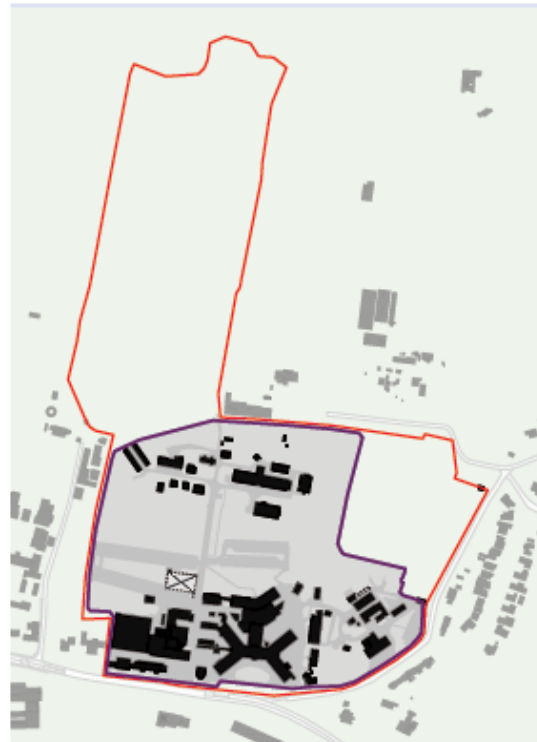
- **Benefits/consequences of being “appropriate”**
  - No need to demonstrate VSC
  - If automatically “appropriate” (e.g. agricultural buildings) impact on openness is irrelevant: ***R (Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404***
- **If appropriateness depends on impact on openness:**
  - Consider how the scheme can be configured to produce benefits
  - Openness is 3-dimensional: mass, spread and views through are all relevant. Impact will depend on overall balance
  - Consider the scope for trading off gains in one against reductions in another

# Practical Tips (3): Configuring Development to Maintain Openness

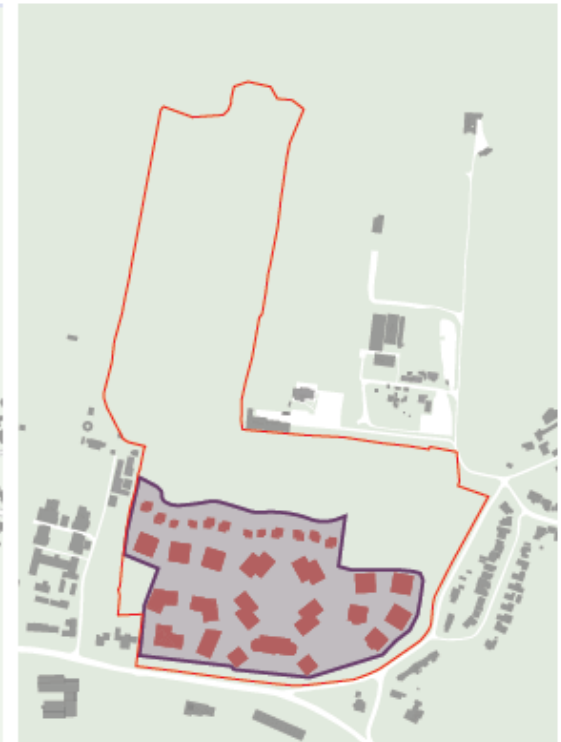


## Eg. NIMR Site

- 38% reduction in PDL
- 8% reduction in footprint
- Enhanced visibility through the scheme
- 38% increase in floorspace



Existing Developed Land  
93,970 sqm  
1,011,500 sqft



Future Developed Land  
58,040 sqm  
624,740 sqft

## Practical Tips (4):

### If the development is inappropriate ...

- VSC depends on the overall balance (good v. bad)
  - So start by assessing the harm
- All harm (to GB and other) goes into the balance
  - Definitional harm (by reason of inappropriateness)
  - any other harm to GB (openness, visual impact, GB purposes)
  - Any other planning harm
- Harm to the GB will be given significant weight
  - So if you are the developer, is there anything you can do reduce or mitigate it – landscaping, public access etc
- But remember: mere absence of harm is not enough!

## Practical Tips (5): Inappropriate development - is the harm outweighed by the benefits?



- The question is not whether any one benefit is a VSC, but whether all the benefits, taken together clearly outweigh the harm
- Need, and absence of alternative sites almost always essential
  - but in housing and traveller cases, need on its own will rarely be enough
- Traveller cases – needs of children will always be given significant weight
- In housing cases
  - scale of any shortfall against 5YHLS will be important
  - affordable housing can significantly strengthen the case

## Practical Tips (5): Inappropriate development- the benefits



- Benefits relating to GB purposes are likely to be given greater weight
- Benefits (e.g. general landscaping) which would be expected of any development are less likely to persuade
  - But major improvements eg remediation of contaminated site
- Weight attributed to employment benefits is less predictable

## The political dimension

- Appeal is unpredictable
  - Especially if the appeal is recovered
  - Clear political steer towards giving weight to the views of the local
- NPPF and the plan-led system
  - Increasing pressure to limit the “release” of GB land to formal de-designation through local plan reviews
  - Particularly relevant in housing cases: consider the local plan process first?
- Not all LPAs are implacably opposed ...
  - It is worth taking time to try and get the LPA on board