

**PLAN MAKING:
GREEN BELT REVIEWS**

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Green Belt Reviews



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1. OVERVIEW

- In plan-making terms, the starting point in policy terms is the core objective that GBs should be permanent:

The fundamental aim of GB policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of GBs are their openness and their permanence

(NPPF 2012 at [79]; NPPF 2018 at [133]; the 2018 NPPF applies for the purposes of examining plans, where submitted after 24/01/19 ([214] in Annex 1: Implementation)

- This approach is reflected in NPPF 2012 at [83] and [136] of NPPF 2018: Once established, GBs should only be altered in **exceptional circumstances**.
- The general extent of GBs across the country is already established – new GBs should only be established in **exceptional circumstances** (NPPF 2012 at [82] and [135] of NPPF 2018).

Legal Context



- The issue of reviewing of the GB boundary has to be considered within **the legal framework** for development plan preparation –
Part 2 of Planning & Compulsory Purchase Act 2004 (PCPA 2004); Town and Country (Local Planning) (England) Regulations 2012
- **Key requirements** – is the plan sound (s.20 of PCPA 2004) and has the duty to co-operate been met (s.33A)?
- **Soundness** –NPPF 2012 at [182]; NPPF 2018 at [35] within section 3 “*Plan-Making*”. Both relate to “*Positively prepared*”, “*Justified*” and “*Consistent with national policy*”. Important change in terms of “*Justified*” – “*the most appropriate strategy, when considered against the reasonable alternatives..*” (2012) to “*an appropriate strategy, taking into account the reasonable alternatives...*” (2018)
- **Duty to co-operate** – cf. [181] of NPPF 2012 and [24]-[27] of NPPF 2018 & SoCG

2. THE POLITICAL CONTEXT

- GB can be a very emotive and politically sensitive topic. Its protection is generally considered to be a vote winner. Inconsistent signals at times.
- Many calls, however, for a more flexible approach to releasing GB land (e.g. Institute of Economic Affairs, FREER's Report "Housing Addressed: Freeing up land, whilst protecting the environment", Sept 2018).
- Statements from PM about the high protection that will be continue to be given to GBs
- There is a tension between the Government's objective of significantly boosting housing supply to tackle the housing crisis and delivery *AND "thousands of worried residents, many of whom are natural Conservative voters, who are opposed to mass housebuilding on their doorsteps."* (FT, referring to Guildford LP, 10 April 2018).
- We now of course also have the standard housing need assessment method (NPPF 2018 at [60]). Implications of that will vary for different areas.

CPRE - "According to its research, at 1 July 2018, 459,000 homes were planned on land intended to be released from the green belt in England, up from just 81,000 in 2012."



Green belt 'being eroded at an alarming rate', says CPRE

6 August 2018 by Mark Wilding

Countryside campaigners have accused the government of failing to protect the countryside after finding that the number of homes proposed on green belt sites across England is almost 460,000, almost six times the figure for 2012.



Development: report warns over green belt loss

Publishing its annual *State of the Green Belt* report today, the Campaign to Protect Rural England (CPRE) accused the government of breaking its promise to protect the green belt.

The CPRE's analysis of local plans across England found that there are now 459,000 homes proposed on land to be released from the green belt – up from 81,000 in 2012.

Meanwhile, the number of homes built on greenfield sites in the green belt has increased from zero in 2009/10 to 3,387 in 2017/18, the CPRE reports.

The report also claims that 72 per cent of homes built on greenfield land within the green belt last year were "unaffordable" by the government's own definition.



Fresh call for government to relax green belt rules

10 September 2018 by Michael Donnelly

Councils should be required to release green belt land 'that is not worthy of the name' but losses should be compensated for by a 'green land guarantee', a report by a new free market think-tank has recommended.



Green belt: report calls for relaxation of planning rules

FREER has been established by the Institute of Economic Affairs think-tank. Its mission statement is to "refocus the political debate, shifting attention towards free enterprise and social freedom".

Its report, *Housing Addressed: Freeing up land, while protecting the environment*, written by Conservative MP Simon Clarke, says that green belt "does not, as most people might reasonably assume, correlate with 'green' or 'environmentally protected' land and much of it is far from being a valuable natural habitat".

The document argues that the government should develop "new criteria to require local planning authorities to release green belt land that is not worthy of the name".

The document says that the criteria would stipulate that green belt land must be released for housing when it is within half a mile of a railway, underground or tram station and is not subject

The never ending tug of green belt war (Use of s.21 of the PCPA 2004)



“Brokenshire freezes Hertfordshire local plan adoption to consider green belt release

Communities Secretary James Brokenshire has made a last-minute intervention to stop a Hertfordshire council adopting its local plan after a local Tory MP and countryside campaigners raised concerns about the document, including proposals to release green belt land.”

(Planning Resource - 12 September 2018)



3. THE POLICY CONTEXT: EXCEPTIONAL CIRCUMSTANCES – PREVIOUSLY UNDEFINED



NPPF 2012 at [83] & [84] advises:

83. Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

84. When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary.

Case Law:
Gallagher Homes Ltd. v Solihull MBC
[2014] EWCA Civ 1610



- The Inspector recommended adoption of the Solihull Local Plan which included return of some sites to the GB. The Plan allocated sites to the GB and removed other sites as the most appropriate means of providing land sufficient to meet the housing requirement. The subject site was returned on the basis that it was no longer considered suitable for development.
- The Inspector concluded that National policy enables reviews of the GB to be undertaken (2012 NPPF paragraph 84), including considering the need to promote sustainable patterns of development, and it is clear from SMBC's evidence that these sites would not meet this objective. These factors constitute legitimate reasons and represent the exceptional circumstances necessary to justify returning these sites to the GB.

Gallagher Homes Ltd.v Solihull MBC
[2014] EWCA Civ 1610 (2)



- The CA agreed with the J that the Inspector has not applied the stringent test for exceptional circumstances (but NB not as strict as for very special circumstances re. inappropriate development in the GB – see *R (oao Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537 at [54]).
- The CA held ([2014] EWCA Civ 1610 at [36]) that fact that a particular site within a council's area happens not to be suitable for housing development cannot be said without more to constitute an exceptional circumstance, justifying an alteration of the GB by the allocation to it of the site in question.
- Is the reverse true? i.e. the site should not be removed from the GB simply because it is suitable for housing

Calverton PC v Nottingham City Council
[2015] EWHC 1078 (Admin)



- It would be illogical to conclude that the existence of an objectively assessed need (OAN) could, without more, be sufficient to amount to “exceptional circumstances” within the meaning of the NPPF 2012 at [83].
- It was clear that the Inspector had regard to the broad content of [83].
- Therefore her evidence-based conclusion that exceptional circumstances existed to justify alteration of the GB boundaries could not be impugned.
- Mr J Jay held: *“20. ‘Exceptional circumstances’ remains undefined. The Department has made a deliberate policy decision to do this, entrusting decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case.”*

As a result of the revised NPPF > no longer the case in the sense now considered.

NPPF 2018 & Exceptional Circumstances Status quo or tightening up of the approach?



KEY POINT: It is now expressly stated that exceptional circumstances have to be **fully evidenced** and **justified** by the strategic policy-making authority.

NPPF 2018 at [136]:

136. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.

What needs to be demonstrated?

KEY POINT: Full consideration of other options



NPPF 2018 at [137]:

- Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development.
- This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:
 - a) makes as much use as possible of suitable brownfield sites and underutilised land;
 - b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
 - c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

**Considerations when drawing up or
reviewing GB boundaries**
KEY POINT: Sustainable Development



NPPF 2018 at [138] (cf. [84] of NPPF 2012):

- The need to promote sustainable patterns of development
- The consequences for sustainable development of channeling development towards urban areas inside the GB, towards towns and villages inset within the GB or towards specific locations beyond the outer GB boundary
- Plans should (where release of GB necessary) give first consideration to land which has been previously developed and/or is well served by PT
- Strategic planning authorities should also set out ways in which the impact of removing land from the GB can be offset through compensatory improvements to the environmental quality and accessibility of remaining GB land.

Exceptional Circumstances for New Green Belts



NPPF 2018 at [135] (very similar to [82] of NPPF 2012):

- Should only be established when there are exceptional circumstances e.g. when planning for larger scale development such as new settlements or major urban extensions.
- Any proposal for New Green Belt should be set out in strategic policies which should:
 - a) demonstrate why normal planning and development management policies would not be adequate;
 - b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;
 - c) show what the consequences of the proposal would be for sustainable development;
 - d) demonstrate the necessity for the GB and its consistency with strategic policies for adjoining areas; and
 - e) show how the GB would meet the other objectives of the Framework.

Criteria for defining Green Belt boundaries



NPPF 2018 at [139] (similar to [85] of NPPF 2012):

- a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;
- b) not include land which it is unnecessary to keep permanently open;
- c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;
- d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;
- e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and
- f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

4. REVIEWS IN PRACTICE: POLICY IMPLICATIONS & REALITY



- **Purpose:** tidying up previous anomalies or where changes have taken place
Issues: can changes to the GB for such a purpose be restricted or does this require a review of the GB as a whole to examine development opportunities?
- **Purpose:** to accommodate development needs
Issues: as indicated above the “permanency” objective does not preclude alteration of the GB to accommodate development. However, that is subject now to explicitly stated criteria.
 - Q. Is it truly now a “last resort” measure?
 - Q. Does meeting the identified need mean that, if there is no alternative source of supply of housing land, GB land must be released?

The presumption in favour of sustainable development

Re: [11] of NPPF 2018 cf. [14] of NPPF 2012



11. Plans and decisions should apply a presumption in favour of sustainable development.

*For **plan-making** this means that:*

- a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas (5), unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area(6); or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Delivering Homes in the Green Belt – A subtle shift? (Section 5 of NPPF 2018; Section 6 of NPPF 2012)



CF. **NPPF 2012** at [47] and **NPPF 2018** at [65]:

47. *To boost significantly the supply of housing, local planning authorities should:*

- *use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework,.....*

(See Hunston Properties Ltd. [2013] EWCA Civ 1610 – two-stage approach)

65. *Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period.*

Where does that leave this?

- The two stage approach based on [47] of NPPF 2012 was central to the approach in both the *Gallagher Homes* and *Calverton PC* cases. However, the particular wording in [47] is not included in the NPPF 2018.
- NPPF 2018 [11] indicates that GB could provide a strong reason for providing less than the OAN for housing. However, a similar approach was previously included in NPPF 2012 [14].
- This could be seen as change in emphasis to providing housing even if GB land is required to do so but not entirely clear. However, it is of note that for soundness ([35] of NPPF 2018) “*Positively prepared*” now says the plan should “*provide a strategy which, as a minimum, seeks to meet the Area’s objectively assessed needs and be informed by agreements with other authorities, so that unmet need from neighbouring authorities is accommodated where it is practical to do so and is consistent with achieving sustainable development.*”
- Q. Will this in practice dilute the arguably stricter approach to exceptional circumstances in 2018 NPPF at [136]-[138]?

Reality - What is currently going on?



Guildford Council proposes releasing new green belt sites in local plan to deliver 550 more homes

29 August 2018 by John Geoghegan

A Surrey council has proposed delivering an extra 550 homes in the first five years of its local plan, 500 of which would be on new green belt sites, as part of a series of modifications to the document.



Guildford: local plan modifications

Guildford Borough Council has published the proposed main modifications to its local plan in order for the document to be found sound.

The changes will be considered at a special meeting of the council's executive on Tuesday (4 September) before going out for consultation.

The modifications have been made in response to issues raised by the inspector Joanthan Bore during the plan's examination, the council said.

The draft plan, which sets out development goals up to 2034, had set an annual housing target

Brokenshire freezes Hertfordshire local plan adoption to consider green belt release

12 September 2018 by Colin Marrs

Communities secretary James Brokenshire has made a last-minute intervention to stop a Hertfordshire council adopting its local plan after a local Tory MP and countryside campaigners raised concerns about the document, including proposals to release green belt land.



Holding direction: housing secretary James Brokenshire. Pic: Chris McAndrew

East Hertfordshire District Council (EHDC) was last night due to hold an extraordinary meeting to adopt the plan.

The Guildford Experience



- Guildford had originally been very upset by the Inspector's concerns regarding their housing land proposals.
- The draft plan had set an annual **housing target of 654 homes**.
- During the examination the Inspector (Jonathan Bore) raised concerns that the planned delivery level in **the early years of the plan period was "not acceptable"** and called for the council to identify additional sources of housing delivery.
- He also said that the Council should accommodate **unmet need from neighbouring Woking** Council of 41 homes per years, producing a slightly higher total housing requirement **of 671 homes per annum**.
- The Council said that increasing development in the earlier years would require allocating 4 additional sites in the GB (of 200, 105, 80 and 120 homes at Godalming, Flexford, Chilworth and Send Marsh respectively). The MMs also accommodate **20% of Woking's unmet need**.

The East Hertfordshire Experience



- Mr Brokenshire's last minute intervention with the **East Hertfordshire DC Local Plan** signals that there remains at present this sensitivity.
- The intervening local MP, Mr Stephen McPartland is reported as saying *"I would like to reiterate that I do not believe the draft local plan is positively prepared, justified, effective or consistent with national policy, especially with regard to the site at the east of Stevenage, known as 'Gresley Park'."*

So he contends that the Plan is **not sound** as required by s.20 of the PCPA 2004.

- Mr Brokenshire's intervention was just **5hrs before the EHDC's** meeting to adopt the plan. In addition to the Local MP, requests for his intervention came from the Hertfordshire branch of the CPRE, 3 PCs, Bishop Stortford Civic Federation and a local campaign group.
- The plan proposed releasing the 37-hectare site, identified for 600 homes.

New Green Belts



- These may be proposed in the future given the current and emerging proposals for new towns/settlements.
- On a more esoteric note – **York City** has has not had a statutory development plan in place since the 1950s. The authority was one of 15 authorities named by former housing secretary Sajid Javid last year as facing central government intervention over their lack of progress on local plans.
- In May, the council voted to submit its local plan for examination with a housing target of 867 dwellings per year, despite warnings from officers that the target should be increased. The Plan also designated and delineate GB for the first time.
- In July 2018 the Inspectors wrote to the Council asking:

- For the purpose of paragraph 82 of the 2102 NPPF, is the Local Plan proposing to establish any new GB?
- If so, what are the **exceptional circumstances** for so doing, and where is the evidence required by the five bullet points set out at paragraph 82 of the NPPF?
- If not, does the Local Plan propose to remove any land from an established GB? If it does, is it necessary to demonstrate that exceptional circumstances exist to warrant that approach? Or is it the case that the Local **Plan establishes the Green Belt boundaries for the first time**, such that the exclusion of land from the GB—such as at the 'garden villages', for example – is a matter of establishing GB boundaries rather than altering them, in the terms of paragraph 83 of the NPPF?
- No **substantive evidence** has been provided setting out the methodology used and the decisions made for **delineating** the boundaries and the Council should now provide this.

The Examination hearing is scheduled for later this year.

5. FINALLY: REVIEWS IN THE FUTURE AND NEIGHBOURHOOD PLANS



- Only time will tell whether the changes in the NPPF will lead to a more “relaxed/flexible” or a stricter approach to releasing GB land for housing.
- The policy wording would suggest that the ping-ponging between the GB is sacrosanct lobby and the housing crisis justifies releasing GB lobby.
- The outcome, even if clear cut, will be determined by in particular what happens with housing delivery and the overall political sensitivities to releasing GB in terms of electoral prospects as perceived by the political parties, and currently particularly the Conservatives.
- One very specific change relates to the role of Neighbourhood Plans in relation to the extent of the GB.

NPs and Amendments to Green Belt Boundaries



- It has been an often asked question as to whether a NP could alter a GB boundary.
- The usual answer has been no as that was a strategic matter for the local plan.
- This is now changing from 24th January 2019 by reason of 2018 NPPF [136].
- Where the strategic policies establish exceptional circumstances for the need for any changes to GB boundaries **detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.**

Q. This will raise issues to to the extent of any such detailed amendments.

Q. How much guidance will be provided by the strategic policies?

A final thought....."there is going to be some element of green belt" for building homes



Jacob Rees-Mogg (pic: LadyGeekTV via Flickr)

Speaking on the *Financial Times*' politics podcast, Rees-Mogg said there needs to be a "difficult conversation" with Conservative supporters "about where we build on green fields".

"It is going to be primarily on green fields but there is going to be some element of green belt as well because not all green belt land is areas of outstanding natural beauty. Some of it is not very good quality land that was made green belt for a different purpose decades ago," he said.

Elsewhere, the MP for North East Somerset argued that the country needs to return to building more houses with gardens.