

**Welcome to Landmark Chambers’  
‘Developing in the Green Belt’ webinar**

The recording may be accessed [here](#).

# Your speakers today are...



**Robert Walton QC (Chair)**



**John Litton QC**

**Topic:** Weighing  
the impact on  
openness



**Matthew Reed QC**

**Topic:** Dealing  
with housing  
need in a  
Green Belt  
authority

# Your speakers today are...



**Topic:** Paragraph 145 and the exceptions

**Kate Olley**



**Topic:** Exceptional Circumstances and Removing Land from the Green Belt (including *Compton*)

**Jenny Wigley**



**Topic:** VSC – what needs to be shown: a round-up of recent planning appeals

**Matthew Dale-Harris**



**Topic:** Reform and reassessment of the Green Belt

**Nick Grant**

# Exceptional Circumstances and Removing Land from the Green Belt (including *Compton*)



**Jenny Wigley**

## Policy Framework Reminder (1)

- NPPF paras 136 – 139;
- Once established “*Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified*” (in development plan process);
- Need for any change has to be established through strategic policies;
- But then detailed boundaries can be adjusted through non-strategic policies, including Neighbourhood Plans.

## Policy Framework Reminder (2)

- No definition of ‘exceptional circumstances’ – left ‘deliberately broad’
- But, before concluding that exceptional circumstances exist, strategic plan-making body must demonstrate it has examined fully all other reasonable options for meeting development need, including –
  - suitable brownfield sites / underutilised land;
  - optimisation of density standards;
  - possibilities for neighbouring authorities to accommodate some of the identified need. (para 137)

## Policy Framework Reminder (3)

- Need to consider consequences of any altered Green Belt boundary on need to promote sustainable patterns of development;
- Once decided to remove land from Green Belt, offset by compensatory improvements for remaining Green Belt land;
- Ensure consistency with development plan's strategy for sustainable development
- Once decided to alter, do not include land that is unnecessary to keep permanently open;
- Identify areas of safeguarded land;
- Ensure endurance beyond the plan period;
- Set legible and permanent boundaries by reference to physical features.

## Courts' Approach to Exceptional Circumstances

- Recent decision of Ouseley J in Compton PC v. Guildford BC & SSHCLG [2019] EWHC 3242 (Admin);
- OAN 10,678, supply 14,602 including 6295 GB;
- Challenge to both principle and extent of Green Belt release – Claimants alleged:
  - Inspector had treated the normal as exceptional;
  - lack of rationality or lack of adequate reasons for GB releases resulting in some 4,000 above OAN;
  - lack of consideration of scope for leaving some need unmet to reflect GB constraints (NPPF 2012 para 14 and 47; NPPF 2019 para 11 and 65 – ‘policy on consideration’)
  - breach of SEA Regs re: consideration of reasonable alternatives when OAN was reduced by 2,000



## Claims Dismissed

- Inspector's reasons full and extensive, referring to many more relevant factors than simply unmet need;
- Emphasised integrated nature of proposals, importance of both small and strategic sites to 'future proof' trajectory, persistent shortfall in delivery, affordable housing and deteriorating affordability, meeting Woking's unmet need, contribution of sites to infrastructure and other benefits, gypsy and traveller sites, sustainability of chosen locations, lack of adverse impact on openness and purposes of the Green Belt;
- Expressly addressed the 'policy on' issue, 'headroom' and alternatives;
- Considered exceptional circumstances at both strategic and local levels.

## **Compton judgment summarises and clarifies principles from previous body of caselaw:**

- Exceptional circumstances – matter of law or planning judgement (consider *Gallagher*)?
- Unmet need sufficient ‘of itself’ to qualify (cf *Calverton*)?
- Do not ‘over analyse’ – judicial emphasis on rationality of the judgement rather than a definition or criteria or characteristics for that which the policy maker has deliberately left in broad terms;
- Confirmation that ‘exceptional circumstances’ test less demanding than vsc;
- No ‘last resort’ requirement; no ‘falsification’ test;
- ‘Exceptional’ not restricted to matters unlikely to recur in similar fashion elsewhere;
- Consideration of exceptional circumstances necessarily involves consideration of the application of restraint policies at ‘policy-on’ stage – no need for separate exercise.

## One to watch:

### *Aireborough Neighbourhood Development Forum v. Leeds CC and SSHCLG*

- s.113 challenge heard in early February before Lieven J;
- Some similar issues re exceptional circumstances, consideration of alternatives and headroom (but very different facts)
- Judgment awaited.

## Dealing with housing need in a Green Belt authority



**Matthew Reed QC**

## Addressing housing need in a Green Belt authority

- How an authority can meet its housing OAN requirements in plan-making context: (a) provide outside GB; (b) provide for need in another authority's area to avoid/minimize GB release; (c) through removal of land from the Green belt; (d) not release GB land and not provide for OAN.
- Issues I'll be dealing with:
  1. Removing Land from the Green Belt: Is housing need sufficient of itself to remove land from the GB?
  2. How have Inspectors justified the removal of land from the GB – has housing need in practice been sufficient? The two-stage process of justification.
  3. What other factors can be used to justify changes to Green Belt boundaries: sustainable locations for development.
  4. Use of another Authority's Land - DtC.
  5. Use of neighbourhood plans as a way of making substantial boundary changes.
  6. Not meeting the OAN?

## Removing Land from the Green Belt – housing need alone sufficient?

- *Calverton*: objectively assessed housing need of itself could not logically be sufficient to amount to exceptional circumstances for plan change [50].
- But in *Compton* - accepted that need of itself could be sufficient [72]: “it is simply not necessarily sufficient of itself”: i.e. it may be sufficient depending upon the circumstances.
- But reality is must look at steps in NPPF 137-138 (use brownfield, increase density, DtC discussions) (highlighted in *Compton*); once satisfied those (i.e. ways of meeting housing need), housing need is sufficient. So need will always be considered against these other factors; if not met, not justify release.

## In practice.

Examples of need supported by other factors -

- Cheshire East inspector (2017) found that exceptional case for releasing to meet housing need, affordable housing, combined with the adverse consequences for patterns of sustainable development of not doing so; and the lack of alternative options to releasing GB land.
- Guildford (2018): pressing housing need, severe and deteriorating housing affordability, very serious shortfall in the provision of affordable homes, lack of urban area development opportunities
- East Herts (2018): acute housing need and supply of land outside GB constrained and HMA partners not accommodate, seek their own boundary changes; brownfield and urban density explored. Because of lack of access to services and facilities, and lack of access to sustainable transport modes, locating more development outside the GB would not be sustainable.

## Cont.

- Barnsley (2018): very significant need, maximising density sought and brownfield land searches undertaken; no scope for neighbouring authorities to meet the needs which in different HMAs;
- Wycombe (2018): every effort had been made to find land outside the GB to meet OAN.
- New Forest DC (2020): exceptional circumstances in need to meet housing requirement and only on strategic sites (1,500 houses) which had limited role in meeting GB purposes. Increases in density would have limited effect; discussions with neighbouring authorities not led to them taking need.
- Cambridge (2018): 2 sites released but only 400 of 14,000 requirement – not able to meet requirement in own boundaries and probably mean development in less sustainable rural locations; given limited amount, benefit outweighed harm of release.



# Sustainable Locations

Provision of sustainable forms of development can be sufficient: para. 138, but is secondary to the release of land.

In practice, sustainability has been a factor, e.g.:

- Wyre Examination (2018): release at most sustainable locations and with limited harm.
- Sunderland (2020): exceptional circumstances in order promote sustainable patterns of development. Release of non-GB land instead of GB land would lead to the loss of the identity of settlements, eroding settlement breaks and putting extra burdens on infrastructure.
- East Herts Examination: lack of sustainability if releases not made.

## The Two-Stage Approach

General justification followed by specific justification for the particular boundary changes.

In practice:

- South Cambridgeshire DC Examination Report: when assess, visual issues, openness and purposes into account.
- Barnsley; general justification followed by specific site analysis.
- Wycombe, sustainability issues taken into account.

- DTC – 137 NPPF requires discussions for accommodating before release.

In practice, a necessary consideration:

- Endorsed in Hart: Hart taking Surrey Heath BC land, even though Surrey Heath's plan not yet adopted.
- Guildford. Taking Woking's unmet need through headroom (42dpa); Waverley did so as well (83dpa).

## Use of Neighbourhood Plans to make substantial amendments to the Green belt boundary

- This has been attempted: Parish Council sought to deal with; in appeal, point raised but I. concerns (Burston Barden Centre [APP/B1930/W/19/3235642]).
- Not able to make: independent examiner must decide whether in accordance with NPPF; NPPF says NPs can only be used to make detailed changes. Justification for release in local plan – setting out pattern and scale of development: paras. [136] and [65].

## Authorities not meeting OAN?

Unsurprisingly, a limited number of authorities are taking this approach.

- The NPPF 19, raised bar for not providing needs, in para. 11 compared to para. 14 and 47 of the NPPF 12. – now whether a “strong reason” for not meeting need as opposed to policies “indicating” not meet needs.
- Not many authorities adopting approach of not meeting OAN. Surrey Heath Borough Council is one but plan at preferred options stage.

## VSC – what needs to be shown: a round-up of recent planning appeals



**Matthew Dale-Harris**

## VSC appeals: the broad and the narrow view

- Since beginning of 2019 c. 75 English appeals have been determined which consider VSC. 41 allowed (at least in part). Also recent clutch of recovered appeals which offer insight into thinking of SoS.
- Two parts to this talk:
  - A brief summary of three biggest categories of cases where VSC have been shown in 2019/20.
  - A more detailed discussion of three most recent recovered appeals (2 allowed, 1 dismissed):
    - [Land at Moor Lane, York](#)
    - [Oxford Brookes, Wheatley Campus](#)
    - [160 Stanley Road, Cheadle Hulme, Stockport](#)

# 3 biggest categories of successful VSC cases (19/20)



## Specialist housing: travellers & rural workers

- Traveller (12 successful)
  - Common backdrop: failure to plan for sufficient sites + evidence of personal need
  - s.149 PSED and PPTS (2015)
  - Can LPA identify suitable and affordable alternative?
- Rural workers (4 successful)
  - Generally turn on compliance with NPPF 79(a) – is there an “essential need” and is business viable



## Infrastructure

- West Midlands SFRI DCO
  - Need case for Black Country and South Staffs established and no suitable alternatives.
  - That national and regional case “outweighs any harm” (DL 68)
  - However amendment allowing more flexibility for warehouse timing rejected to ensure GB harm could not occur without rail connection
- See also A585 Improvement DCO



## Community / social benefit

- 2 schools:
  - West Drayton. Portacabin classroom met VSC for Muslim faith school where no other scope for housing students.
  - Stanley Road (to follow). School + housing need
- 110 extra care units at Whitchurch Road, Chester. Substantial weight given to socio-economic case : Units would relieve pressure on community/health facilities.



# Land at Moor Lane, York (13 May 2020)

- **Context:** Proposal for 516 residential units + local centre and sports pavilion. 35% affordable housing proposed – above 30% policy requirement.
- York heavily constrained: a “housing crisis”, both for market and AH.
- Inspector and SoS gave **considerable weight** to housing.
  - Moderate excess AH should be given “*disproportionate value*” (IR 365)
  - Ins: “*it might be thought that these cumulative disproportionate benefits would clearly outweigh ... [GB & LV harm] if those were the only two adverse considerations*”.
- **Decision:** VSC not met because Askham Bog SSSI would be harmed. NPPF 175(b) and (c) not met (IR 356-359) (DL 30-32).
- N.B. IR 350: “*benefits which are not disproportionate would be unlikely to contribute to a finding of [VSC]*”; SoS not so sure... at DL 23.

# Oxford Brookes, Wheatley Campus (23 April 2020)

- **Context:** Redevelopment of campus and surrounding land for 500 dwellings including 173 AH units. Emerging plan proposed release but limited weight. LPA could should 5YHLS but accepted an “acute” shortage of AH.
- SoS accepted campus PDL – only 14 % of proposed built form inappropriate.
- Proposal removed existing 12 storey tower. Removal of visual benefit to openness.
- **Decision:** VSC made out. SoS gave:
  - **Very substantial weight** to housing in light of AH shortfall
  - **Very substantial weight** to benefits of removal of tower
  - Also gave **significant weight** to economic benefits (DL 36) heritage benefits (DL 37); and reinvestment of proceeds in the education sector (DL 38).

# 160 Stanley Road, Cheadle Hulme, Stockport (22 April 2020)

- **Context:** Seashell Trust applied for pp. for new special needs school and 325 dwellings. Emerging GMSF proposes release but limited weight.
- **Decision:** SoS endorsed Inspector's consideration of detail of proposal – could not be said that the “Transformation Project” was more than minimum necessary (DL 26) nor that anticipated cost not justified nor could it be met without crossfunding from resi in GB (DL 27). Given **substantial weight**.
- SoS also gave **very significant weight** to housing benefits
  - Only 2.8 years of supply
  - 30% AH offered, with clawback.
- **Moderate weight** to economic benefits & to improvements to community facilities (DL 31)

## Take away points

- SoS willing to give very substantial/considerable weight to housing in VSC balance – even where 5YHLS present (see Wheatley Campus).
- AH position carries real weight – even moderate ‘policy plus’ offer can be given “disproportionate” weight (see Inspector in Moor Lane)
- Note Inspector in Moor Lane’s focus on “disproportionate benefits” as the acid test for VSC.
- Some particular aspect of community benefit appears to make a difference:
  - SEN school in Stanley Road
  - Whitchurch Road extra care units
  - Educational reinvestment in Wheatley Campus

## Weighing the impact on openness



**John Litton QC**

# Samuel Smith Old Brewery

## Facts

- North Yorks CC granted planning permission for the extension of an existing magnesian limestone quarry in the Green Belt.
- OR contained a section on the landscape impacts and the impact on the Green Belt in which she posed 2 questions (1) would the development preserve the openness of the Green Belt; and (2) would it conflict with the purposes of including land in the Green Belt?
- Answers were “yes” to (1) and “no” to (2).
- The development had a visual impact but it would not materially harm the character and openness of the Green Belt and complied with the relevant local plan policies and NPPF.

## Green Belt policy

- Essentially unchanged since Circular 42/55, PPG2 and the 2018 NPPF.
- Fundamental aim = to prevent urban sprawl by keeping land permanently open. Their essential characteristic is their openness and permanence.
- Five purposes of Green Belt (1) check unrestricted sprawl of large built-up areas; (2) prevent neighbouring towns coalescing; (3) safeguard countryside from encroachment; (4) preserve setting/special character of historic towns; and (5) assist urban regeneration by encouraging reuse of derelict/other urban land.
- Clear from fundamental purpose/aims of GB that visual quality of the landscape is not in itself an essential part of “openness”.

## “Openness”

- Broad policy concept variously defined by the Courts as “unbuilt on land” or “the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact”.
- Openness is related to the fundamental aim of preventing urban sprawl and keeping land permanently open. It is not necessarily a statement about the visual qualities of the land (but may be an aspect of the planning judgment involved in applying the concept of openness).
- E.g. large quarry may be visually unattractive but that doesn’t necessarily mean it impacts on the openness. As a barrier to urban sprawl, a quarry may be no less effective than a stretch of agricultural land. The counter-point is that new buildings which, although they may have a limited visual impact, reduce openness.



## Material considerations

- Crucial to understanding the relevance of visual impact on “openness” is the s. 70(2) TCPA requirement to determine applications having regard to the development plan and “any other material considerations”.
- A material consideration must be taken into account:-
  - where the relevant statute requires, expressly/impliedly, a matter to be taken into account e.g. s. 70(2) requires the decision taker to take into account the development plan or s.66 LBA and the need to have special regard to the desirability of preserving listed buildings etc
  - where something is so obviously material that it would be irrational not to take it into account. E.g. where planning policy requires it to be taken into account.

## Materiality of visual impact to openness

- Were visual impacts expressly/impliedly identified in the Act or policy as considerations which the decision taker was required to take into account as a matter of legal obligation or because they were so obviously material?
- Answer – “no”. NPPF 90 does not expressly refer to visual impact as a necessary part of the analysis of whether mineral extraction would preserve the openness of the GB or conflict with the purposes of including land in the GB. Nor on the facts of the case were the visual impacts obviously material to whether the proposed development (an extension of an existing quarry) would affect the openness of the GB.
- What was material was that minerals can only be extracted where they are found, the temporary nature of the impacts and requirement for restoration.

## But...

- Although visual impact not material to openness in *Samuel Smith*, SC was not saying it is never relevant. Fact dependent and a matter of planning judgment.
- Where visual impact is relevant to openness, weight is a matter for decision taker.
- Visual impact is likely to be a material consideration to be weighed in the overall planning balance even if not relevant to openness. Again matters of planning judgment.

## Paragraph 145 and the exceptions



**Kate Olley**

## NPPF 145- what isn't inappropriate?

- 145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
  - a) buildings for agriculture and forestry;
  - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
  - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
  - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
  - e) limited infilling in villages;
  - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
  - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: – not have a greater impact on the openness of the Green Belt than the existing development; or – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

## Agricultural occupancy

- *Alison Hook v SSCLG and Surrey Heath BC* [2020] EWCA Civ 486
- No new issue of law (Lindblom LJ)
- Had the Inspector erred in concluding that a dwelling was not a ‘building for agriculture’ and therefore inappropriate development in the GB- even though the applicant had suggested a condition could be imposed to restrict occupancy to an agricultural worker?
- Lindblom LJ pulled out some basic points from the relevant cases (including Samuel Smith)
  - *R. (on the application of Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404; [2016] Env. L.R. 30
  - *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P. & C.R. 1

(both cited with approval by the Supreme Court in *R. (on the application of Samuel Smith's Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3)

## Para 7

- 1) The concepts referred to in NPPF policy for the Green Belt – "inappropriate development", "very special circumstances", the preservation of the "openness" of the Green Belt, the impact of development on "the purposes of including land within it", and so on – are **not concepts of law**. They are **broad concepts of planning policy**, used in a wide range of circumstances (see the judgment of Lord Reed in [\*Tesco Stores Ltd. v Dundee City Council\* \[2012\] UKSC 13; \[2012\] 2 P. & C.R. 9](#), at paragraph 19). Where a question of policy interpretation properly arises, understanding those concepts requires a sensible reading of the policy in its context, without treating it as if it were a provision of statute. Applying the policy calls for realism and common sense.

## contd

- 2) In dealing with the "threshold" question of whether a proposal is for "inappropriate development" in the Green Belt, and then in deciding whether the proposal is acceptable and ought to be given planning permission, **the decision-maker must establish relevant facts and exercise relevant planning judgment.** If called upon to review the decision, the court will not be drawn beyond its limited role in a public law challenge (see the speech of Lord Hoffmann in [\*Tesco Stores Ltd. v Secretary of State for the Environment\* \[1995\] 1 W.L.R. 759](#), at p.780G-H). The interpretation of planning policy falls ultimately within that role, but the decision-maker's application of policy will only be reviewed on traditional public law grounds (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraphs 18 and 19). As this court has emphasized more than once, excessive legalism must be avoided (see, for example, [\*East Staffordshire Borough Council v Secretary of State for Communities and Local Government\* \[2017\] EWCA Civ 893, \[2018\] P.T.S.R. 88](#), at paragraph 50). The court will not second-guess the decision-maker's findings of fact unless some obvious mistake has occurred, nor interfere with the decision-maker's reasonable exercise of planning judgment. But if an error of law is demonstrated- such as a misinterpretation of relevant policy leading to a failure to exercise a planning judgment required by that policy- its duty is to act.



## contd

- 3) The **nature of the decision-maker's task will differ from one kind of development to another**. For example, whether a proposal is for "**buildings for agriculture and forestry**"- the first category of "new buildings" that are not to be regarded as "*inappropriate development*" under the policy in paragraph 89 of the NPPF- will be largely if not wholly a **matter of fact**. There is no proviso in that category (see [Lee Valley](#), at paragraph 19). By contrast, assessing whether a proposed "[**facility**] for **outdoor sport**"- the second category in paragraph 89- would "preserve the openness of the Green Belt" is largely a **matter of planning judgment**. The same applies to proposals for "mineral extraction" or "engineering operations"- two categories of "other forms of development" that are potentially "not inappropriate" under the policy in paragraph 90, which are subject to the same proviso. The requisite planning judgment will turn on the particular facts. It is not predetermined by the general statement in paragraph 79 that one of the "essential characteristics" of Green Belts is their "openness"- meaning, in that context, the mere presence of buildings, regardless of any visual impact they might have (see [Lee Valley](#), at paragraph 7). In the context of a development control decision, as Sales LJ observed in [Turner](#) (at paragraph 14), "[the] word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case", and (at paragraph 15) "[the] question of visual impact is implicitly part of the concept of [the] "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF".

## Central question in the case

- **Failure to have regard to agricultural occupancy condition?** - was the inspector was entitled lawfully to find, essentially as a matter of fact and degree, that the development for which planning permission was being sought by the claimant was not a "building for agriculture", which led to his conclusion that it was "inappropriate development" in the green belt.
- If the crucial findings of fact generating that conclusion were lawfully made, the inspector was not required to consider the imposition of a condition to control the occupancy of the building on the assumption, contrary to those findings, that it was, or would in the future become, a "building for agriculture".
- On the case presented to him, the inspector's conclusion that the proposed development was not a "building for agriculture" embodied an entirely lawful application of green belt policy, and was unassailable. It followed that the inspector had been entitled, and right, not to take the suggested agricultural occupancy condition into account when determining the appeal. Though obviously aware of the proposed condition, he had not acted unlawfully by omitting to have regard to it in making his decision. He was not required to take into account a condition that was incompatible with the proposal before him (see paras 41, 45, 50-54 of judgment).

## Rural exception site

- *Housing Plus Group v South Staffordshire Council* [2020] 1 WLUK 530; [2020] PAD 19
- Developer appealed against decision of LPA denying permission for a development scheme within the GB.
- Proposed scheme- consisted of five houses and five bungalows, to be located in an unused field within the GB as defined by the LPA's Core Strategy DPD.
- Field adjacent to the settlement boundary of a small settlement falling within the category of "other villages and hamlets" under the development plan.
- Scheme proposed as a "rural exception site" within the meaning of the development plan, with all of the dwellings being affordable and for occupancy by local people.

## contd

- A main issue in the appeal- **was the scheme inappropriate development in the green belt** (for the purposes of both the development plan and the NPPF)?
- Development plan indicated support for schemes for the provision of 100% affordable housing on rural exception sites in "other villages and hamlets" where a need had been demonstrated. Five criteria had to be met for a site to be a "rural exception site" and, in the instant case, those criteria were satisfied.
- First, it was common ground that the site was immediately adjacent to the existing village development boundary. Though certain third parties argued that the settlement was a hamlet instead of a village, the plan clearly indicated that rural exception sites were acceptable in settlements classified as "other villages and hamlets" without further distinguishing between them. Secondly, a housing need had been identified in the parish or in one or more adjacent parishes. Thirdly, the size and scale of the development and its relationship to existing services and facilities was acceptable. Though the settlement had no services or facilities and no public transport, such that future residents would need a car, it was close to a main service village. Moreover, rural exception sites were, by their nature, found in places not normally considered suitable for housing. The allocation system, under which people would choose the property themselves, meant it was likely that people without a car would not pick the location. Fourthly, a s106 agreement had been submitted as part of the proposal, ensuring the long-term affordability of the scheme for local people. Finally, the scheme would be sympathetic to the prevailing character of the area. Though just outside the development boundary, the site was surrounded by housing and other built development and would not represent a significant incursion of the settlement into the open countryside. Thus, the scheme amounted to a rural exception site and would not be inappropriate development in the green belt or contrary to the local plan or the Framework.

## Para 146 – some analogy in terms of key test of openness

- NPPF 146- Certain other forms of development also not inappropriate as long as openness is preserved and they do not conflict with the purposes of including land within the GB.
- Reminder- Ouseley J in *Europa Oil and Gas Ltd v SSCLG* [2013] EWHC 2643. Impact on openness a matter of judgment which will take into account the nature of what is proposed (there, mineral extraction- 146a)
  - “66. Secondly, as Green Belt policies NPPF 89 and 90 demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and one a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another. The one it is harmed by because of its effect on openness, and the other it is not harmed by because of its effect on openness. These concepts are to be applied, in the light of the nature of a particular type of development.”

## Example of the approach taken

- Smithsonhill Limited- South Cambs- Agritech technology park
- SoS concluded that transport infrastructure in the GB (146c) was not inappropriate development although would have a substantial impact.
- “13. The part of the proposal to take place in the Green Belt includes the bus/cycle interchange and pedestrian/cycle connections along with part of the proposed bridge. The Secretary of State has carefully considered the Inspector’s assessment of the proposals impact on the Green Belt at IR320-331 and he considers that the transport infrastructure would provide useful connections for general public use. He further agrees with the Inspector at IR326 that it would be very difficult to achieve the transport infrastructure works without using Green Belt land. The Secretary of State agrees with the Inspector (IR326) that the interchange works are local transport infrastructure that would require a Green Belt location.
- 14. The Secretary of State agrees with the Inspector at IR327 that the transport infrastructure would erode the open feel of this part of the Green Belt in special and visual terms and would harm openness. He further agrees with the Inspector at IR328 that the works would have an urbanising influence on this part of the open countryside and that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. However, he agrees with the Inspector (IR329) that the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the threshold set out at paragraph 146 of the Framework. As such he concludes that the exception for local transport infrastructure would apply, and that the proposed development would therefore not be inappropriate development in the Green Belt. As such the Secretary of State concludes that the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy.”

## Reform and reassessment of the Green Belt



**Nick Grant**

## Reform and reassessment: battle lines

- Public generally supportive of green belt
  - CPRE & Natural England [\*Green belts: A greener future\*](#) (2010)
  - Ipsos Mori [poll](#) for CPRE (2015)
  
- But pressure from industry and economic actors:
  - OECD Surveys of the UK (2011, 2013, 2015, [2017](#))
  - Policy Exchange [\*Rethinking the Planning System for the 21<sup>st</sup> Century\*](#) (2019)
  - *The Times* interview with [Sir John Armitt](#) and [editorial](#) the same day



## Reform and reassessment: options

- Complete abolition
  - Adam Smith Institute [The Green Noose](#) (2015)
  - Policy Exchange?
- Redraw the lines – remove land around railway stations
  - *The Green Noose*
  - Centre for Cities [Homes on the Right Tracks](#) (2019)
  - (though note 2015 RTPI Paper on [commuting patterns](#))
- Refocus purpose
  - Monbiot et al [Land for the Many](#) (2019)

## Reform and reassessment: government response

- Consistent line of green belt protection
  - Response to OECD suggestions
  - NPPF 2019
  - £8m cash boost for [“vibrant new communities”](#)
  - Esther McVey’s speeches in late 2019, e.g. to [MIPIM](#) or on the [NPPF](#)
  
- Recent change?
  - Robert Jenrick [speech](#) (Feb 2020)
  - [Planning for the Future](#) (March 2020)
  
- [Green Belt Protection Bill](#) (2019-2021)

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.**

# Thank you for listening

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