

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



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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.

Thank you for listening

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