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NPPF Case Law Update:

Green Belt after *Samuel Smith*

Introduction

- *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3*
- Key issue = the meaning of “*openness*” in the Green Belt, in particular relationship between *openness* and *visual impact*.

“It seems surprising in retrospect that the relationship between openness and visual impact has sparked such legal controversy.” [23]

"Green Belt makes
me and my family
who we are."

#OurGreenBelt



Campaign to Protect
Rural England
Standing up for countryside



I'M NOT JUST A PRETTY PLACE...



I am the Green Belt &
I Encourage Urban Regeneration
Green Belt protection encourages the recycling of
derelict & other land inside towns & cities

”Openness” in the NPPF

- Openness is the backbone of GB policy.

“133. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

134. Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;**
- b) to prevent neighbouring towns merging into one another;**
- c) to assist in safeguarding the countryside from encroachment;**
- d) to preserve the setting and special character of historic towns; and**
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”**

”Openness” in the NPPF

“143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

”Openness” in the NPPF

“145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

...

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;

...

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”**

”Openness” in the NPPF

“146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;**
- b) engineering operations;**
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;**
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;**
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and**
- f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.”**

Samuel Smith: what was the case about?



Samuel Smith: landscape impacts

- ‘Quality of the Locally Important Landscape Area as a whole would be compromised’
- *Exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so.*
- *Long distance views could be cut off by the proposed bunding and planting.*
- Agricultural land would ultimately be replaced by a ‘deep lower level landscape’ of grassland.
- The ‘character and quality’ of the landscape would be ‘permanently changed’ and the ‘impact cannot be described as neutral’

Samuel Smith's argument

- NY erred in failing to treat the visual effects of the development as “material considerations” in its application of the openness proviso under paragraph 90 (now para 146).
- In other words, visual impact needed to be considered by the Council not just, for example, when thinking about landscape or visual amenity but specifically *through the prism* of openness

Samuel Smith: the judgment

“... The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.” [39]

Reflections on the case

What are the most important points to take away from this case?

1. Openness as a “broad policy concept”

- **“The concept of “openness” in paragraph 90 of the NPPF seems to me a good example of... a broad policy concept.” [22]**
- For the planning decision-maker to decide, on the facts of any given case, what factors are relevant when considering whether openness is preserved.
- Only if the decision maker has failed to consider a factor that, on the facts of the case, was “so obviously material” as to require direct consideration, that there will be scope for the court to intervene.

2. Openness ≠ landscape quality

- **“It is clear therefore that the visual quality of the landscape is not in itself an essential part of the “openness” for which the Green Belt is protected.” [5]**
- **“As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land....” [22]**
- **“Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication.” [39]**







3. But visual aspect is not *irrelevant*

- “...though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept.” [22]
- Possible examples:
 - Mineral extraction requiring restoration
 - Development in GB that constitutes setting of historic town
 - Development particularly close to GB/urban boundary that risks contributing especially to urban sprawl

4. Openness as “counterpart to urban sprawl”

- **“It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...” Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt.” [22]**
- Not about openness or absence of development “per se”. Absence of “urbanising development”?
- Mineral extraction, Court highlighted that generally temporary, can be restored, and minerals can only be worked where found.
- **“...Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land” [22]**

Post-war housing

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5. Planning common sense

- Lord Carnwath emphasized:
 - The proper distinction between planning policy application and interpretation;
 - That officer's reports must be read fairly and as a whole, and not subjected to exegetic analysis as if they were a contract.
- During coronavirus pandemic, worth bearing in mind even more than usual when considering challenges.

Questions?

Thank you for listening

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