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Paragraph 145 and the exceptions

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NPPF 145- what isn't inappropriate?

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- 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 Courtin *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.

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- 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.

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- 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 re*garded 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.

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- 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.”

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Thank you for listening

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