

## 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.

## Thank you for listening

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