

Development affecting MOL, GB and Local Green Spaces in London



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Definitions

- Green Belt – Emerging London Plan:
“A designated area of open land around London (or other urban areas). 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”
- Metropolitan Open Land – Emerging London Plan:
“Extensive areas of land bounded by urban development around London that fulfils a similar function to Green Belt and is protected from inappropriate development by land-use planning policies”
- Local Green Space – PPG:
“Green areas of particular importance to local communities”

Summary of relevant policies

	Current London Plan	New London Plan	NPPF	PPG
GB	Policy 7.16	Policy G2	Chapter 13, in particular 143-147	“Green Belt” (22 nd July 2019), para 1
LGS	Para 7.58A	N/A	99-101 & Ch.13	*
MOL	Policy 7.17	Policy G3	Ch.13 (see LP7.56)	“Green Belt” (22 nd July 2019), para 1

*PPG, “Open space, sports and recreation facilities, public rights of way and local green space” (6th March 2014), paras 5-22 discusses the designation of LGS

What do the policies say?

- London Plan, Policy 7.16
 - Strongest protection should be given to London's GB
 - Inappropriate development should be refused except in VSC
 - Ref. to national guidance
- London Plan, Policy 7.17
 - MOL should be given same level of protection as GB
 - Essential ancillary facilities for appropriate uses only acceptable where they maintain the openness of MOL
- London Plan, para 7.58A
 - Policy for controlling development on LGS = GB policy

What do the policies say?

- NPPF, Chapter 13 – Protecting GB Land
 - 133: essential characteristics of GB = openness & permanence
 - 134: five GB purposes
 - 143: inappropriate development should not be approved except in VSC
 - 144: substantial weight to GB harm; must be clearly outweighed
 - 145: construction of new buildings = inappropriate dev.; 7 exceptions
 - 146: 6 more exceptions to inappropriate development
 - 147: renewable energy projects in GB often = inappropriate dev.
- NPPF, para 11(d)(i) – fn.6 – application of GB/LGS policies & tilted balance

What do the policies say?

- PPG – Green Belt, para 1 – factors to consider when assessing impact on openness of GB:
 - Openness incl. both spatial and visual aspects
 - Duration of development and remediability
 - Degree of activity likely to be generated e.g. traffic

Recent Appeal Decisions

- 12 decisions re GB, MOL and LGS in London over past 12 months
- Only 4/12 successful
- 6 MOL; 5 GB and 1 LGS

Success Story (1)

- **Land at Harrow School (APP/M5450/W/18/3208434)**
 - Proposal was inappropriate development in the MOL
 - Openness: no visual harm but harm through erosion of MOL
 - Proposed extension of MOL to restrict further development = “pragmatic and reasonable approach” but minimal weight given
 - **VSCs clearly outweigh harm and sufficient to justify development**
 - Educational need for science & sports – for school & local community
 - Free/discounted access for local state schools & community groups
 - Lack of alternative sites to deliver sports & science need
 - Compliance w/ Harrow School SPD
 - Biodiversity gains

Success Story (1)

- VSC balance upheld by the HC in Mayor of London v SSHCLG [2020] EWHC 1176, at [104]-[134]
 - NPPF144: “...and any other harm resulting from the proposal”
 - Test correctly set out in IR, [3]
 - Usual warning against “excessively legalistic” challenge to IR
 - Even if heritage harm was not properly taken into account in the SoS’s decision the outcome would inevitably have been the same

Success Story (2)

- **Heathrow Service Station (APP/R5510/W/19/3229922)**
 - NPPF, 145(g) – limited infilling or redevelopment of PDL w/o greater impact on openness of the GB
 - Infilling = “development of a small gap in an otherwise built-up context”
 - PDL = “land which is or was occupied by a permanent structure, including the curtilage of the developed land...”
 - Proposal arguably infill; appeal site = PDL
 - No conflict w/ 5 purposes in NPPF134
 - Openness – Euro Garages [2018] EWHC 753; loss of openness in spatial & visual sense but very little *harmful* loss given setting
 - **Not inappropriate development**

Success Story (3)

- **Pillory Down Stables [2020] P.A.D. 13**
 - Proposal did not accord w/ Local Plan Policy on re-use of buildings in GB
 - But Local Plan policy was more restrictive than London Plan 7.15 and NPPF so greater weight given to latter
 - Applicable exceptions:
 - 146(d): re-use of buildings of “permanent and substantial construction”
 - 146(e): material change in use of the land
 - 145(c): alteration of a building w/o disproportionate change in size
 - [20]-[24]: detailed comparison of the proposal’s impact on openness versus existing permission – considered spatial, visual and use changes
 - **Not inappropriate development**

Success Story (4)

- **Will to Win, Chiswick House Grounds (APP/F5540/W/19/3237850)**
 - MOL consideration very brief: [13]-[14]
 - Floodlights not considered to be inappropriate development so long as openness of MOL preserved
 - Floodlights would have visual presence but “height, number and scale” limited → no material harm to openness

Cautionary tales

- **Former Imperial College Private Ground (APP/L5810/W/18/3205616)**
 - Agreed that proposal = inappropriate development
 - Development needs to be considered as a whole
 - NPPF145(b) – provision of appropriate facilities for outdoor sport etc.
 - Have to preserve openness and not conflict w/ purposes
 - Purposes of LGS is “somewhat different” to purposes of GB → “protect green areas of particular importance to the community”
 - Provision of housing – even where unmet need – not usually sufficient to outweigh presumption against inappro. dev. in the GB → same for LGS

Cautionary tales

- Must consider proposal as a whole: Eltham Town FC (11/09/19)
- Extant permission on the site not relevant: The Barge Dock Site (13/02/20) but cp. Pillory Downs Stables (above)
- NPPF145(f) – affordable housing exception – cannot be met by financial contribution: The Barge Dock Site (above)
- London Plan Policy 7.17 is consistent with new NPPF → full weight given to it: Steam Packet Steps (30/07/19)
- Putting up a radio mast, antennae & shelter = building not engineering op. → GB policy applies: Lordland's Farm (17/07/19)

Thank you for listening

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