

## Round-up of non-housing NPPF cases



**Alistair Mills**

## Round up the usual suspects

- Emerging Plans
  - *Starbones*
- Green Belt
  - *Samuel Smith, Mayor of London, Keep Bourne End Green, Aireborough Neighbourhood Development Forum*
- Heritage
  - *Bramshill, Kay, Spitfire Bespoke Homes*
- Open Space
  - *Lochailort*

## Emerging Plans – the Law

- NPPF 48 provides factors to take into account when deciding what weight to give to emerging plans (consider stage of preparation, unresolved objections, consistency of policies with the NPPF)
- *Starbones Ltd v SSHCLG* [2020] EWHC 526 (Admin)
- Appeal dismissed for mixed use tower at Chiswick Roundabout, near Kew Gardens
- Claimed that SoS failed to understand and apply NPPF 48
- Given very short shrift – SoS’s decision was a matter of judgment
  - “Secretary of State’s judgment that only limited weight should be given to an emerging plan on which the examiner had not yet reported was entirely orthodox” (para. 85)

## Emerging Plans – SoS practice

- Publication Draft of Site Allocations and Development Policies document being prepared for further consultation: no weight – Earl Road, APP/R0660/W/19/3155191, 12 June 2019
- Assembling evidence base: very little weight – Hatchfield Road, Newmarket APP/H3510/V/14/2222871, 12 March 2020
- Pre-submission consultation draft: little weight – Vauxhall Bus Station, APP/N5660/V/19/3229531, 9 April 2020
- During examination of London Plan, before IR: little weight – 215 Tunnel Avenue, APP/E5330/V/18/3216423, 25 September 2019
- Advanced stage (interim conclusions by Examining Inspector): moderate weight – Pale Lane, APP/N1730/W/18/3204011, 4 November 2019
- Significant weight: policies of London Plan unaffected by SoS direction – Vauxhall Bus Station

## Emerging NPs – SoS Practice

- Pre-submission consultation and publicity under Reg 14: no weight – Fiddington APP/G1630/W/18/3210903, 22 January 2020
- Further consultation before submission for examination: little weight – Station Road, APP/D3505/W/18/3214377, 1 April 2020
- Yet to be submitted under Reg 16: limited weight – Barbrook Lane, APP/A1530/W/19/3223010, 7 April 2020

## Green Belt (Decision-making)

- *Samuel Smith v North Yorkshire Council* [2020] PTSR 221
- Extension of quarry in the Green Belt
- Question: had there been failure to consider visual impact in the context of the Green Belt?
- SC stressed that openness is a matter of judgment
- Also – openness is the counterpart of preventing urban sprawl
- *Mayor of London v SSHCLG* [2020] JPL 1387 – referring to one of the paras of GB policy in the NPPF suggests all have been considered, absent positive indication (drawing on *Jones v Mordue* [2016] 1 WLR 2682)

## Green Belt (Plan-making)

- Exceptionality is a matter of judgment: *Keep Bourne End Green v Buckinghamshire Council* [2020] EWHC 1984 (Admin)
 

“But reading [paras 47 and 83 of the former NPPF] properly together, the effect is that the mere *identification* of housing need, or unmet housing need, cannot be *assumed* by itself to constitute an exceptional circumstance to justify an alteration in the boundary of the green belt. But it does not follow that it is *incapable* of amounting to an exceptional circumstance. Whether it does so is a matter of judgment for the decision-maker, which depends in part on how much significance or weight the decision-maker attaches to that identified need.”
- Successful challenge on exceptionality – serious failings on the particular facts in *Aireborough Neighbourhood Development Forum v Leeds CC* [2020] EWHC 1461 (Admin)

## Heritage

- Requirement of an “internal heritage balance”? *City and Country Bramshill Ltd v SSHCLG* [2019] EWHC 3437 (Admin)
- See *Kay v SSHCLG* [2020] EWHC 2292 (Admin) NPPF 196 requires
  - Initial establishment of nature and extent of harm to significance, ignoring beneficial impact
  - Only after harm fixed that beneficial impact to be considered in assessing whether public benefits outweigh the harm
- *Spitfire Bespoke Homes v SSHCLG* [2020] EWHC 958 (Admin) – approach to considering the impact of a proposal on the conservation area



## Local Green Space

- *R (Lochailort Investments Ltd) v Mendip DC* [2020] EWCA Civ 1259
- Comparison of policy with the Green Belt:
  - Policy tests for development within LGS as restrictive as in Green Belt
  - However, this does not mean no development in the LGS
  - The proposed NP policy was more restrictive than GB policy, with no reason given for this
  - The designation requirements for LGSs are less stringent than for the GB
  - Requirements for the endurability of LGSs are also less stringent than for the GB

# Thank you for listening

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