



Webinar series on Local Plans - Green Belt release

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Green Belts - Planning's no-go area?

Jonathan Clay

Green Belt - what is it?



- Not a statutory designation like National Parks
- Not a landscape quality designation like AONB or SLA
- Long standing policy to provide a belt of countryside around our major urban areas
- Fundamental aim – prevent urban sprawl by keeping land permanently open
- Essential characteristics: (1) Openness; and (2) permanence

Green Belt purposes



- Restrict urban sprawl
- Prevent neighbouring towns from merging
- Safeguard countryside from encroachment
- Preserve the setting of historic towns
- Assist urban regeneration – encouraging recycling of derelict and other urban land

Green Belt – what is its true effect?



- Protects land which may have very little amenity, ecological or buffer value. Much open land of poor landscape quality - “horsiculture” and private leisure uses - “Plotlands”
- Puts greater pressure on countryside “beyond the GB” which has much greater intrinsic value
- Sterilises land that is close to jobs, urban facilities, transport nodes, in sustainable locations for new development
- Inflexible: 1.6 million hectares of land; 87% undeveloped; 77% of land within the GB is within 1 mile of a railway station

Green Belt - true effect



- Leading to creation of unsustainable new “rural towns” or “garden cities” which are remote from jobs, services and transport links. Viz Braintree, Cambridge Ark, N. Essex Local plans unsound; or
- Widespread disillusionment with the planning system where land that meets all of the Green Belt purposes is taken out of Green Belt - eg Guildford (now run by independent coalition)

Green Belt - BUT



- Remarkable policy survivor
- Popular (especially with those who live there)
- Successful

Inappropriate Development



- By definition, harmful
- Not to be approved except in very special circumstances
- VSCs will not exist unless harm “by reason of inappropriateness and any other harm” is clearly outweighed. Any harm is to be given “substantial weight”[NPPF 144]

What is or (is not) inappropriate development?



- See paragraphs 145 and 146 of NPPF
- 145 New Buildings except...(a) to (g)
- 146 Other forms of development, provided that they preserve openness and do not conflict with the 5 purposes of GB
- 147 “elements of many renewable energy projects” are inappropriate development. VSCs “may include” wider environmental benefits

Openness - what is it?



- Not a landscape characteristic
- Absence of development
- *Samuel Smith v N.Yorks* [2020] (UKSC3)
- Context: mineral extraction
- Addresses issues of visual impact as part of assessment of openness

Samuel Smith in the Court of Appeal...



- Lindblom LJ in the Court of Appeal found at [49] that:

“[Her report] was defective, at least, in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in para 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the ‘openness of the Green Belt’...”

Samuel Smith in the Supreme Court



- *“Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt [...] it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 [now 146] shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. 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”*

Samuel Smith in the Supreme Court



- *“[Openness] is a matter not of legal principle but of planning judgement for the planning authority or the inspector”*
- *“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 [...] the matters relevant to openness in any particular case are a matter of planning judgement, not law”*

Exception 145(g) Limited infilling or redevelopment of PDL



- Change from 2012 NPPF
- Added proviso “not cause substantial harm to openness...re-use PDL... and contribute to an identified affordable housing need within the area of the LPA”
- Compare with exception 145(f) “limited affordable housing for local community needs under policies set out in the development plan”
- Compare with 144 “substantial weight given to any harm”

Extent of Green Belts



- New Green Belt and alteration of existing Green Belts to take place through the preparation or updating of strategic policies of plans
- Justification “exceptional circumstances”
- Lesser test than VSCs: see *Compton PC v Guildford*: “*That difference is clear enough from the language itself and the different contexts in which they appear, but if authority were necessary, it can be found in R(Luton BC) v Central Bedfordshire Council [2015]EWCA Civ 537at [56].*”

Compton PC, v Guildford BC, SSHCLG & Ors [2019] EWHC 3242 (Admin)



Sir Duncan Ouseley:

- All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional circumstances” in this context. The breadth of the phrase and the array of circumstances which may come within it place the judicial emphasis very much more on the rationality of the judgment than on providing a definition or criteria or characteristics for that which the policy-maker has left in deliberately broad terms
- There is a danger of the simple question of whether there are “exceptional circumstances” being judicially over-analysed. This phrase does not require at least more than one individual “exceptional circumstance”. The “exceptional circumstances” can be found in the accumulation or combination of circumstances, of varying natures, which entitle the decision-maker, in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional to warrant altering the Green Belt boundary
- General planning needs, such as **ordinary housing**, are **not precluded from its scope**; indeed, meeting such needs is often part of the judgment that “exceptional circumstances” exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need

Compton PC v Guildford BC



- Restraint (in stage 2) may mean that the OAN is not met. But that is not the same as saying that the unmet need is irrelevant to the existence of “exceptional circumstances”, or that it cannot weigh heavily or decisively; it is simply not necessarily sufficient of itself. These factors do not exist in a vacuum or by themselves: there will almost inevitably be an analysis of the nature and degree of the need, allied to consideration of why the need cannot be met in locations which are sequentially preferable for such developments, of the impact on the functioning of the Green Belt and its purpose, and what other advantages the proposed locations, released from the Green Belt, might bring, for example, in terms of a sound spatial distribution strategy
- “Exceptional circumstances” is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires “very special circumstances”
- Explanatory Note: Stages 1 and 2 in identifying housing requirement:
- Stage 1: What the OAN before the application of any policy constraints, the so-called "policy-off" figure) Stage 2: consider whether a policy constraint should be applied, the so-called "policy-on" stage, to reduce the housing requirement figure, leaving an unmet need



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Green Belts release

Wayne Beglan

The ground to cover



- Some key changes NPPF 2012 / 2019
- GB lessons from recent examinations
- Green Belt Assessments - pitfalls



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NPPF 2012 vs 2019

NPPF 2012 vs 2019



- Remarkable consistency of GB guidance over time
- Samuel Smith case; see also Calverton and Compton
- Yet, pressure on GB greater than at any previous time?
- Other opportunities largely exhausted in GB areas

NPPF 2012 vs 2019 – Exc Circs



2012

- No definition of EC - §83
- But clear proper time for consideration is in local plan review - §83
- Take into account “sustainable patterns of development” in *reviewing* boundaries - §84

2019

- Part definition of EC, not exhaustive
- EC must be “fully evidenced and justified” - §136
- §137 is new: threshold test to EC; but not necessarily sufficient

New §137



- Gateway: “*Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the [LPA] should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development*”
- This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy [does 3 things], [c.f. – a reasonable strategy]

New §137



- A) makes as much use as possible of suitable brownfield sites and underutilised land;
- B) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
- C) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

§137 Criterion B



§137 . . . B) optimises the density of development in line with the policies in chapter 11 of this Framework,

including whether policies promote a significant uplift in minimum density standards

in town and city centres and other locations well served by public transport;

- Chapter 11 – Making effective use of land
- §123 addresses situation of shortage of land
- Notes optimisation of sites will be “tested robustly” at examination
- Steps “should include” the use of minimum density standards in certain locations.
- Standards should seek a “significant uplift” in the average density in the area, unless strong reasons why not appropriate

§138 – New in part



§138 . . . Where it has been concluded

that it is necessary to release Green Belt land for development,

plans should give first consideration to land which has been previously-developed and/or is well-served by public transport.

They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land”

- Para is consistent with idea that may well be necessary to release GB land to meet needs
- More prescriptive regarding location of land to be released
- Land which meets both criteria should perhaps be accorded additional advantage in terms of release
- The compensatory improvements: They are directed towards particular qualities, and do not indicate explicit support for compensatory expansion of GB



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Lessons from Recent Examinations

Runnymede (2020)



- Clear recent statements of principle and approach
- Emphasising the potential use of GB land to ensure needs are met (§36, 53-55)
- Emphasising that GB Assessment relies on a sequence of planning judgments
- Testing those judgments by asking if judgment was reasonable and based on proportionate evidence (§91, 120)
- A useful indication/reminder that plans, looked at holistically must meet “the overall thrust of national guidance” (§76)

Guildford (2019)



- Issue 5: Whether strategic case for Green Belt release bearing in mind headroom in plan
- 1: eLP represents integrated set of proposals
- 2: Flexibility to meet unexpected contingencies, HR = minimum figure
- 3: Balance of short and long term sites
- No justification for restriction under FN9 NPPF 2012 (§86)

Waverley (2018)



- GBR expressly endorsed as “comprehensive and well-judged piece of work” Clear recent statements of principle and approach
- Emphasising the potential use of GB land to ensure needs are met (§75); only moderate releases were required
- Noting the proposed spatial strategy would be compromised without GB release – due to Godalming being surrounded by GB
- Use of an asterisk notation to show in broad terms where changes would be made, subject to further detailed analysis in LPP2s

The Leeds case [2020] EWHC 1461



- Related to adoption of Leeds SAP
- Second largest LPA outside London, with 2/3 GB
- SAP provided for release from GB of various sites.
- Housing requirement c. 70,000 in 2014 on adoption of CS, but CS Selective Review proceeding in parallel with SAP, with broadly 1/3 reduction in housing need for relevant years

The Leeds case [2020] EWHC 1461



- In those circumstances:
- Whether need remained to release GB sites based on absolute figures was a main controversial issue at SAP examination
- Inspectors had to provide clear reasons why EC case based on absolute figures was still made out

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Green Belt Assessments - pitfalls

Some potential pitfalls in GBA



Parcel Sizes

- Ensure that parcel coverage is comprehensive, with a consistent methodology for parcel division and assessment of relative contributions of GB parcels
- Consider whether parcels should be further subdivided, based on contribution to purposes, or likely harm arising from GB removal

Local purposes

- Consider carefully any justification for local purposes. How are they providing an appropriate local application of national guidance?

Visual impact

- Consider extent to which visual impact can appropriately play a role following Samuel Smith

The SA dimension

- How is the GBA factored into site selection? Is it part of SA? Should SA now factor in a reasonable alternative of “no GB development” as a matter of course?



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