

## Green belt land versus housing needs

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**Planning analysis: Will the release of land on Sutton Coldfield's green belt to build new homes signal the release of other green belt land if there is a high level of housing need? Estelle Dehon, barrister at Cornerstone Barristers, looks at the campaign against the green belt release.**

### What is the background to this?

Housing and other development in and around Birmingham will be controlled for the next 15 years by the Birmingham Development Plan (BDP), which was adopted by Birmingham City Council on 10 January 2017. The BDP was submitted for examination in July 2014, and, after a process of modification, was found to be sound in March 2016. One element in particular has been very controversial—the release of two large areas of land on Sutton Coldfield's green belt, one in order to build 6,000 homes and the other for employment use.

### Why has the move to develop new homes on West Midlands's green belt proven controversial?

Thousands of local residents objected to the release of the green belt land, contending that there were brownfield sites which should be developed first and that the areas identified for housing and employment use were not sustainably located. There was also opposition because of the loss of open space, which supports wildlife and which is crossed by public rights of way. A number of residents set up 'Project Fields', which campaigned against the green belt release. Under pressure from Sutton Coldfield's MP, Andrew Mitchell, the government wrote to the city council in May 2016, asking that it not implement the BDP until the government investigated the planned green belt release. The 'hold' was lifted in November 2016, because of the scale of housing demand in Birmingham and the surrounding area. This opened the way for the BDP to be adopted.

### What are the likely grounds of Project Fields' claim for judicial review of Birmingham City Council's development plan for Sutton Coldfield's greenbelt?

If Project Fields were to challenge, they would have to do so via statutory appeal under section 113 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), rather than by judicial review. Such a challenge would need to be brought within six weeks of the BDP's adoption. A challenge under PCPA 2004, s 113 is limited to two grounds:

- o that the document has been adopted 'beyond the power' of the local authority, or
- o there has been a failure to comply with procedural requirements

This has been held to amount to a form of statutory judicial review. The likely grounds of challenge are:

- o lack of consultation (in that the plans did not change despite thousands of objections)
- o error of law for failure to identify very special circumstances justifying building in the green belt
- o error of law arising from the failure properly to consider alternative sites for employment and residential redevelopment, and
- o potentially errors of law arising from failing to take into account ecological impacts and from an irrational approach to the duty to cooperate

### Has the duty to cooperate been adequately followed in this instance and do you envisage decisions in recent cases such as Solihull Met Borough Council and the pending court case involving Lichfield Council as lending support to any legal challenge by Project Fields?

The objectively assessed level of housing need in Birmingham is for around 89,000 dwellings. Local residents argued that the duty to cooperate required the city council to identify where any shortfall in housing provision would be met through

allocation of land in neighbouring local planning authority (LPA) areas. This would have delayed the examination of the BDP until those adjoining areas had undertaken their own local plan reviews.

The council relied on a commitment from seven neighbouring authorities in the housing market area (HMA) to review their adopted or emerging local plans should this be necessary to address any shortfall. The inspector accepted this, as well as requiring some modifications to the BDP to reflect the duty to cooperate: a policy spelling out that provision would need to be made to meet the shortfall within the plan period in the Greater Birmingham HMA; and a requirement for the council to monitor housing land supply and delivery in the city and in neighbouring authorities and to take an active role in promoting appropriate provision across the HMA. If sufficient housing land does not come forward, the BDP will be subject to a full or partial review.

The *Solihull* case (*Solihull Metropolitan Borough Council v Gallagher Estates Limited* [2014] EWCA Civ 1610, [2014] All ER (D) 214 (Dec)) is not particularly helpful on duty to cooperate, as its focus was on the prior question of the correct approach to identifying the housing requirement in a local plan. The key decision is the recent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 (Admin), in which Mr Justice Holgate set out the correct approach to legal challenges under PCPA 2004, s 113 based on the duty to cooperate. The judge emphasised that the question of compliance with the duty to cooperate is a matter of judgment for the inspector. Furthermore, the legislation imposing the duty to cooperate affords a margin of appreciation to LPAs, which must not be subject by the court to intrusive review. Accordingly, the court's role is limited to reviewing whether the inspector could rationally make an assessment that it would be 'reasonable to conclude' that the LPA had complied with the duty. This is quite a limited ground of review.

### **Is there a danger that this could lead to a 'stepping stone' to further development on West Midlands's green belt as opposed to identifying suitable brownfield sites to build new homes?**

The inspector examining the BDP was at pains to limit the release of green belt land and specifically found that there were no other substantial areas of greenfield or green belt land in Birmingham that should be considered for development. Nevertheless, there will be pressure for further releases of green belt land. The BDP establishes that there is a high level of housing need—89,000 dwellings—and that the supply of land in Birmingham is a long way short of meeting that need. The duty to cooperate and various policies in the BDP require other authorities in the West Midlands to assist in providing 51,000 dwellings over the plan period. That will inevitably put pressure on the West Midlands green belt.

### **What are the likely implications for other developers and local planning authorities?**

The Secretary of State's decision to lift the 'hold' on the BDP and facilitate the release of green belt land, despite very strong local and Parliamentary opposition, is an indication of the government's commitment to building more houses. It may embolden developers with sites on the green belt, and sends a message to local authorities that large strategic releases of green belt land will be supported where there is a high level of housing need.

*Interviewed by Evelyn Reid.*

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