

In his Post-Case Management Conference Note, the Inspector identifies that for relevant appeal decisions and judgments *“each must be prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on, with the relevant paragraphs flagged up”*.

Explanation Note:

CD12.05 - Judgment, Turner v Secretary of State for Communities and Local Government [2012] EPLR 20 (Q.B.) (C-2 (D))

Turner determined that the concept of openness of the Green Belt “is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors

Neutral Citation Number [2016] EWCA Civ 466
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
8(1)(A)
PLANNING COURT
MRS JUSTICE LANG

Between :

**John Turner
- and -**

Appellant

(1) Secretary

Government

Respondents

(2) East Dorset Council

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Judgment

The policy framework

6. This appeal turns on the application of the NPPF, and in particular paragraph 9 of the NPPF is headed "Protecting Green Belt land". It starts paras. 79-81 with a statement of some broad principles:

"79. The Government attaches great importance to Green Belts. 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.

80. Green Belt serves five purposes:

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10. The appellant contends that if the development were to go ahead then, in addition to the loss of the volume of the mobile home, or potentially a larger replacement double unit, a further volume of some 372.9 cubic metres, equivalent to eleven commercial vehicles that he has demonstrated could be stored on the appeal site, might also be offset against the volume of impact on the openness of the Green Belt.

11. Openness is essentially freedom of development and relates primarily to the quantum and extent of development and its physical effect on the appeal site. The Certificate of Lawful Existing Use conveys that the use of the land may be for a mobile home rather than a permanent dwelling.

15. For the reasons set out I consider that the proposed development would have a considerably greater impact on the openness of the Green Belt and the purpose of including land within it than the existing lawful use of the land. I therefore conclude that the proposal does not meet criterion six of the exceptions set out in paragraph 89 of the Framework and, therefore, would be inappropriate development which by definition is harmful to the Green Belt. I give substantial weight to the fact that the proposed development is a permanent structure which by definition is harmful to the Green Belt. I give substantial weight to the fact that the proposed development is a permanent structure which by definition is harmful to the Green Belt.

9. In my judgment, the Inspector was wrong to conclude that although in paras. 11 and 12 of the decision the Inspector referred to the fact that the redevelopment was inappropriate development in the Green Belt, this was an immaterial slip and there is no appeal in that regard). Having found that the redevelopment was inappropriate development in the Green Belt, it is surprising that the Inspector found that there were not adequate grounds to justify the grant of planning permission.

The appeal: discussion

10. The grounds of appeal are relevant on this appeal: (i) the Inspector failed to treat the existing development on the site as a relevant material factor to be taken into account in considering whether the sixth bullet point of para. 89 was applicable, and (ii) the Inspector wrongly conflated the concept of openness in relation to the Green Belt with the concept of visual impact. The judge rejected all the grounds of challenge and the appellant now appeals to this Court, relying again on these two grounds.
11. In his oral submissions, Mr Rudd developed the first ground somewhat. His submission was that the Inspector was wrong to say that no valid comparison could be made between the volume of moveable chattels (mobile home and lorries) on the site and a permanent structure in the form of the proposed bungalow; on the proper interpretation of para. 89 of the NPPF the sole criterion of openness for the purpose of the comparison required by that bullet point was the volume of structures comprising the existing lawful use of a site compared with that of the structure proposed by way of

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22. The Heath and Hampstead Society was concerned a proposal to demolish an existing residential building on Metropolitan Open Land (which was subject to a policy giving it the same level of protection as the Green Belt) and replace it with a new dwelling. Sullivan J rejected the submission that the test in para. 3.6 was solely concerned with a mathematical comparison of relevant dimensions: [19]. However, he accepted the alternative submission that the exercise under para. 3.6 was primarily an objective one by reference to size, where which particular physical dimension was most relevant would depend on the circumstances of a particular case, albeit with floor space

It was the difficulty of establishing in many cases that a particular proposed development within the Green Belt would be harmful to the Green Belt. This is the statement of policy in para. 3.2 of PPG 2 that inappropriate development is, by definition, harmful to the Green Belt. The Green Belt of Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual, possibly very modest proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land.

25. This remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from para. 87 of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that the openness of the Green Belt has no visual dimension.
26. The purpose of the last sentence, from which it appears that Sullivan J considered that a series of modest visual intrusions from new developments would be a way in which the essential quality of the openness of the Green Belt could be damaged, even if it could not be said of each such intrusion that it represented demonstrable harm to the openness of the Green Belt itself. At any rate, Sullivan J does not say that the

Conclusion

28.