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 Stater fore (consider) (consider) (consider) (consider) (consider) (consider) (consequence) (consequ

Case No: C1/2015/3507

Neutral Citation Number[2016] EWCA Civ 466
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
8((1002)
PLANNING COURT
MRS JUSTICE LANG

| Between:                         |                  |
|----------------------------------|------------------|
| John Turner                      | <b>Appellant</b> |
| - and - (1) Secretary Government | Respondents      |
| (2) East Dorset Council          |                  |
|                                  |                  |
|                                  |                  |
|                                  |                  |
| 4May                             |                  |
|                                  |                  |

**Judgment** 

#### **Lord Justice Sales:**

1. This is an appeal from the judgment of Lang J in which she dismissed an application under section 288 of the Town and Country Planning Act 1990 to quash a decision of a Planning Inspector to refuse to grant planning permission for developmentation RIODQGRQ%DUUDFN5RDG:HVW3DUOH\)HUQGRZ located in the South East Dorset Green Belt. The appellant developer submits that the Inspector erred in his interpretation and application of para. 89 of the National 3ODQQLQJ3ROLF\)UDPHZRUN 3WKH 133) FRQFHUQ development on the Green Belt may not be regarded as inappropriate and in his DSSURDFKWRWKHFRQFHSWRIWKH3RSHQQHVV RIV

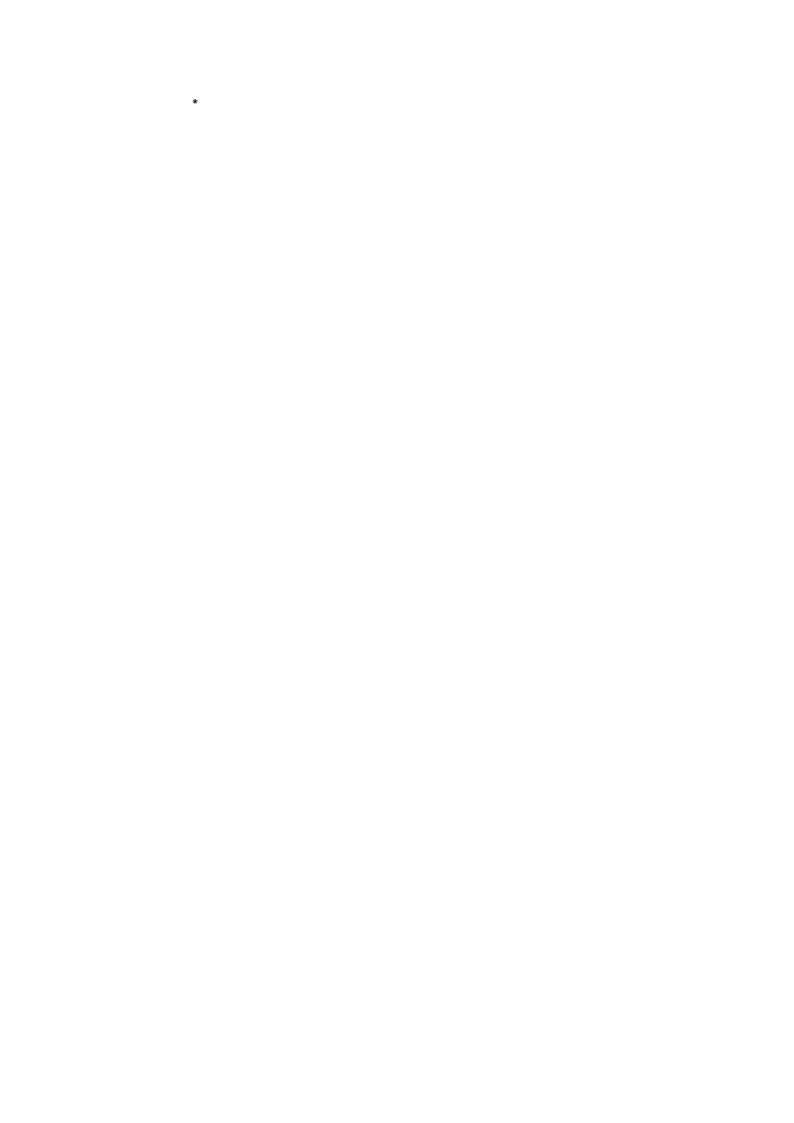
## Factual background

- 2. Barrack Road is haracterised by a mix of residential and commercial properties spasmodically placed along the road. The eastern side of the road where the site is located does not have a continuously built up frontage. The site is in open countryside, and not in an urbarea or settlement.
- 3. There is a static single unit mobile home stationed on the site which is used for residential purposes. Adjacent to this is a substantial area of a commercial storage yard which is used for the storage of vehicles; the preparational vehicles and sale of commercial vehicles and cars; the ancillary breaking and dismantling of up to eight vehicles per month; and the ancillary sale and storage of vehicle parts from a workshop on the site. A certificate of lawful existing use wasniged in 2003 for the mobile home and lawful use has been established in respect of the storage yard in a planning appeal decision. We were told that the storage yard has capacity to park some 41 lorries as an established lawful use of the site.
- 4. The apSHOODQW¶V DSSOLFDWLRQ IRU SODQQLQJ SHUPL mobile home and storage yard with a three bedroom residential bungalow and associated residential curtilage. Another area of land adjacent to the site would be retained to continue the existing commercial enterprise. In his application, the appellant compared the proposed redevelopment with the existing lawful use of the land for the mobile home and 11 parked lorries in order to suggest that the volume of the proposed bungalow who be less than the volume of the mobile home and that PDQ\ ORUULHV DQG WKDW DFFRUGLQJO\ WKH SURS JUHDWHU LPSDFW RQ WKH RSHQQHVV RI WKH \*UHHQ site, with the result that it shot not be regarded as inappropriate development in the

### The policy framework

- 6. This appeal turns on the application of the NPPF, and in particular passection 9 of the NPPF is headed "Protecting Green Belt land". It statements. 7931 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 characteristis of Green Belts are their openness and their permanence.
  - 80. Green Belt serves five purposes:

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- 310. 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 off set against the volume of WKH SURSRVHG GZHOOLQJ WKHUHE\ OLPLWLQJ impact on the openness of the Green Belt.
- 11. Openness is essentially freedom mfrooperational 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 dw

- 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 thurpose 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 developmenthich by definition is harmful to the Green Belt. I give substantial ZHLJKW WR WKLV KDUP
- 9. , W L V W K L V S D U W R I W K H , Q V S H F W R U ¶ V U H D V R Q L Q J Z that although in paras. 11 and 12 of the decision the Inspector reference R 3 R S H U D W L F G H Y H O R S P H Q W ′ U D W K H U W K D Q V L P S O \ 3 G H Y H O R S P H C was an immaterial slip and there is no appeal in that regard). Having found that the redevelopment was inappropriate development in the Green Belt, rints its purising that the Inspector found that there were not adequate grounds to justify the grant of planning permission.

#### Theappeal: discussion

- 10. 2 Q WKH DSSHOODQW¶V VHFWLRQ DSSOLFDWLRQ FKDOOHQJH W\$Rde\diskorn, of \text{Qv/Nvc\text{s} ktw\dagger} \text{AteRrelef}\text{vant 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, ath (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 pernanent structure in the form of the proposed bungalow; on the proper FRQVWUXFWLRQ RIWKH FRQFHSW RI³RSHQQHVV RIW point in para. 89 of the NPPF the sole criterion of openness for the purpose of the comparison requed 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

- bullet point and then proceeded to make an evaluative comparative raese of the existing lawful use and the proposed redevelopment in paras. 10 to 15 of the decision.
- 13. The principal matter in issue is whether the Inspector adopted an improper approach to the question of openness of the Green Belt when he made **thpatriss**on. The question of the true interpretation of the NPPF is a matter for the court. In my judgment, the approach the Inspector adopted was correct and the judge was right so to hold.
- 14. 7KH FRQFHSW RI 3RSHQQHVV RI WKteboli tö tuhlel vhol Norme%frild OW ′LV

# WKDW 3WKHUH LV D FOHDU F

22. The Heath and Hampstead Societyse concerned a proposal temblish an existing residential building of Metropolitan OpenLand (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 submissi 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 whi 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 RILWVHOIFDXVH  $\mu$ GHPRQVWUDEOH KDUP¶ WKD statement of policy in para. 3.2 of PPG 2 that inappropriate development is, bylefinition, harmful to the Green Belt. The DSSURDFK DGRSWHG LQ WKH RIILFHU¶V UHSRUW 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 invision 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 float openness of the Green Belt has no visual dimension.
- 26. : KDW LV DOVR VLJQLILFDQW LQ WKLV SDUDJUDSK F purposes is the last sentence, from which it appears that Sullivan J considered that a series of modest visual trusions 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.