

STAGE 2 HEARINGS: OVERARCHING STRATEGY

GREEN BELT EXCEPTIONAL CIRCUMSTANCES

(a) What should constitute 'exceptional circumstances' for removing land from the Green Belt?

1. Paragraph 83 of the NPPF states that "Green Belt boundaries should only be altered in exceptional circumstances". This is one of the strongest policies in the NPPF. The normal expectation in planning policy is that if there are circumstances where actions should or should not be taken as a matter of policy, then these are stated clearly. The reference to 'exceptional circumstances' is essentially because those circumstances are so special and unusual that they cannot reasonably be expressed in advance as a matter of policy. For example, had the Secretary of State wished the policy in NPPF paragraph 83 to be along the lines of "Green Belt boundaries should only be altered if there is an outstanding Objectively Assessed Need for housing which should be satisfied within the local authority area after every effort has been made to provide the dwellings needed by all other reasonable means" – then he would have said so. The point is that wholly foreseeable circumstances, such as pressure to build on Green Belt because alternative means of dwelling supply in the area appear insufficient, cannot be 'exceptional'. That is an entirely foreseeable circumstance that is 'normal' rather than 'exceptional' on which a national planning policy could have been stated. 'Normal' circumstances are clearly not enough to justify releasing Green Belt.

2. Green Belts are creations of policy, not law. This limits the extent to which the Courts can become involved. Nonetheless, there have been various legal challenges to planning decisions which have set the ground rules for deciding when Green Belt boundaries can be changed through Local Plans. For example, in the case of Solihull MBC v. Gallagher Estates Ltd and Lioncourt Homes, the Court of Appeal (17 December 2014) in effect supported the High Court judge (30 April 2014) who had said of the Local Plan Inspector:

"He performed an exercise of simply balancing the various current policy factors, and, using his planning judgement, concluding that it was unlikely that either of these two sites would, under current policies, likely to be found suitable for development. That, in his judgment, may now be so: but that falls very far short of the stringent test for exceptional circumstances that any revision of the Green Belt boundary must satisfy. There is nothing in this case that suggests that any of the assumptions upon which the Green Belt boundary was set has proved unfounded, nor has anything occurred since the Green Belt boundary was set that might justify the redefinition of the boundary" (paragraph 135).

So far as the allocation of land at Symondshyde is concerned (Policy SP24), on this basis the Council has not demonstrated that the existing Green Belt designation is unfounded for any reason, nor sought to do so specifically. That is not sufficient in terms of the Solihull judgement, and the stringent test for releasing Green Belt has not been demonstrated.

3. The point of emphasis was different in Calverton PC vs Nottingham City Council (High Court 21 April 2015). As WHBC's Green Belt Topic Paper notes, the consequence for sustainable development of releasing land for housing, or not, had to be taken into

consideration, so the acuteness of the need for housing could affect whether there were 'exceptional circumstances' to justify releasing land from the Green Belt. On this basis the sustainable development strategy promoted by the local authority is central to the issue, and that is a matter of policy choice for the authority.

4. The actions taken by Welwyn-Hatfield BC are well short of demonstrating exceptional circumstances for releasing Green Belt. Instead, the Council's approach to the preparation of its Local Plan has been to:

- identify whatever housing (and employment) land quantities it thinks appropriate;
- apply a sequential approach which prioritises brownfield and underused land;
- propose a housing supply very close to the Objectively Assessed Need identified at the time; and then
- lament that satisfying a significant fraction of its supply target involves taking Green Belt land.

Almost all land in the Borough which is not built-up is Green Belt, and the Council was well aware at the outset that pressure for substantial numbers of dwellings would potentially lead to a challenge to Green Belt boundaries. Nonetheless, the Council has promoted substantial economic development in the Borough, recognising the housing requirements that would follow from the expanded labour force. The housing consequence of the Council's growth strategy was originally to raise the Objectively Assessed Need for housing from a starting point of 574 dwellings annually to 631 annually (using the 2012-based household projections). In our view, the Council should instead have tailored its development aspirations more clearly to its capacity to supply dwellings so far as possible without taking Green Belt land. That would also be more closely in line with reasons for London's Green Belt designation in the first place: to encourage development either back into the urban areas which were being prevented from sprawling, or to locations beyond the Green Belt more remote from the influence of London. To some degree the pressures which the Council faces arise from its own creation, and Green Belt policy should not be compromised just because the Council chose not to prioritise it during policy development.

5. The Council's argument in its response to the Inspector's Preliminary Questions on Matter 3 (EX14) at 1(e) and 1(j) is that revised OAN figures in the SHMA Update 2017 raised the alleged need for housing above that quantity to satisfy the proposed economic growth, and that the Council's proposals now fall short of satisfying OAN for Green Belt reasons. If, however, the SHMA's wholly unjustified uplifts to housing 'requirements' above the demographic starting point are removed, and if a sensible correction is made for the continued over-statement of net inward international migration in the demographic projections, then the actual need for housing would revert to a level well below that being planned for by the Council for economic growth reasons. This is explained in more detail in our response to Matter 2.

6. Government policy is directed strongly to the provision of housing, including through planning policy in the NPPF. Nonetheless, the NPPF is clear that objectively assessed needs (not least for housing) do not necessarily have to be met if "specific policies in this Framework indicate development should be restricted". The restrictions are explained in footnote 9 as including designated Green Belt. The indications are clearly that there is no automatic case for allocating Green Belt land for housing just because that outcome would

be convenient for various parties. Rather, the emphasis is the other way round, with the onus on the proposer to show that there are 'exceptional circumstances'.

7. The Council has fallen far short of making a case which could satisfy the NPPF. As it states in paragraph 1.7 of the Green Belt Topic Paper: *"The Council's case for exceptional circumstances therefore relates to the scale of the need for housing and employment land, which cannot be met within the urban areas, and the social and economic consequences of not addressing need as far as possible. Its inability to meet the full objective assessment of housing need relates in part to the consideration of the nature and extent of harm to the Green Belt and the extent to which it can be ameliorated or reduced"*. Green Belt policy has not been allowed to exert any discernible level of restraint on development in this Plan, certainly not in the case of the Symondshyde new village proposal. The Council has clearly done very little to avoid pressurising Green Belt in the first place. It should not be rewarded for damaging the Green Belt on such a major scale (removing around 480 hectares from the designation).

(b) Has the choice of land to be lost from the Green Belt been objectively derived?
(i) Housing

8. No. There was some degree of objectivity by using the Green Belt Review to identify parcels where development would cause least damage to the Green Belt, as shown in Figure 8.1 of the November 2013 report, together with a selection of sites identified by using the Stage 2 methodology in 2014. Beyond that, the decisions on land to allocate were political. This is specifically accepted by the Council in respect of the Symondshyde new settlement. The Council states in response to the Inspector's Preliminary Questions on Matter 3:

"The new village is proposed in the interests of meeting a significant part of the borough's Objectively Assessed Need for housing. Whilst this proposal does not direct development towards an urban area inside the Green Belt or adjoin the edge of a town or village inset within the Green Belt, the Council has concluded that exceptional circumstances exist to release land from the Green Belt to meet the borough's development needs consistent with the principles of sustainable development. The new village is appropriately identified in the Settlement Hierarchy as a small excluded village." (Document EX14, paragraph 7(c))

9. The decision to allocate the Symondshyde site was not based on an objective Green Belt study but as a politically convenient place for the Council to provide large numbers of houses. The Council's responses to Qs 5, 6 and 9 in EX14 also show that the Symondshyde site is heavily dependent for its services on the nearby Hat1 site on the north-west edge of Hatfield, and that almost all infrastructure necessary for urban life will have to be put in place from a standing start to serve this free-standing location. We doubt that any objective approach would have recommended this, and observe that the claimed sustainability 'benefits' of the new settlement should be the kind of measures expected with any new significant development anywhere – they are not benefits peculiar to Symondshyde.

10. We explained in our Regulation 19 submission that the Council changed the way it treated the findings of the Green Belt Review during the process of the Local Plan review

(see paragraphs 15-19 of our comments on Policy SP3). The Housing and Economic Land Availability Assessment in 2016 introduced a new approach to considering the development of housing in the Green Belt. Previously, the Strategic Housing Land Availability Assessment in 2014 had rejected from consideration any site that was not within or adjoining a settlement excluded from the Green Belt. However, without any justification, the HELAA added an exception for “sites capable of forming a new excluded settlement” (section 2.5.1), after Gascoigne Cecil Estates had proposed their site at Symondshyde. Hat15 was therefore taken forward for consideration in the Housing Sites Selection process, even though it would previously have failed to make any progress under the SHLAA.

11. Examination Documents EX11 and EX14 repeatedly make reference to the meeting of the Council’s Cabinet Housing and Planning Panel on 20 July 2016 as justification for the Council’s decision that ‘exceptional circumstances’ exist for the release of Green Belt. That Panel meeting received a report which included a brief summary of the High Court decision in *Calverton PC vs Nottingham City Council*. At no point did the report explain the choice of sites to be released from the Green Belt.

(ii) Employment

No comment.

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