

## Councils Response to Inspectors Initial Questions Friday 24<sup>th</sup> May 2019

### 16. Question 16

**In carrying out a Green Belt review, the first stage is the evidence gathering and assessment that leads to an in-principle decision by the LPA that review of the Green Belt boundary is necessary to help meet development needs in a sustainable way. The second stage determines which site or sites would best meet the identified need having regard to Green Belt harm and other relevant considerations. It is only after satisfactory completion of the two stages that exceptional circumstances are capable of being fully demonstrated. Can you please point us to where this has been done and where the exceptional circumstances are set out. Are the new boundaries clearly shown on the policies map or are they 'draft'? A Green Belt topic paper would be helpful in allowing us to understand this matter further.**

- 16.1. The issue of 'exceptional circumstances' has been a central issue in the production of this draft Local Plan. It was addressed most recently and directly in the March 2019 PPC report, as reproduced below. The relevant part of the report effectively was a concise Green Belt and 'Exceptional Circumstances' Topic Paper.
- 16.2. It can be added that the new Green Belt boundaries shown in the draft Local Plan and draft Proposals Map are considered to be clearly shown and are not intended only to be 'draft'. The only exception is the Park Street Garden Village Broad Location where the boundary shown may be reviewed as Masterplanning work progresses. This would then be reflected in the Local Plan review intended within 5 years and before delivery on site.

#### Green Belt – 'Exceptional Circumstances'

*4.6 As mentioned at the PPC meetings in March, May and June 2018, the issue of the 'exceptional circumstances' required to necessitate altering Green Belt boundaries is a key issue for the draft LP.*

*4.7 As addressed by PPC in considerable depth since its inception in 2013, the issue of the 'exceptional circumstances' required to necessitate altering Green Belt boundaries is central to the draft LP. PPC reports considered the issue to some degree at its March, May and June 2018 meetings. PPC has considered the policy and legal context of 'exceptional circumstances' in detail most recently at its meetings in June 2015 and June 2016. As set out in those reports, the Calverton case most directly addresses the matter of 'exceptional circumstances'. The 2015 and 2016 reports also refer directly to the legal and national policy contexts in which those court decisions were taken.*

*4.8 As always it is important that judgments are read as a whole and in context. That is also the same for reading of the NPPF. However it is possible to summarise the process officers have used to come to their conclusions by using paragraph 51 of Calverton as shorthand. It sets out:*

*In a case such as the present, it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at*

*least ideally, identify and then grapple with the following matters: (i) the acuteness/intensity of the objectively assessed need (matters of degree may be important); (ii) the inherent constraints on supply/availability of land prima facie suitable for sustainable development; (iii) (on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt; (iv) the nature and extent of the harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and (v) the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent.*

**4.9** *In simple terms in relation to Calverton paragraph 51 above:*

*Preamble and (i) – are addressed primarily in the Government’s standard methodology; also with the St Albans SHMA and SHMA update and the South West Herts Group SHMA and emerging SHMA Update*

*(ii) – Can be found in ‘housing trajectory/land supply data in the draft LP. This itself has been informed by the ‘Call for Sites’, Authorities Monitoring Report and Strategic Housing Land Availability Assessment processes.*

*(iii) - The District is wholly bounded by the Green Belt and Duty to Cooperate discussions with adjoining and nearby authorities currently show no reasonable prospect of the District’s housing need being met elsewhere at this point in time. Work with adjoining and nearby authorities is ongoing. The NPPF / sustainable development approach is also covered in the Strategic Site Selection work and the Sustainability Appraisal*

*(iv) – This is addressed in the independent SKM Green Belt Review and the Strategic Site Selection work*

*(v) – This is addressed by a combination of the Green Belt Review, Strategic Site Selection work, land supply information and the development approach in the draft LP*

**4.10** *A broadly similar approach exists in relation to the economic development land at East Hemel Hempstead in the draft LP. However the understanding of ‘need’ relates also to the stock and supply of economic development land in the district and sub-region and the priorities of the Hertfordshire Local Economic Partnership.*

**4.11** *As set out in the case law, the issue of ‘exceptional circumstances’ must be addressed with reference to the individual Broad Locations and the Spatial Strategy of the LP as a whole. In summary, the SKM Review and the Strategic Site Selection work sets out the key impacts in direct relation to the Green Belt. The Strategic Site Selection work and the SA evaluates a range of likely economic, environmental and social impacts/benefits/costs. The Strategic Site Selection work/developer engagement process has given further detail that assists in considering other impacts in relation to the deliverability of the overall aspirations set out in the draft LP.*

**4.12** *Paragraph 125 in Gallagher also contains helpful context:*

*125. From these authorities, a number of propositions are clear and uncontroversial.*

i) Planning guidance is a material consideration for planning plan-making and decision-taking. However, it does not have statutory force: the only statutory obligation is to have regard to relevant policies.

ii) The test for redefining a Green Belt boundary has not been changed by the NPPF (nor did Mr Dove suggest otherwise).

a) In Hunston, Sir David Keene said (at [6]) that the NPPF "seems to envisage some review in detail of Green Belt boundaries through the new Local Plan process, but states that 'the general extent of Green belts across the country is already established'". That appears to be a reference to paragraphs 83 and 84 of the NPPF. Paragraph 83 is quoted above (paragraph 109). Paragraph 84 provides: "When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development...". However, it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary. National guidance has always dealt with revisions of the Green Belt in the context of reviews of local plans (e.g. paragraph 2.7 of PPG2: paragraph 83 above), and has always required 7 "exceptional circumstances" to justify a revision. The NPPF makes no change to this.

b) For redefinition of a Green Belt, paragraph 2.7 of PPG2 required exceptional circumstances which "necessitated" a revision of the existing boundary. However, this is a single composite test; because, for these purposes, circumstances are not exceptional unless they do necessitate a revision of the boundary (COPAS at [23] per Simon Brown LJ). Therefore, although the words requiring necessity for a boundary revision have been omitted from paragraph 83 of the NPPF, the test remains the same. Mr Dove expressly accepted that interpretation. He was right to do so.

iii) Exceptional circumstances are required for any revision of the boundary, whether the proposal is to extend or diminish the Green Belt. That is the ratio of *Carpets of Worth*.

iv) Whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if he fails to adopt a lawful approach to exceptional circumstances. Once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration."

4.13 It is important to also bear in mind that the NPPF has been updated, including with regard to the Green Belt, since the *Hunston* and *Gallagher* cases. Whilst much of the text and the overall thrust of the Government's approach to the Green Belt is either the same or very similar, there are a number of changes. The Government continues to attach great importance to the Green Belt and to set out its fundamental aim, essential characteristics and five purposes. The more updated NPPF text includes at paragraphs 136:

Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries

*has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.*

*And 137:*

*Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority 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:*

- 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.*

*4.14 At this time and on the basis of the evidence, officers consider that the test for 'exceptional circumstances' requiring alteration to Green Belt boundaries as set out in the draft LP has been made.*

#### *Park Street Garden Village*

*4.15 As addressed at PPC in June 2018, the committee will note that the draft Local Plan contains 11 Broad Locations. In relation to the Park Street Garden Village Broad Location, after legal advice, this allocation was the subject of a re-evaluation following the gathering of evidence on the relative merits and importance of delivering the site either for housing or the Strategic Rail Freight Interchange, for which it was found that there was a national need. This re-evaluation included looking at alternative strategies which would deliver the identified housing elsewhere including options such as identifying a Housing Target for Neighbourhood Plan areas. This re-evaluation set out:*

#### *Key issue – At a point in time*

*This re-evaluation is appropriate for this point in time. It will be revisited as time and the situation progresses. Assessment and judgments for these issues are time-sensitive and there is significant potential for revision. This is in particular given the high likelihood that the new NPPF Update will be published in June/July 2018.*

*The Regulation 19 formal consultation stage itself is yet to come. This stage and consideration of representations made at this stage will be an important matter for the Council in deciding on progress towards submission.*

*Parties including SEGRO, the Government, the Railfreight industry, HCC etc. will be fully able to respond to that consultation and we welcome their formal feedback at that stage.*

*...*

## *Conclusion*

*Overall, at this time, the current view of officers is that the draft Broad Location for Park Street Garden Village is the most appropriate response to the evidence available. This will be kept under ongoing review, in particular in the light of responses to the Regulation 19 Local Plan formal consultation.*

*4.16 The re-evaluation considered at June 2018 PPC (and Cabinet and Council thereafter) has been further reviewed in the light of more recent considerations (March 2019). These considerations have included: correspondence reported to Cabinet and Council in June and July 2018, the LP regulation 19 Publication consultation responses (reported elsewhere on the Agenda), further Sustainability Appraisal work (see Appendix 2) and the NPPF 2018 and 2019 revisions. Of particular note is the updated text in the NPPF (2018 and 2019) relating to interchanges for rail freight. Paragraph 104 sets out:*

*Planning policies should:*

*...*

*e) provide for any large scale transport facilities that need to be located in the area<sup>42</sup>, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements;*

*<sup>42</sup> Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services.*

*4.17 There have also been a number of other related matters where circumstances have moved on – for example the ‘making’ of the Harpenden Neighbourhood Plan in February 2019 and the fact that there have been a further number of conditions discharged in relation to the permitted Strategic Rail Freight Interchange.*

*4.18 This further review (at Appendix 3) does not alter the overall view of officers that the draft Broad Location for Park Street Garden Village is the most appropriate response to the evidence available.*

<http://stalbands.moderngov.co.uk/ieListDocuments.aspx?CId=459&MId=8631&Ver=4>