CO/6702/2008

Neutral Citation Number: [2009] EWHC 533 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 16th February 2009

B e f o r e:

MR ROBIN PURCHAS QC
(Sitting as a Deputy High Court Judge)

Between:

SUMMERS POULTRY PRODUCTS LTD

Claimant

v

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) STRATFORD-ON-AVON DISTRICT COUNCIL

Defendants

TANWORTH-IN-ARDEN RESIDENTS ACTION GROUP

Interested Party

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(Official Shorthand Writers to the Court)

David Park (instructed by Cousins Business Law) appeared on behalf of the **Claimant**
Stephen Tromans (instructed by the Treasury Solicitor) appeared on behalf of the **First Defendant**
The Second Defendant was not represented and did not attend
The Interested Party was not represented and did not attend

J U D G M E N T
(Approved by the court)

1. THE DEPUTY HIGH COURT JUDGE: In this application the claimant applies under Section 288 of the Town and Country Planning Act 1990, as saved under the 2004 Act, to quash the decision of an inspector, appointed by the first defendant, dismissing the claimant's appeal from the decision of the second defendant, Stratford-upon-Avon District Council, refusing permission for the extension of a slaughterhouse at Cank Farm, Tanworth-in-Arden. The site is in the adopted green belt.

2. The claimant relies on four grounds: first, that the Inspector erred in rejecting the requirement for the established abattoir business to meet statutory regulations as a "very special circumstance" for the purposes of an exception to the green belt restrictions; second, that the Inspector erred in holding that the development of a brownfield site amounted to an encroachment into the countryside; third, that the Inspector erred in giving weight to the guidance in Annex C to PPG2 and Annex B to PPS3, which were irrelevant; and, fourth, that the Inspector erred in failing to take into account Policy COM 16 of the Local Plan Review, which provided a presumption in favour of the extension of existing businesses or, alternatively, failed to give adequate reasons in that respect.

Background

3. The claimant has operated a poultry slaughterhouse business on the appeal site for many years. It is in the West Midlands green belt and an area of special landscape, and is on the edge of the village of Tanworth-in-Arden, which contains a conservation area. As a result of the Food Hygiene Regulations 2006, the slaughterhouse needed to be upgraded to meet the requirements of those regulations. The appeal proposals would enable the abattoir to comply with the regulations. They involved an extension of the present premises, resulting in a building with a footprint of some 3,100 square metres, as against the existing footprint of 1,470 square metres, being some 73 metres long and 42 metres wide, with an overall roof height of some 8.8 metres. At paragraph 14 of the decision letter the Inspector described it as "a very significant increase in building size".

Green belt policy

4. As part of the green belt PPG2 provided the relevant national policy guidance, for the purposes of which it is accepted in this case that the proposed development constituted inappropriate development. In these circumstances, the PPG provides advice in respect of the control over development:

> "3.1 The general policies controlling development in the countryside apply with equal force in green belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances...
>
> 3.2 Inappropriate development is, by definition, harmful to the green belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist

> unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the green belt when considering any planning application or appeal concerning such development."

5. The appeal decision was promulgated on 5th June 2008, which was before the judgments in the Court of Appeal in Wychavon District Council v Secretary of State for Communities and Local Government [2008] EWCA Civ 692 were handed down. In that decision the Court of Appeal set out helpful guidance as to the approach to very special circumstances under PPG2 in the judgment of Carnwath LJ, with which the other members of the court agreed. At paragraph 21 the learned Lord Justice referred to the conclusion of the judge below, saying:

> "I say at once that in my view the judge was wrong, with respect, to treat the words 'very special' in the paragraph 3.2 of the guidance as simply the converse of 'commonplace'. Rarity may of course contribute to the 'special' quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word 'special' in the guidance connotes not a quantitative test, but a qualitative judgement as to the weight to be given to the particular factor for planning purposes."

The Lord Justice then went on to consider the context of that case, which concerned a gypsy family, and continued:

> "23. At the general level, a judgement must be made as to whether, or in what circumstances, the societal value attached to the protection of the homes of gypsies as individuals can in principle be treated as sufficiently important to outweigh the public value represented by the protection of the green belt. That might have been thought to be a matter properly to be addressed by the Secretary of State by way of national guidance. It would perhaps have been more helpful if the PPG or the 2006 guidance had addressed this issue in terms. As it is, the guidance neither excludes nor restricts the consideration of any potentially relevant factors (including personal circumstances). The PPG limits itself to indicating that the balance of such factors must be such as 'clearly' to outweigh green belt considerations. It is thus left to each inspector to make his own judgement as to how to strike that balance in a particular case.
>
> 24. At the particular level there has to be a judgement how, if at all, the balance is affected by factors in the individual case: for example, on the one hand, public or private need, or personal circumstances, such as compelling health or education requirements; on the other, particular factors increasing or diminishing the environmental impact of the proposals in the locality, or (as in this case) limiting its effect in time. This judgement must necessarily be one to be made by the planning inspector, on the basis of the evidence before him and his view of the site."

The learned Lord Justice then went on to refer to earlier judgments in the Administrative Court and, at paragraph 26, set out the judgment of Sullivan J (as he then was) in Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509 as follows:

> "Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the green belt, was clearly outweighed by the benefit to the appellant's family, and particularly to the children, so as to amount to very special circumstances justifying an exception to green belt policy.'
>
> (Original emphases)."

Carnwath LJ continued:

> "This passage, rightly in my view, treats the two questions as linked, but starts from the premise that inappropriate development is 'by definition harmful' to the purposes of the green belt."

Thus, the question for the Inspector was whether the harm engendered by inappropriate development, together with any further harm caused to openness or the purposes of the green belt, was clearly outweighed by other considerations, which amounted, in the circumstances, to very special circumstances.

The Inspector's decision letter

6. I remind myself that the purpose of the decision letter is to give reasons for the decision. The approach, helpfully set out in the opinion of Lord Brown in South Buckinghamshire County Council v Porter (No 2) [2004] 1 WLR 1953, does not need repetition in this judgment. The reasons must be intelligible and adequate and, although brief, the degree of particularity depends on the context of the case. It is not necessary to deal with every point or argument raised in the appeal. It must be read as a whole, as if by an informed reader familiar with the matters in debate, in that it is intended to explain the reasons to the parties to the appeal. It should deal with the substantial issues raised and must not leave substantial doubt as to whether the decision was taken lawfully, or as to the basis on which it was in fact made.

7. I then turn to the decision letter. After certain introductory paragraphs, the Inspector set out the main issue as follows:

> "7. The site is in the green belt. The appellant acknowledges that, in terms of national policy guidance in PPG2 'Green Belts', the proposed extension of the slaughterhouse would be inappropriate development, by definition harmful to the green belt. The overriding issue is, therefore, whether there are other considerations which clearly outweigh the harm to the green belt by reason of inappropriateness, and any other harm, resulting in very special circumstances sufficient to justify the

grant of planning permission.

> 8. The principal matters to be considered in this respect relate to the effect the enlargement of the building would have on the openness of the green belt; the impact of the extended building on the character and appearance of the area; the need for compliance with food hygiene and animal welfare regulations; the effect on the living conditions of local residents, with particular regard to odours, noise and flies; the effect on the surrounding highway network; the sustainability of the development in terms of its location and accessibility; and the implications for farm diversification."

I comment at this stage that the main issue, as stated by the Inspector, would appear to accord closely with the conclusions of the Court of Appeal in Wychavon, together with the range of matters set out in paragraph 8, which as Mr Stephen Tromans, who appears for the first defendant, submitted and in my judgement refer back to the balance to be struck under paragraph 7, and in particular as to whether or not very special circumstances existed to justify outweighing the relevant harm.

8. At paragraph 9 the Inspector dealt with the policy background, including the Local Plan Review. He then sets out his reasons in paragraphs 10-34, before coming to his conclusions at paragraphs 35-39. The structure of the reasons was first to explain the background, including the character of the site, that it was, in his words, something of an eyesore, and that the proposals gave the opportunity to tidy it up, and, at paragraph 19, that the proposals would enable the operations to meet with all current regulations and that the second defendant's objections centred on the external layout of the site.

9. He then dealt in turn with the effect on openness, together with the impact on the character and appearance of the area, followed by consideration of some five or six matters that the claimant had identified as constituting special circumstances in support of its appeal. He dealt with the effect of openness in paragraphs 14-16:

> "14.The extensions would be wrapped around all four sides of the existing building and would more than double its footprint from about 1,470-3,100 square metres. The extended building would be about 73 metres long and 42 metres wide. The highest part of the existing roof is about 8.8 metres above ground level, but the majority of it is between 1 and 4 metres lower. Almost all the roof of the extended building would be at the higher level so there would also be a major increase in building volume. Notwithstanding the fact that the relatively small area of portacabins would be removed, in aggregate this would be a very significant increase in building size.
>
> 15. The appellant accepts that there would be loss of openness but argues that the impact would be limited because the building lies within previously-developed land. However, PPG2 makes

no concession for the use of previously-developed land, and the PPS3 definition points out that there is no presumption that the curtilage land of a previously-developed site should be developed. Annex C of PPG2 gives some relevant guidance on the approach to redevelopment of existing sites and confirms that any new building should have no greater impact than the existing development on the openness of the green belt and the purposes of including land in it, and should not occupy a larger area of site than the existing buildings. The proposal clearly conflicts with this guidance. In my view, the impact of the enlarged building on the openness of the green belt would not be mitigated by the use of previously-developed land.

16. I consider that the proposal takes no real account of the importance of protecting the openness of the green belt, its most important attribute, or to (sic) the purposes of including land in it, particularly in safeguarding the countryside from encroachment. Although the site would be tidier, paragraph 1.7 of PPG2 makes it clear that the quality of the landscape is not relevant to the inclusion of land within the green belt. Furthermore, since it is no longer in agricultural use, enlargement of these industrial premises would not fulfil the objectives for the use of land in green belts. Overall, I consider that the proposed extension of the existing building would result in a very significant loss of openness of the green belt."

10. He then turned to deal with the impact of the extended building on the character and appearance of the area in paragraphs 17-21. He concluded:

"20.In my view, an enlarged slaughterhouse would be very apparent in open landscape views from the south. Its high metal-sheeted walls and roof and large monolithic industrial appearance would be particularly out of place in the generally small-scale agriculture landscape, on the edge of the village. I consider that the proposed mounding, tree screening and colour treatment would not be sufficient to diminish its visual impact to any significant degree and I believe that the proposal to enlarge the building would significantly undermine the quality of the village's landscape setting. I also consider that the proposed increase in scale, size and bulk of the slaughterhouse would be of such an extent, and would be so evident, that the setting of the listed buildings and the conservation area would not be preserved.

21. The building would be very utilitarian in appearance and, while the site itself would be tidied up, in the design of the building itself there seems to have been little regard for national design quality objectives. The large increase in size would emphasise

> the incongruity of this large industrial building in the landscape, adding to its visual impact from both longer viewpoints and closer village views from the churchyard. This would be inappropriate in the particularly high quality rural context of the site. I consider that, in conflict with Policy EF.2, the extended slaughterhouse building would have a seriously adverse effect on the character and appearance of the surrounding area."

11. He then went on to consider the need to comply with the regulations. At paragraph 22 he noted the history of seeking to comply, and the enforcement steps that had been taken, concluding that "the operator must take action to comply with the latest regulations or face revocation of his licence and closure. This is the driving force behind the proposal". He continued at paragraph 23:

> "The appellant proposes to alter and enlarge the existing building to provide the accommodation and equipment necessary to meet the requirements of the latest regulations. I note that the Food Standard Agency's local Veterinary Meat Hygiene Adviser has confirmed that the works proposed are in line with the implementation of the 2006 Hygiene Regulations and are necessary to ensure compliance. They would ensure long-term animal welfare practices at the slaughterhouse and the hygiene of operations throughout the plant. The ability to comply with up-to-date food, hygiene and animal welfare regulations is a clear benefit of the proposal."

12. He considered the effect on the living conditions of local residents in paragraphs 24-26, concluding that "I therefore consider that the proposal would result in a significant improvement of the current living conditions of nearby local residents". He then dealt with the effect on the surrounding highway network in paragraphs 27 and 28, concluding that "while it has limited legal force, adherence to the Lorry Routing Plan would minimise heavy traffic through the village and go some way towards improving the current impact on the local highway network".

13. He considered sustainability at paragraphs 29-31, concluding:

> "I do not consider that the extension of the building can be justified by claims that the site is particularly sustainable in terms of its location and accessibility."

14. He then dealt with the implications for farm diversification. In paragraph 32 he concluded that he would not consider that the "extension of an existing use can be considered to be a farm diversification project". He then continued at paragraph 33:

> "Furthermore, as I have found, the increase in size of the slaughterhouse would be out of scale with its rural location, it would not preserve the openness of the green belt and it would conflict with the purposes of including land in it. It would result in excessive expansion and

encroachment of building development into the countryside. It would not, therefore, meet the restrictions placed on farm diversification schemes. While I fully understand the commercial relationship with other farms it serves, it makes little difference to the circumstances of these farms where their poultry is sent. I do not consider that the extension of the slaughterhouse can be justified as a farm diversification project."

15. At paragraph 34 considered other matters, in particular the fall-back use for general industrial purposes, concluding that "it seems to me unlikely that any new use of the building would give rise to problems that local residents would find even more objectionable. I give this fall-back position little weight".

16. Having finished the reasons, he then turned to his conclusions as follows:

"35.The proposal would result in benefits for the area. It would deliver a substantial improvement in living conditions for local residents through the strict control of odours from the site; and it would in all likelihood reduce the number of HGVs travelling through the village and minimise traffic generation from the site. These factors weigh in favour of the proposal.

36. Against this, more than doubling in size of the building on the site would significantly decrease the openness of the green belt, its most important attribute. It would increase the harm that the existing building causes to the rural character of the green belt and on the purposes of including land in it, particularly in safeguarding the countryside from encroachment. The enlargement of industrial premises would not meet the objectives for the use of land in the green belt. The extended building would have an adverse visual impact on the character and appearance of the countryside, designated for its special landscape quality, and on the setting of the village and its listed buildings.

37. I fully recognise that the building has to be modernised to stay in use as a slaughterhouse. However, this proposal is a somewhat naive approach to meeting the requirements of the food hygiene and animal welfare regulations by vastly enlarging the building without reference to the restrictions of its green belt location. The need for compliance with these regulations is a normal requirement of the business and cannot be seen as in any way special, sufficient to justify such an approach. I also recognise that failure to modernise could result in closure and the loss of jobs. However, I heard no convincing evidence to show why the existing building could not be successfully refurbished to meet current regulations without major extension, albeit with a loss of capacity. This might affect the viability of the business, but closure, refurbishment or

relocation is ultimately a business decision for the owners and operators. While closure could mean job losses, this would have a limited effect on the rural economy since so few employees live locally.

38. The proposal would be inappropriate development, by definition harmful to the green belt. There would be other harm to the openness, purposes and objectives of the green belt. As paragraph 3.2 of PPG2 makes clear, harm to the green belt must carry substantial weight. There would also be significant harm to the character and appearance of the landscape. While there would be some benefits of the scheme, I consider that, on balance, they would not be so great as to outweigh the extensive harm I have identified.

39. I therefore find that there are no other considerations which would clearly outweigh the harm to the green belt by reason of inappropriateness and other harm, so I consider that there are no very special circumstances, individually or cumulatively, sufficient to justify the grant of planning permission. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed."

17. Ground 1: that the Inspector erred in finding that a statutory requirement to comply with statutory regulations cannot amount to a "special circumstance".

Submissions

18. Mr David Park, who appears for the claimant, submits that it is clear from paragraph 37 that the Inspector was treating "special" as something which is other than "normal" or "commonplace". The Inspector, in terms, described the need for compliance as a "normal requirement of the business and cannot be seen as in any way special". He submits that that demonstrates an error in law, following the approach at first instance in Wychavon, which was rejected by the Court of Appeal. In any event, he submits that here the evidence was clearly that this business was actively under threat of closure and that it was subject to enforcement. The evidence, furthermore, was unchallenged, that the development was necessary to enable the business to comply with the requirements at its present capacity. He submits that there was evidence that a reduction to a throughput of 50,000 birds, as opposed to the 120,000 birds per week which was proposed, and which reflected its existing throughput, would not have been viable and that relocation was ruled out by cost. He also referred me to other appeal decisions, where inspectors in other cases had concluded that compliance with regulatory requirements amounted to very special circumstances for exception in the green belt.

Decision

19. There is no doubt, in my judgement, that if this Inspector was equating "special" with "other than normal or commonplace", or concluding that compliance with statutory requirements was incapable of amounting to a very special circumstance, that would have been an error of law. The short point on this ground is, accordingly, whether that was, on a fair reading of the decision letter, his conclusion.

20. The decision letter must be read as a whole. The starting point is the main issue, set out in paragraph 7, together with paragraph 8, which, as I commented earlier, sets out a range of matters to be considered in the context of the test set out in paragraph 7, including "the need for compliance with food hygiene and animal welfare regulations". I then move to the reasons that the Inspector sets out before coming to his conclusions, particularly those in paragraphs 22 and 23, where he is considering the need for compliance with the regulations. In those paragraphs he identified the threat to the business and the need to comply with the regulations to avoid revocation of the licence and closure, and that that is the driving force behind the proposal. At paragraph 23 he concluded that the ability to comply with the regulations is "a clear benefit of the proposal".

21. Against that background, one comes to the conclusions of the Inspector. At paragraph 35 he set out a variety of benefits, reflecting some of the matters he referred to in paragraph 8 of the decision letter. At paragraph 36 he set out the harm, in terms of a significant decrease in openness; that it would increase the harm the existing building causes to the rural character of the green belt, including safeguarding the countryside from encroachment; that the extended building would have an adverse visual impact on the character and appearance of the countryside. Having dealt with that at paragraph 37, he recognised that the building has to be modernised to stay in use as a slaughterhouse, although he did not then address how. In the second sentence he characterised the proposal as "a somewhat naive approach". Whatever is thought about the use of the word "naive", the meaning is made clear, in my judgement, by the antithesis that follows, that is the approach of meeting the requirements of the food hygiene and animal welfare regulations by vastly enlarging the building without reference to the restrictions of its green belt location. What, in my judgement, the Inspector was plainly saying at that point was that the approach here appeared to him to be to put forward what he described as the vast enlargement of this building to meet the regulations, but without heed or regard to the limitations of its green belt location, including the effect on openness. It was what Mr Stephen Tromans termed the "blank cheque approach".

22. From that he continued to say that the need for compliance with these regulations is a normal requirement of the business and cannot be seen as in any way special, sufficient to justify such an approach. In my judgement, the use of the word "special" in conjunction with the characterisation as "normal", in terms of the requirement of the business, has to be seen against the qualitative judgement of sufficiency to justify such an approach. In that context, I am in no doubt that the reference to "such an approach" is to what I have referred to as the "blank cheque approach". In other words, what this Inspector was saying was not that the need to comply with the regulations was not capable of amounting to a special circumstance for the purpose of the balance, but that it was not such as to enable any building to be constructed without regard to the green

belt location. That that is the right understanding, in my judgement, is demonstrated by the remainder of the paragraph.

23. The Inspector went on to recognise that failure to modernise could result in closure and the loss of jobs, that point as to modernisation being made in general terms without identifying how. He then made a comment on the evidence before him. "However, I heard no convincing evidence to show why the existing building could not be successfully refurbished to meet the current regulations without major extension, albeit with a loss of capacity." That, as I understand from the papers before this court, was an issue that was debated, as appears from the closing submissions on behalf of the third parties, as to what extent it would be possible to achieve compliance, albeit with reduced capacity. I do not question that there was evidence as to the practicalities of refurbishment, as described to me by Mr Park. The important point is the judgement of this Inspector on the quality of that evidence, and that he was not convinced that it would not be possible to successfully refurbish without a major extension. Plainly the scale of the extension was closely related to the effects on the openness of the green belt. The Inspector then continued recognising that the loss of capacity might effect viability of the business, but closure, refurbishment or relocation was ultimately a business decision. So he had had that important aspect very much in mind. Finally, he concluded that, while closure could mean job losses, this would have a limited effect on the rural economy. In my judgement, the Inspector, in that paragraph, has captured all of these matters which Mr Park has properly advanced in his submissions.

If one goes on to paragraph 38 of the decision letter, the Inspector then addressed the balance; that the proposal would be inappropriate development; there would be other harm to the openness, purposes and objectives of the green belt; and, "while there would be some benefits of the scheme, I consider that, on balance, they would not be so great as to outweigh the extensive harm I have identified". Then, in paragraph 39, he went back to restate the issue as he set out above as his main issue. In my judgement, it is impossible to read this decision letter as leaving out of account the clear benefit of the proposal in complying with the regulations and avoiding closure as he had found in paragraph 23 of the decision letter as a matter that he included in his overall balance. His judgement, however, was that that factor, in qualitative terms, was not sufficient, in the total context of this case, to justify the vast extension, as he categorised it, without regard to the restrictions arising out of its green belt location. Accordingly, in my judgement, the basis for the legal challenge from Mr Park is not made out, there was no error in law in the approach and this ground accordingly fails.

24. I turn to Ground 2: that the Inspector erred in concluding that development within the curtilage of a brownfield site could amount to an encroachment into the countryside.

<u>The policies</u>

25. By way of introduction, I should remind myself of the relevant policies in PPG2. Paragraph 1.4 states:

> "The fundamental aim of green belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of green

belts is their openness. Green belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development."

Then "Purposes of including land in green belts", 1.5:

"There are five purposes of including land in green belts:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

Submissions

26. Mr Park relies on references made by the Inspector to the effect of the proposal on the purposes of the green belt and, particularly, encroachment into the countryside. Those references appear in paragraph 16 of the decision letter, where the Inspector is considering the effect on the openness of the green belt; in paragraph 33, where he is considering the implications for farm diversification; and as part of his overall conclusion when he is looking at the harm from the proposal on the green belt. There is no doubt here, and it is accepted, that the development was proposed to take place, not just within the curtilage of a building, but on land that was already developed, either in the form of buildings or, particularly, hard standings. Mr Park submits that, in those circumstances, it was a misdirection and misapplication of green belt policy to describe the development as "failing to safeguard the countryside from encroachment". It was an error, he submits, that the Inspector drew particular attention to and repeated and plainly it was capable of affecting the balance that the Inspector struck between the harm — here, the additional harm — and the special circumstances, in terms of benefits to which I have referred. In his submission, encroachment must involve physical encroachment and cannot, therefore, comprise development of what is already developed land.

Decision

27. I find some difficulty with these submissions. The driving force behind the policy and the purposes of the green belt, in this respect, is the contribution that openness can make to the preservation of the countryside. It seems to me that loss of openness can take a number of forms leading to encroachment. The countryside contains a wide variety of features: open farmland, agricultural buildings, dwellings and other

structures. The effect of development as encroachment on the countryside may be in the form of loss of openness or intrusion. An agricultural hard standing will be developed land, but still part of the countryside, and to that extent open. If I construct a building on the hard standing, there may well be loss of openness and, through the loss of openness, an intrusion or encroachment into the countryside. In the present case, where there is an industrial building, which was proposed to be substantially extended, albeit on to a hard standing, through its creation of additional bulk and loss of openness it is in my judgement clearly capable of constituting an encroachment into the countryside as a matter of planning judgement, but it is just that. It is quintessentially a matter of planning judgement for the decision-maker.

28. If one then turns first to the paragraph 16 reference. It is part of the three paragraphs which I have already set out in this judgment and which deal with the effect on openness of the green belt. The Inspector had already described the physical effect of the increase in building size and the impact of openness, he then dealt with the argument as to the fact the building would be on previously-developed land, in terms of any mitigation as to loss of openness, and rejected that. Then at paragraph 16, he concluded that no real account was taken of protecting the openness of the green belt and the purposes of including land in the green belt, particularly in safeguarding the countryside from encroachment. In my judgement, he was fully entitled to come to that conclusion, and, as is set out in the decision letter, a building of this scale and size, in these circumstances, is well capable of constituting encroachment into the countryside.

29. I turn then to the second reference, which is at paragraph 33 of the decision letter. This dealt with diversification. It is right I should refer to the relevant policy in the Local Plan Review. It is policy CTY.4, which provides:

> "Proposals which seek to diversify farm-based operations will generally be supported. All proposals will be assessed against the following criteria...
>
> (c) whether the scale and nature of the proposed activity can be satisfactorily integrated into the landscape without being detrimental to its character...
>
> In assessing the merits of such proposals, the extent to which they would contribute to and not conflict with the long-term operation and viability of the existing farm holding will be taken into account."

In paragraphs 32 and 33, the Inspector first dealt with the issue of whether this policy applies at all, as no longer being farm-based, and concluded that the policy does not apply. He then went on to consider the criteria, including the effect on the countryside, and in that context drew attention to the implications for the openness of the green belt, including the encroachment of the building development into the countryside. In my judgement, for the reasons that I have set out above, that was a judgement to which he was entitled to come and there is no force in the submissions made in this respect.

30. As to paragraph 36, the reference was simply reiterating the point as to the green belt purposes. For the reasons I have already set out, there is no flaw shown in that approach and this ground accordingly also fails.

31. Ground 3: that the Inspector erred in giving substantial weight to the guidance in Annex C of PPG2 and Annex B of PPS3.

Policy

32. I should begin by setting out the material parts of those two policies. I will start with PPS3, which deals with housing development. Paragraphs 40-44 deal with effective use of land, encouraging, as a key objective, that planning authorities should continue to make effective use of land by re-using land that has been previously developed. That term is defined in Annex B of the PPS in these terms:

> "Previously-developed land is that which is or was occupied by a permanent structure including the curtilage of the developed land and any associated fixed surface infrastructure."

It then goes on to make qualifications on that, but concluding:

> "There is no presumption that land that is previously developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed."

33. Turning to PPG2, paragraph 3.4, in considering control over development, deals with new buildings and provides that the construction of new buildings inside a green belt is inappropriate unless it is for the following purposes, including:

> "... limited infilling or redevelopment of major existing developed sites identified in adopted local plans, which meets the criteria in paragraph C3 or C4 of Annex C."

I point out, as is accepted, that the appeal site in this case is not identified in any local plan as falling within this guidance.

34. I turn to the relevant part of the advice in Annex C, "Future of major developed sites in the green belt":

> "C1 Green belts contain some major developed sites such as factories... These substantial sites may be in continuing use or be redundant. They often pre-date the town and country planning system and the green belt designation.
>
> C2 These sites remain subject to development control policies for green belts, and the green belt notation should be carried across them. If a major developed site is specifically identified for the purposes of this Annex in an adopted local plan or UDP, infilling or redevelopment which meets the criteria in paragraph C3 or C4 is not inappropriate development. In this

> context, infilling means the filling of small gaps between built development."

The present case involves redevelopment and infilling is not relevant. Turning, therefore, to paragraph C4, which deals with redevelopment:

> "C4 Whether they are redundant or in continuing use, the complete or partial redevelopment of major developed sites may offer the opportunity for environmental improvement without adding to their impact on the openness of the green belt and the purposes of including land within it. Where this is the case, local planning authorities may in their development plans identify the site, setting out a policy for its future redevelopment. They should consider preparing a site brief. Redevelopment should:
>
> (a) have no greater impact than the existing development on the openness of the green belt and the purposes of including land in it, and where possible have less;
>
> ...
>
> (d) not occupy a larger area of the site than the existing buildings (unless this would achieve a reduction in height which would benefit visual amenity)."

35. Put shortly, Mr Park submits that it is clear that the Inspector treated the guidance in Annex C of PPG2 as applicable to these proposals, which it was not.

36. The Inspector went on, in paragraph 15, to conclude that there was a clear conflict with the guidance, which he treated as a further objection weighing against accepting the development on previously-developed land as a circumstances forming part of the overall balance. Here again, in my submission, it is essential to see the relevant part of the decision letter in context. The issue which the Inspector was considering was loss of openness. I have already indicated that in paragraph 14 he dealt with the physical implications of what was proposed. In paragraph 15 he turned to address directly the contention of the claimant that, although there was going to be loss of openness, its impact would be limited because the building lies within previously-developed land. That paragraph considered that argument, concluding in the last sentence:

> "In my view, the impact of the enlarged building on the openness of the green belt would not be mitigated by the use of the previously-developed land."

Thus, within this paragraph he has set out the considerations that led to his conclusion in the last sentence. In coming to that conclusion, the Inspector made three points. First, he made the point that PPG2 makes "no concession" for the use of previously-developed land. That appears entirely accurate, in that the use of previously-developed land in these circumstances is not treated as making development appropriate or acceptable, or otherwise a basis for exception. He then goes on to refer,

as his second point, to the definition in PPS3, in respect of housing advice. In my judgement, it is impossible to think that the Inspector was not aware, having noted that PPG2 makes no concession on this matter, that the advice in PPS3 was dealing with housing matters, but he draws attention to the fact that in that context the fact that land was previously developed gave no presumption that it should be developed. Whether it was a necessary reference or not, in my judgement it cannot detract from the overall judgement that this Inspector has made in this paragraph, nor does it constitute a flaw in his reasoning.

37. I then come to what is the major point on which Mr Park relies in this respect. What he says is that Annex C gives some relevant guidance on the approach to redevelopment of existing sites. Pausing there, as a matter of record it is correct that what one has in Annex C, including C4, is advice on what would be redevelopment of developed sites, albeit contingent upon the site having previously been identified in an adopted local plan. The advice is in the context of limiting the impact on the openness of the green belt and the purposes of including land within it. In my judgement, in making that reference, and in applying those tests, the Inspector was looking to see what guidance there was and the tests that would be appropriate to see to what extent the use of previously-developed land could mitigate or reduce the effect of development of previously-developed land. He drew attention, particularly, to criteria (a) and (d), which I have set out above, as to the greater impact of development on the openness of the green belt and its purposes, and the criterion that it should not occupy a larger area of the site than existing buildings. He concluded on both those aspects that the proposal would clearly be in conflict. In my judgement, if he had simply set out those tests as reasons why he concluded that the use of previously-developed land did not mitigate the implication on loss of openness, there could be no reasonable complaint.

38. Against that background, I must consider whether here this Inspector was treating the guidance in PPG2, Annex C, as applying as a policy directive in its own right to this development. In my judgement, there is no warranty for that conclusion. It is not a freestanding objection to which his conclusions were directed but, clearly in the context of the issue he had set out, that is the effect of this development on the openness of the green belt. In my submission, he was entitled to pay regard to those factors and there is no flaw in his judgement.

39. Accordingly, coming to the fourth ground, which was the failure to address Policy COM.16 or, alternatively, to give reasons in that respect.

40. Policy COM.16 of the Local Plan Review provides:

> "Throughout the district the retention of sites in business uses will be promoted by:
>
> ...
>
> (b) supporting the expansion of existing firms in their established locations, except where the scale and nature of the activity would cause unacceptable environmental impact on the local

area."

Mr Park submits that the development plan policy was clearly relevant and reinforced the benefit of the business and its development so as to comply with statutory regulations. Accordingly, it was a material consideration with which the Inspector should have dealt in his decision. His failure to refer to it demonstrates that it was not taken into account in the overall balance as a consideration, alternatively, the reasons were inadequate in that respect. In my judgement, that the substantial or main issue was the green belt issue was a conclusion open to him in this case. Given his conclusions on the green belt issue, as to the impact of the proposal in terms of loss of openness and other aspects, it is plain that Policy COM.16 would not as a result apply. In any event, this Inspector took into account the benefit that would derive to the business and its employees, and otherwise, from compliance with the regulations, as against the implications of closure and other consequences. In those circumstances, in my judgement, he was fully entitled to come to the view that Policy COM.16 was not a substantial issue with which he had to deal. In any event, there is nothing on the face of this decision to indicate that he failed to take that policy into account. He refers to the Local Plan Review in paragraph 9 of his decision letter and has referred to other policies within it. He also indicates he had had regard to all other matters raised, although I do not place much weight on that fairly common mantra in decisions of this kind. The important point, in my judgement, is that these reasons for this decision were adequate, do not demonstrate any flaw in the law, or any material or substantial doubt as to the lawfulness of the decision. In those circumstance, this ground fails, as does the challenge, which will be dismissed.

41. MR TROMANS: My Lord, I am grateful. Can I deal with the issue of costs?

42. THE DEPUTY HIGH COURT JUDGE: Yes.

43. MR TROMANS: As regards the principle of costs, first of all, we would ask for an order for the costs in favour of the Secretary of State. I do not think there is any issue on that. Secondly, it is an appropriate case for summary assessment of costs. Thirdly, I am pleased to be able to indicate to your Lordship that during the lunch adjournment the solicitors got together and agreed what costs would be **(inaudible)** before your Lordship. So the agreed sum for the Secretary of State, if I can give that to your Lordship, is £11,170. I can, of course, pass up a statement of that, if your Lordship wishes it.

44. THE DEPUTY HIGH COURT JUDGE: I will hear, obviously, from Mr Park in a moment, but if you are agreed on that — and, if I may say so, those behind you are to be commended on that — then I do not think I need see the details of that. I have the original summaries and that is sufficient. Mr Park?

45. MR PARK: My Lord, the figure is agreed.

46. THE DEPUTY HIGH COURT JUDGE: Is the principle in issue?

47. MR PARK: I do not think so. We do seek permission to appeal the four grounds your Lordship has gone through in the last hour and ten minutes. I do not know to what extent your Lordship would wish me to address them. If your Lordship is content to grant permission, I --

48. THE DEPUTY HIGH COURT JUDGE: I am not in favour of granting permission at the moment, but if there is any issue for you -- plainly you will bear in mind I have heard the points you wish to make on this. Of course, I will listen to any additional points — it would be helpful — but I would not have thought it was necessary for you to reiterate the points you have made, which you advanced very clearly.

49. MR PARK: My Lord, thank you. So far as the fourth ground is concerned, COM.16, your Lordship has not been able to find any reference to it, yet there was reference to other policies in the decision letter. My Lord, you might recall that I dealt with the way the COM.16 was dealt with by all parties at the inquiry in a substantial way **(inaudible)** and pages and pages were addressed to it.

50. So far as the reference to Annex C [is concerned], your Lordship heard my submissions this morning. The Inspector could not, in my submission, have been clearer in dealing with Annex C, in paragraph 15, than to say that this proposal clearly conflicts with this guidance. He could not, my Lord, in my submission, have been clearer. There is no conflict, because that is guidance that applies to a different set of circumstances.

51. Going back to the issue of encroachment, this may be of more general application than simply this case, if only because the Secretary of State has not produced any decisions at all that begin to deal with the matter. It may be that there will be many who wish to advance the notion that encroachment into the countryside needs no physical encroachment into the countryside. I can see, my Lord, that that would give rise to a little head scratching. I have explained to my Lord the position, insofar as that is concerned, this morning. It may be that your Lordship wishes to take on board that additional point that it may have some general application.

52. So far as the regulatory regime is concerned, I do not need to do more than simply refer back to the point that the Inspector's approach to that policy was against the backdrop of Mitting J's approach, and it would be a remarkable thing, having regard to the words used by the Inspector in paragraph 37, that when he refers to "normal requirement of the business", he was in some way managing to sidestep the approach which had been promoted before him and apprehending the Court of Appeal's approach. So, my Lord, for those reasons I seek permission to appeal.

53. THE DEPUTY HIGH COURT JUDGE: Thank you very much. I need not trouble you, Mr Tromans. I am not going to give permission for the reasons in my judgment. In my judgement, this has no real prospect of success.