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Court of Appeal

# Dartford Borough Council *v* Secretary of State for Communities and Local Government

[2017] EWCA Civ 141

B

2017 March 9; 14 Gloster, Lewison LJJ

*Planning — Development — Green Belt land — Applicants seeking permission for change of use of land to private gipsy and traveller caravan site — Site within residential curtilage of farmhouse in Green Belt and not in built-up area — Inspector granting permission on basis site qualifying as previously developed land — Whether "previously developed land" — National Planning Policy*
C *Framework (2012)*

The owners of a farmhouse applied for planning permission for change of use of land within its residential curtilage to use as a private gipsy and traveller caravan site comprising one mobile home and one touring caravan. The farmhouse was in the Green Belt and was not in a built-up area. On their appeal against the local planning authority's refusal of planning permission, the planning inspector appointed by the
D Secretary of State decided that the site qualified as "previously developed land", as defined in the glossary of terms in the National Planning Policy Framework ("NPPF")[1], because it was within the curtilage of a permanent structure and was not excluded as "land in built-up areas such as private residential gardens, parks, recreational grounds and allotments". The judge dismissed the local planning authority's challenge to that decision under section 288 of the Town and Country Planning Act 1990, rejecting its contention that all private residential gardens were excluded from the definition of
E previously developed land, whether or not they were in a built-up area.

On the local planning authority's appeal—

*Held*, dismissing the appeal, that the same approach was to be adopted to the interpretation of the National Planning Policy Framework 2012 as to the interpretation of a development plan document, namely that policy statements should be interpreted objectively in accordance with the language used, read in its proper context, and not as if they were statutory or contractual provisions; that the starting point was the glossary definition of "previously developed land" read as a
F matter of ordinary English; that the critical words defining the exception to previously developed land were "land in built-up areas such as private residential gardens, parks, recreation grounds and allotments"; that the words "such as" stated clearly that what followed were examples of the more general expression that preceded them, namely "land in built-up areas", so that as a matter of ordinary English, "land in built-up areas" could not mean land not in built-up areas; that while the NPPF was full of broad statements of policy which might be in conflict with each
G other, it was not the business of an interpreter to search for possible ambiguities or conflicts in order to detract from the obvious meaning of the words to be interpreted, and in any event there was no such conflict in the present case; that neither, where the language of the NPPF was clear, should previous policy guidance be invoked in order to create ambiguities and it would be wrong to expect the public, for whose benefit the NPPF was published, or indeed a would-be developer, to have to undertake the investigation of previous iterations of government planning policy in order to
H understand the NPPF, let alone ministerial statements introducing previous iterations of policy which would defeat one of the main purposes of promulgating the NPPF; that, therefore, statements made by ministers about previous iterations of policy could not detract from the clear words of the definition of previously developed land;

[1] National Planning Policy Framework, glossary: see post, para 2.

and that, accordingly, the proposed development site fell squarely within the definition of previously developed land and was not excluded as land in a built-up area (post, paras 6–9, 20, 23–25, 26).

*Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983, SC(Sc), *R (Timmins) v Gedling Borough Council* [2015] PTSR 837, CA and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2016] PTSR 1315, CA applied.

Decision of Charles George QC sitting as a deputy judge of the Queen's Bench Division [2016] EWHC 635 (Admin) affirmed.

The following cases are referred to in the judgment of Lewison LJ:

*Adedoyin v Secretary of State for the Home Department* [2010] EWCA Civ 773; [2011] 1 WLR 564, CA

*Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2016] EWCA Civ 168; [2016] PTSR 1315; [2017] 1 All ER 1011, CA

*R (Timmins) v Gedling Borough Council* [2015] EWCA Civ 10; [2015] PTSR 837; [2016] 1 All ER 895, CA

*R (TW Logistics Ltd) v Tendring District Council* [2013] EWCA Civ 9; [2013] 2 P & CR 9, CA

*Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] PTSR 274, CA

*Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13; [2012] PTSR 983, SC(Sc)

*Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2016] JPL 1092, CA

No additional case was cited in argument.

**APPEAL** from Charles George QC sitting as a deputy judge of the Queen's Bench Division

By a claim form issued pursuant to section 288 of the Town and Country Planning Act 1990, the local planning authority, Dartford Borough Council, challenged a decision of a planning inspector appointed by the Secretary of State for Communities and Local Government made on 29 July 2015, allowing an appeal by the owners of land at Shirehall Farm, Shirehall Road, Hawley, Kent, which was in the Green Belt and not in a built-up area, against the planning authority's refusal of their application for the change of use of part of the land within the residential curtilage of the farm to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan. On 21 January 2016 [2016] EWHC 635 (Admin) Charles George QC, sitting as a deputy judge of the Queen's Bench Division, dismissed the claim.

By an appellant's notice dated 20 April 2016, and with permission granted by the Court of Appeal (Lindblom LJ) on 10 August 2016, the planning authority appealed on the following grounds. (1) The judge had erred in his interpretation of the term "previously developed land" in the glossary to the National Planning Policy Framework ("NPPF") and should have held that all private residential gardens were excluded from the definition whether or not they were in a built-up area. (2) The judge's reading of the definition meant that other parts of the NPPF were at odds with each other. (3) The judge should have looked at ministerial statements covering changes to previous iterations of planning policy when interpreting the relevant words in the context of the NPPF document.

A At the conclusion of the hearing the court dismissed the appeal with reasons to be given later.

The facts are stated in the judgment of Lewison LJ, post, paras 3–4.

*Ashley Bowes* (instructed by *Sharpe Pritchard LLP*) for the local planning authority.

B *Charles Banner* (instructed by *Treasury Solicitor*) for the Secretary of State.

The court took time for consideration.

14 March 2017. The following judgments were handed down.

C **LEWISON LJ**

**1** The sole issue on this appeal was the meaning of "previously developed land" (often called "brownfield land") as defined by the glossary forming part of the National Planning Policy Framework ("NPPF").

**2** That definition reads:

> "Previously developed land: Land which is or was occupied by a
> D permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been
> E made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

**3** The context in which the issue arises is that on 29 July 2015 a
F planning inspector allowed an appeal against the refusal by Dartford Borough Council ("Dartford") to grant planning permission for a change of use of land to a private gipsy and traveller caravan site comprising one mobile home and one touring caravan. The site in question was within the residential curtilage of Shirehall Farm. Shirehall Farm is within the Green Belt, and is not in a built-up area.

G **4** The inspector decided that the site qualified as previously developed land because: (i) it was within the curtilage of a permanent structure (namely Shirehall Farm); and (ii) it was not excluded as "land in built-up areas such as private residential gardens, parks, recreation grounds and allotments".

**5** Dartford does not challenge the first of those reasons: the challenge is to the second. The argument is that all private residential gardens are
H excluded from the definition of previously developed land, whether or not they are in a built-up area. Any other interpretation, so it is said, would give rise to conflicting policies within the NPPF. At the conclusion of the hearing we announced that the appeal would be dismissed with reasons to follow. These are my reasons for joining in that decision.

6 The approach to the interpretation of the NPPF is the same as the approach to the interpretation of a development plan document: *R (Timmins) v Gedling Borough Council* [2015] PTSR 837, para 24 and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2016] PTSR 1315, para 24. The correct approach to the interpretation of a development plan document was laid down by the Supreme Court in *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983. In that case Lord Reed JSC said, at para 18: "policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." He went on to make an important point, at para 19:

> "That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse . . . Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

7 It is particularly that feature, namely that broad statements of policy may be irreconcilable, that differentiates a development plan document from a contract which one would expect to be internally consistent. Like a development plan document, the NPPF is also full of broad statements of policy; and it would be crying for the moon to start the process of interpretation with the idea that there is no tension between statements of policy pulling in different directions.

8 The starting point is, of course, the words themselves read as a matter of ordinary English. The critical words are: "land in built-up areas such as private residential gardens, parks, recreation grounds and allotments . . ."

9 In my judgment the words "such as" state clearly that what follows are examples of something. Examples of what? They can only be examples of the more general expression that precedes them, namely "land in built-up areas". As a matter of ordinary English I cannot see that any other meaning can be given to this sentence. "Land in built-up areas" cannot mean land *not* in built-up areas. It is argued that this interpretation means that other parts of the NPPF are in conflict with each other. Even if that were true it is not the business of an interpreter to go searching for possible ambiguities or conflicts in order to detract from the obvious meaning of the words to be interpreted.

10 The alleged conflict within the NPPF upon which Mr Bowes relied was the juxtaposition of two of the core planning principles in paragraph 17 of the NPPF, and a conflict between paragraphs 14, 55 and 111. I start with paragraph 17. This provides that 12 core principles should underpin both plan-making and decision-taking. Two of those principles are:

A "take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;"

and "encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high B environmental value . . ."

11 There is in truth no conflict between these two core principles, as is demonstrated by the more detailed policies about the Green Belt. Paragraph 87 of the NPPF states: "As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances."

C 12 Paragraph 89 goes on to say that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. But that general policy is immediately qualified by exclusions, one of which is:

"limited infilling or the *partial* or complete *redevelopment of previously developed sites* (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within D it than the existing development." (Emphasis added.)

13 Accordingly, the NPPF accommodates the definition of previously developed land within the general policy about development in the Green Belt. If a new building is a partial redevelopment of a previously developed site it is not to be regarded as inappropriate redevelopment in the Green Belt, provided that it has no greater impact on the openness of the Green Belt than E the existing development. The proviso also means that the encouragement of development on brownfield land is not, at least in the Green Belt, unqualified. So any possible tension is resolved.

14 Nor do I see any conflict between the definition and paragraphs 55 or 111 of the NPPF. Paragraph 55 states: "Local planning authorities should avoid new isolated homes in the countryside unless there are special F circumstances . . ."

15 However, the definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that a new dwelling within that curtilage will not be an "isolated" home. There will already be a permanent structure on the site. Paragraph 111 states: "Planning policies and decisions should encourage the effective use of land G by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value."

16 This paragraph expressly adopts the expression "previously developed" land and I cannot see that there is any conflict in so doing.

17 Mr Bowes also relied on statements made by the minister when introducing changes to previous versions of planning policy contained in H PPS3. Before commenting on that argument it is worth recalling why Lord Reed JSC said that development plan documents were to be objectively interpreted. His explanation, also at [2012] PTSR 983, para 18, was:

"The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which

will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities."

**18** The same is true of the NPPF. In the foreword to the NPPF the responsible minister stated: "By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning."

**19** In *R (Timmins) v Gedling Borough Council* [2015] PTSR 837, para 24 Richards LJ said that the NPPF was: "on the face of it a stand-alone document which should be interpreted within its own terms and is in certain respects more than a simple carry-across of the language in the guidance it replaced." In *Turner v Secretary of State for Communities and Local Government* [2016] JPL 1092, para 21 Sales LJ said:

> "The NPPF was introduced in 2012 as a new, self-contained statement of national planning policy to replace the various policy guidance documents that had proliferated previously. The NPPF did not simply repeat what was in those documents. It set out national planning policy afresh in terms which are at various points materially different from what went before."

**20** However, in both *Timmins's* case and *Turner's* case the court accepted that, at least in the case of the Green Belt, previous policy guidance remained relevant. I do not, however, consider that previous policy guidance should be invoked in order to create ambiguities in the NPPF where the language of that document is clear. Nor do I consider that that was the process that the court sanctioned in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2015] PTSR 274. The question in that case was whether "any other harm" should be given a restrictive meaning limited to what was described as "Green Belt harm" as opposed to "non-Green Belt harm". In the result the court interpreted the words by giving them their ordinary meaning. "Any other harm" meant "any other harm"; not "some other harm". The reference to previous guidance was deployed in order to rebut an argument that there had been a policy shift which justified a more restrictive and unnatural interpretation.

**21** Mr Bowes drew our attention to the decision of this court in *Adedoyin v Secretary of State for the Home Department* [2011] 1 WLR 564. That case concerned the Statement of Changes in Immigration Rules (1994) (HC 395) which, unlike ministerial statements of planning policy, must be placed before Parliament. The question was whether the word "false" meant "dishonest" or merely "incorrect". Rix LJ said, at para 70:

> "in a situation where a word, such as here 'false', has two distinct, and distinctively important, meanings, there is a genuine ambiguity which makes it legitimate, in construing Rules which are expressions of the executive's policy, to consider what the executive has said, publicly, about its rules. Clearly, what a minister says in Parliament, expressed as an assurance, and especially on the occasion of a debate arising out of the tabling of amended rules, is of particular, and may be of decisive, importance . . ."

**22** I do not consider that he derives any help from that case. That was a case in which there was an ambiguity on the face of the rules. Here there is no ambiguity on the face of the NPPF. The minister's statement relied on was not a statement about the NPPF, so it is not covered by Rix LJ's observations. Nor was there any ambiguity in PPS3 itself. Mr Bowes does not in fact rely on previous policy guidance: so his reliance is not within what was contemplated by *Timmins's* case [2015] PTSR 837 or *Turner's* case [2016] JPL 1092. The alleged ambiguity only arises if the minister's statement in Parliament is literally interpreted without regard to the text of the revised policy that he was introducing. I do not regard that as a legitimate approach to the interpretation of the NPPF.

**23** In my judgment it would be quite wrong to expect the public, for whose benefit the NPPF is published, or indeed a would-be developer, to have to undertake the investigation of previous iterations of government planning policy in order to understand the NPPF, let alone ministerial statements introducing previous iterations of policy. Indeed that would defeat one of the main purposes of promulgating the NPPF in the first place. If I may repeat something I have said before:

> "The public nature of these documents is of critical importance. The public is in principle entitled to rely on the public document as it stands, without having to investigate its provenance and evolution." (*R (TW Logistics Ltd) v Tendring District Council* [2013] 2 P & CR 9, para 15.)

**24** For these reasons I did not consider that statements made by ministers about previous iterations of policy could detract from the clear words of the definition of previously developed land.

**25** I note that when Lindblom LJ granted permission to appeal he did not do so on the ground that the appeal had a real prospect of success, but because there was some other compelling reason for the appeal to be heard. I agree with his view on the merits of the appeal, which is why I agreed to its dismissal.

**GLOSTER LJ**

**26** I agree with the reasons given by Lewison LJ for the dismissal of this appeal.

*Appeal dismissed.*

ALISON SYLVESTER, Barrister