

SMALLFORD WORKS

GREEN BELT OPENNESS

ADVICE

Introduction

1. I am asked to advise Stackbourne Ltd in relation to its planning application to the St Albans City and District Council (“**the Council**”) for:

“Outline planning permission with all matters reserved, expect access, for the redevelopment of site including demolition of existing buildings to provide up to 100 residential units [at] Smallford Works, Smallford Lane, Smallford, St Albans, AL4 0SA.”

2. The site is in the Metropolitan Green Belt. The application is supported by a Planning Statement from Carter Jonas which finds that the scheme is appropriate development in the Green Belt. I am asked to comment on that approach.
3. For reasons I explain below, my view is that:
 - (i) The Planning Statement’s conclusion that the scheme does not cause “substantial harm” to the openness of the Green Belt under §145(g) NPPF accords with the relevant Court of Appeal caselaw, and with recent decisions from the Planning Inspectorate;
 - (ii) On that approach, the scheme would constitute appropriate development in the Green Belt with no need to be justified by very special circumstances;
 - (iii) Nonetheless, and for completeness, my view is that the approach in the Planning Statement both to Green Belt purposes and the very special circumstances test accords with the relevant national policy and caselaw.

Legal and Policy Framework

(i) NPPF

4. The key passages of the National Planning Policy Framework (“**NPPF**”) are as follows:

“133. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

134. Green Belt serves five purposes:

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

[...]

Proposals affecting the Green Belt

143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are

[...]

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

[...]

Previously developed land: Land which is or was occupied by a 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 was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as 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.”

5. So whether a new building in the Green Belt is “appropriate” or “inappropriate” may depend on whether or to what degree it harms “the openness of the Green Belt”. But what does openness mean?

(ii) “Openness”

6. Openness is not simply a question of volume.¹ It is an open-textured concept and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case.² Those factors include visual impact.
7. Further, even when the comparison does turn on volume, the openness assessment is not limited to buildings.
8. In *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 – the key Court of Appeal authority in this area – the Planning Inspector found that commercial vehicles and hard-standing will inevitably have an effect on the openness of the Green Belt, and that approach was upheld by the Court.³

¹ *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 at §14.

² *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 at §14.

³ *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 at §27.

9. In *Samuel Smith Old Brewery (Tadcaster), Oxtan Farm v North Yorkshire County Council* [2018] EWCA Civ 489, the Court of Appeal followed the approach in *Turner*: see §37. *Samuel Smith* has been appealed to the Supreme Court. The appeal was heard on 3rd December 2019 and judgment is awaited. But it was not argued in that appeal that *Turner* was incorrectly decided. Indeed, it was expressly endorsed by both sides.

Analysis

10. The scheme includes the policy-compliant provision of 40 affordable homes. A policy-compliant offer of affordable housing contributes to meeting an identified affordable housing need within the meaning of the 2nd bullet of §145(g) NPPF.⁴
11. The site is an established employment site which includes a range of industrial buildings, hardstanding and fencing. There is no doubt that it comprises “previously developed land” within the meaning of the glossary to the NPPF.
12. In consequence, the policy question under the 2nd bullet of §145(g) NPPF is whether the scheme will cause substantial harm to the openness of the Green Belt.
13. That issue must be assessed against the correct baseline: i.e. the existing built form on site, taken together with the substantial piles of stored materials of various kinds and wide range of large commercial vehicles on site. Those elements make a substantial impact on the existing openness of the Green Belt.
14. That substantial impact is the correct baseline against which the scheme’s effects should be judged. And in my view the Planning Statement is right to conclude at §6.24 that the existing

⁴ APP/T3725/W/18/3218529 [DL:17].

site does not benefit from a sense of visual or perceptual openness, and does not contribute to the openness of the surrounding countryside.

15. Further, Carter Jonas conclude at §6.25 of the Planning Statement that:

“Whilst the actual volume of built form will increase, the proposed residential would incorporate elements of openness within it that would give a sense of openness and better relate to the neighbouring countryside. Key features include the provision of a central ‘village green’, as well as landscaped gateway access for pedestrians and cyclists in the south eastern corner of the site. The provision of mews avenues towards the neighbouring open space to the west of the site creates a greater perceptual and visual connection to it.”

16. That point becomes apparent when comparing some of the images of the current site with the proposed masterplan for the scheme:

- Existing site



- Proposed masterplan



17. Albeit the actual volume of built form would increase if permission were granted, that is only one element in the analysis. In my view, the Planning Statement is plainly correct to find that that the scheme would positively enhance several aspects of the site's openness – both internally, and in terms of its links with the broader countryside.
18. Overall, my view is that the conclusion at §6.25 of the Planning Statement – set out above – accords with the principles set out in *Turner* and accepted by all sides recently in the Supreme Court in *Samuel Smith*.

19. The bar for showing “substantial” harm to openness is a high one.⁵ Only slight harm is not enough.⁶
20. In this case, particularly given the substantial impact on the openness of the Green Belt to which this site already gives rise, the Planning Statement’s conclusion that the scheme would not cause “substantial harm” to Green Belt openness is unsurprising, and plainly accords with the relevant cases – both in the Court of Appeal, and from the Planning Inspectorate.
21. The consequence of that view is that the scheme constitutes appropriate development in the Green Belt with no need to be justified by very special circumstances.
22. Still, for completeness, I note my view is that the Planning Statement’s approach both to the purposes of the Green Belt and to very special circumstances accords with the relevant national policy and caselaw.
23. In particular, I agree that the provision of 60 new market homes and 40 affordable homes to contribute to meeting substantial local need, along with the opportunity for significant environmental enhancements, are important elements in the correct approach to the very special circumstances policy test, if it applies – albeit, as above, I agree with Carter Jonas that it does not apply.

Conclusion

24. Those instructing me should not hesitate to contact me in Chambers with any questions arising out of this advice.

⁵ APP/T3725/W/18/3218529 [DL:16].

⁶ APP/T3725/W/18/3218529 [DL:18].



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