Notes 159

March 2011

The London Green Belt Council

Government abandons proposal to abolish Forestry Commission

Though this is not specifically a green belt issue, I feel that it is of such importance, and of such a revealing nature, that I should put it at the head of these Notes. The proposal was about the most gormless ministerial proposal that I can remember, in the sense that it displayed a complete inability by the Minister to grasp the widespread love of and pride in our forests, as was the woolly thinking in assuming that abolishing such a widely respected organisation as the Forestry Commission in favour of private interests would solve economic problems. Fortunately public opinion soon made itself felt in large numbers and in no uncertain terms. But one shudders to think what a 'communities' department, managed in such a fashion, will do next. Can we still have confidence in Government promises of protection of green belt? So I quote again from a letter from the Department for Communities and Local Government, which I quoted more fully in the last issue of Notes: 'In relation to proposals affecting green belt the policy in PPG2 is generally very relevant'. (My underlining: I know that when the letter was written 'generally' was meant to cover the fact that references to regional structures no longer applied; but it could, of course, later be used to cover other changes as well. So we must remain very alert).

But the Government did come down to earth and admit its error. The Open Spaces Society, which opposed the proposals from the beginning, said, as their General Secretary, Kate Ashbrook, put it, that they were 'immensely relieved that the Government has at last seen the trees for the wood and recognised that its plan was a recipe for complete disaster ... It is astounding that Ministers were so out of touch with popular culture that they did not understand just what our woods and forests mean to us all and that they are incredibly special, for recreation and enjoyment and as an essential part of the nation's history'.

The Localism Bill and Green Belt

The Governments new Localism Bill sets out how the planning system will be structured in future. As it is 184 pages long plus 247 pages of schedules I am not copying it all here, but I recommend the excellent six-page summary circulated in a special edition of the CPRE's south-east eBulletin of 14.12.2010.

But the Bill does seem likely to have serious implications for green belt, not through direct references, but by rendering 'advice' in more general and vague terms. In this context, I quote a letter sent by the Department for Communities and Local Government to our former secretary, Laurie Holt on, 17th February. It follows earlier correspondence, which was quoted in Notes 158. What concerns me most is the statement that the National Planning Policy Framework 'will eventually replace all the Planning Policy Statements and Guidance Notes'. Thus PPG2, which has been the bedrock of green belt protection for many years, and is referred to in practically every planning appeal, could become just a wisp of good intentions with no firm basis for anything. The letter from DCLG reads as follows:

Dear Mr Holt

Thank you for your further letter of 10 January. I am sorry to have taken so long to reply. You enquire about the relative force of PPG2 (Planning Policy Guidance Note 2, Green Belts) or any successor policy, and neighbourhood development orders or the 'community right to build'.

Neighbourhood development orders and Community Right to Build orders are being introduced through the Localism Bill. I am advised that the Bill will ensure that they appropriately fit with national planning policy. In particular, the Bill as drafted requires these orders to be `appropriate having regard to national policy' before they can come into force. This would include national policy on Green Belt.

Of course, 'having regard to' is not the same as saying 'comply with'; it leaves the assessment of relevance and the relative weight of all the facts and issues in a case to the determining local planning authority. That is the situation now, when the authority determining an application affecting Green Belt is required to have regard to PPG2, the local development framework, and all other material considerations.

As part of its work to create the National Planning Policy Framework, launched in December, the Government will be considering how best to update Green Belt policy. The Framework will eventually replace all the Planning Policy Statements and Guidance Notes,

Section 19 of the Planning and Compulsory Purchase Act 2004 states that, in preparing a local development document, the local planning authority must have regard to 'national policies and advice contained in guidance issued by the Secretary of State'. Section 34 of the same Act states that, in determining planning applications, the local planning authority 'must have regard to any guidance issued by the Secretary of State'. All policies comprised in the National Planning Policy Framework will be covered by those same requirements.

We expect a draft Framework to be ready for full public consultation in summer, and the final document to take effect in 2012.

We very much hope that the policy will not require support from new separate guidance – the aim is to reduce 7000 + pages of mixed policy and guidance on all aspects of planning to something more 'user-friendl'!

You may also be interested in the 'duty to co-operate" proposed in the Bill. If made law, this would require local planning authorities to discuss and agree strategies with each other on wider or supra-local planning issues, and these could include a joint approach to designating and protecting Green Belt.

Planning Guidance concerning Travellers

I copy below another document which was sent to Laurie Holt by DCLG in response to some comments by him. It is undated but must have predated the matters referred to above.

Planning

Regional Strategies The Government has announced its intention to abolish Regional Strategies in their entirety through the forthcoming Localism Bill This will make local authorities responsible for determining the right level of site provision in their area, reflecting local need and historical demand in consultation with local communities.

Circular C1/2006 (Planning for Gypsy and Traveller Caravan sites) The Government intends to revoke Planning Circular 01/06, subject to necessary impact assessments. It will be replaced with a short

policy statement and light-touch guidance. This is being done as part of a broader package of reforms to decentralise the planning system and strengthen the role of elected councils

Unauthorised dewlopments (when Travellers develop land they own but without planning permission) Local authorities have a range of powers, We recognise, however, that planning enforcement remains a problem.

We are clear that we will not tolerate attempted abuse of the planning system over Bank Holiday weekends The Secretary of State wrote to Local Planning Authorities in advance of the Whitsun weekend to remind them of the need to be alive to unauthorised developments over the extended break We are working on proposals to strengthen the powers that local authorities have to enforce against breaches of planning control and to limit the opportunities for retrospective planning applications in relation to any form of unauthoriseed development.

Unauthorised Encampments (when Travellers occupy land they do not own, without permission) The Government is concerned about unauthorised traveller encampments and the effect they have on local communities; we want to see fair play and avoid conflicts between the settled and travelling communities. The police and local authorities have a range of powers to deal with unauthorised encampments . The strongest powers enable the police to remove encampments immediately where an alternative site is available in the local authority area. We will look at ways we can work with councils and the police to help them tackle unauthorised encampments more effectively.

Site Provision The Government is committed to encouraging sustainable development and it remains very important AM local authorities continue to plan for the future of their communities.

Local authorities are best placed to determine how to meet their housing needs, including traveller site provision to meet local need and historic demand.

We will encourage local authorities to provide appropriate sites for travelers, in consultation with local communities, and will offer incentives to do so. Councils will be given incentives through the New Homes Bonus scheme to deliver new housing, including traveller sites.

Grant funding for local authorities, to deliver new sites resumes next year. An announcement on funding levels will be made shortly. Private provision is a key element of supply.

Discrimination and Social Outcomes. We are committed to addressing the discrimination and poor social outcomes experienced by traveller communities and are looking into a cross-government approach to tackling existing social inequalities, particularly in relation to health and education.

Mobile Homes Act We intend to bang local authority traveller sites into the Mobile Homes Act (1983) to give residents on those sites improved protection against eviction and a secure home.

Specific Cases Because of the Secretary of State for Commnuities and Local Government's quasi judicial role in the planning process we cannot comment on specific planning applications as they may come to him for decision on appeal

I have included the above in full because the matter is often a source of local concerns. The above must apply generally and on green belt. In green belt the extra green belt guidance applies - in theory.

(PS: The item above which appears to give travellers protection against having a secure home is a correct copy from the original.)

Planning Decisions

1. This concerned a proposed addition to a replacement dwelling in green belt when the size of the original dwelling was not agreed, or even whether there had been one original dwelling or two. The council had refused the application, but the applicant argued that, in view of these doubts, the council could not prove that the application breached greenbelt policies about the size of extensions.

The house at present on the site is a replacement dwelling. Before it was built there had been a proposal for a 5- bedroomed house and double garage, and this had been replaced by an application for 6-bedroomed house with enclosed swimming pool and garage for five cars. Though this increased the floor space compared with the earlier scheme the planning officer had remarked at the time that the increase was 'mainly due to the ancillary accommodation, i.e. swimming pool and garaging and the improved siting enclosures'. The last three words mystified the inspector dealing with the current application, which was for a ground floor extension and alterations to provide a pool lounge and study and a first floor guest suite with en-suite bathroom and balcony.

The inspector concluded, however, that 'in all likelihood' the second application described above (i.e. the six bedrooms plus swimming pool etc) represented a significant increase in area over the original dwellings) and that, when the present proposal was added to that, the cumulative effect could not be said to represent a limited extension to the floorspace of the original building(s). It was therefore inappropriate development in green belt.

2. New access road to stable yard. The proposal, on a site in open countryside, is to replace an access road to an existing group of 17 stables, tack rooms, stores and horse facilities, which passed through the curtilage of a listed building, by a new access road. The inspector considered whether it would be inappropriate development within the terms of PPG2, and whether it was an essential facility within the terms of the local district plan. He stressed that the main concern was the openness of the green belt and found that, while taken on its own the access track would have limited impact on openness, in the context of the existing buildings and horse-related facilities, it would have an unacceptable impact, even though the use of grasscrete® [a new one on me] would make it appear less urban. He also considered other points made by the appellant, the use of extra landscaping, the reduction of the danger which the use of the existing track near a lodge created for children, and concluded that they did not outweigh the damage the proposal would do to the openness of the green belt. He dismissed the appeal. He also noted the council's comments on the harm which approval would do by way of precedent, and remarked that, while each case must be considered on its merits, he appreciated their concern that approval might encourage other applications leading to an undesirable cumulative effect.

3. More on cricket. In the last issue of Notes, I commented on a case where a wind turbine had been refused because it might disturb the concentration of cricketers on a pitch nearby. This time I am reporting the refusal of cricket and football pitches in West Mdlands green belt, because of the buildings which the applicant held to be essential with them. These included, an assembly area, changing rooms, a kitchen, an office, and a meeting room Taking account also of parking areas, access yards and walls, the inspector ruled that the scheme would be contrary to PPG2. The very special circumstances, including improving the health of young people, did not outweigh the harm to the green belt.

4. Visibility does not count in assessing inappropriateness. The proposal was to extend and convert a coach house in Bucks into a separate three-bedroomed dwelling. There was dispute over several aspects which I need not go into here, but the one that should be noted is the appellant's claim that account should be taken of the fact that the scheme would not be visible from public viewpoints, that extension to the west would be behind the existing building as seen from the road, and that the site has buildings on all four sides. The inspector commented that 'These considerations are not of determining significance. That is because the protection of the openness of the green belt afforded by policy is not limited to land that is visible from public vantage points or to land which is surrounded by undeveloped sites. I have concluded that in addition to harm by reason of inappropriateness, the proposal would be harmful in terms of green belt policy by virtue of its effect on reducing the openness of the green belt.'

5. Does being polite rule out legal rights. Land wanted by Redcar council for development had been used since 2002 as a golf course. A local organisation wanted to register it as a green, but following an inquiry in 2007 the council refused to back them for two reasons (1) whether the public use which led to the desire for registration was indeed 'as of right', and (2) whether it could be as of right since the walkers had usually given way to the golfers if their routes happened to cross. As regards (1) the golf club had put up a notice in 1998 saying that the walkers were trespassers and that their use of the site was dangerous. The judge said that the wording did not amount to the landowner's saying that he did not acquiesce in the use of the land by walkers. As regards (2) the judge said that the fact that the walkers overwhelmingly deferred to the golfers did not necessarily conflict with their use of the land 'as of right', but he gave leave to appeal 'about the ambit of the deference principle'.

In 2009 the Court of Appeal refused the appeal, saying that the appellants needed to show that the local people had been asserting a right to use the land, whereas they had let the golfers play first. But in 2010 the Supreme Court overturned the Court of Appeal's ruling and ruled that the land should become a village green. The fact that the people had acted with deference and courtesy to golfers did not mean that they were not asserting a right. So the exercise of courtesy (or regard for one's safety on golf courses?) will prevail.

6. Green Belt strip separating two estates to be preserved. A business park had been built on a former scrapyard alongside green belt in Gloucestershire and its owners wanted to extend it onto a strip of the green belt which separated the site from another industrial, estate by a hedge and public footpath. The proposed development would almost fill the gap between the two The inspector, who had commented that he was unclear why the business park had been permitted in the first place in view of green belt policies, said that the projected economic benefits of the proposal did not outweigh the harm to the green belt; so he rejected the proposal.

7. Green Belt v. coal. The Secretary of State rejected proposals for coal extraction in West Yorkshire green belt, not because of the short-lived impact that extraction would necessitate but because the long-term profile of the site would appear unnatural with areas of raised ground and knoll-type profiles which would be out of place in the landscape. The applicant had also argued that the proceeds from the coal site were critical to the funding of the restoration of a listed hall nearby, but the Secretary of State said that this was not a material benefit of any weight.

8. Travellers' compliance period extended. In view of the lengthy Government-guidance note about gypsies and travellers given in these Notes you may find its response to one of the many problem cases in this field instructive. Two gypsy families had been ordered to vacate a site in North Yorkshire green belt. After an inquiry, the inspector decided to extend the period for compliance with the order rather than grant the families temporary permission to stay.

The families had divided the land into three parts separated by fenced paddocks. Each part contained a mobile home and amenity block, and an access road had been created. They argued that the unmet need for additional sites and the large numbers of children on the land justified permission to stay. The inspector decided that the access, residential-style gates, hardstanding, mobile homes, caravans and vehicles limited the site's openness. She accepted that the need for extra approved pitches may have been underestimated but she saw considerable scope to find sites outside the green belt, and the council was searching for one of between 10 and 12 pitches. She noted that the families involved here had vacated authorised pitches and that one had the option of returning to one. She therefore gave only moderate weight to their personal needs. Temporary permission for 12 months would involve the council in the issue of a further enforcement order at the end of it, so she extended the compliance period for vacating the site by 12 months, by when a new site might be available.

Comments and contributions to R W G Smith, 111 Billy Lows Lane, Potters Bar, Herts, EN6 1UY. 01707 645256.