



The London Green Belt Council

The last two issues of Notes stressed the confusion that seemed to reign in the planning world as Ministers sought to formulate a new approach which would make everyone happy, would cost less, and would reduce the delays imposed by the existing system which seemed to be in process of being made a scapegoat in various respects. Members will know that I have a high regard for the planning system, and particularly for the planning inspectorate, and we must try to ensure that neither is unfairly treated.

The situation is not getting clearer as time goes on, and I advise members where possible to read the last two issues of Notes again so that they can try to follow (I would not say understand) developments.

Regional Planning: What significance, if any, should it have in future?

When the Government came to power, one of its first acts in the planning world was to tell local authorities that recently imposed regional housing strategies should be ignored with immediate effect because Regional Planning and Development Authorities were going to be abolished. Unsurprisingly there was immediate legal doubt about whether a Minister could tell a planning authority or the planning inspectorate to ignore the instructions which legally existed but which the Minister said he was going to get rid of later, though he had as yet no power to do so.

This came to a head when a firm called CALA HOMES, which was involved in a planning appeal in the Basingstoke area, applied to the High Court to quash the Minister's statement, so that the existing situation would remain in force until the Government had acquired the legal power to change it. The High Court agreed, but on the very day when it published its decision (27th May 2010) the Secretary of State sent authorities the proposed clause in the Localism Bill which would start its journey through Parliament six months later. But, in his accompanying letter, the Minister said that he expected local authorities and inspectorate to treat his future intention as a material consideration in coming to planning decisions. CALA appealed against this letter also, but in February 2011, a different High Court judge ruled against them. They also took that matter to appeal and in May this year the Court of Appeal ruled against them, saying that the prospect of a change in planning policy is capable of being a material consideration.

But confusion still reigns. An article in Planning of 3rd June says that the judge did go on to say that 'it would be unlawful for a local planning authority preparing, or a planning inspector examining, development plan documents, to have regard to the proposal to abolish regional strategies. For so long as the regional strategies continue to exist, any development plan documents must be in general conformity with the relevant regional strategy'. Another article in the same journal goes into the confusion in the planning world, some wanting to revise their plans before the regional authorities are abolished and some wanting to wait so that they can then work on a new basis. The overall production

of housing will be a mystery but figures provided by ten major authorities show that home numbers proposed in their regional spatial strategies will be reduced by about 28%

And what about Green Belt?

This, of course, does not directly relate to green belt. But there are disturbing indications that green belt could be affected by the present spate of revised promises in many fields and by the Government's desire to loosen controls generally. The following may be straws in the wind, or may not (I am not sure what the opposite of a straw in the wind is);

a) From a recent CPRE appeal: "The Government has opened the flood gates to development on green field sites...Planning bodies are being told to prioritise jobs and growth over all other considerations... the Chancellor said that the default answer to development is 'Yes'".

b) The same CPRE document says that this would be disastrous for the English countryside. It acknowledges that 'designated land such as green belts will continue to be protected for now'. The words 'for now' are the CPRE's not the Government's, but they remind me of Notes 157 which, in quoting the Government's commitment to green belt, included an ambiguous sentence about revising boundaries. The DCLG was challenged about this by Laurie Holt, our former Secretary, and the Department's reply to him was in my view even more ominous, not less: 'There was no intention on our part to suggest that Green Belt boundaries should be revised whenever any development plan document is revised. As you will have noted, the previous sentence of the Question 22 answer said 'Local planning authorities should continue to apply policies in PPG2'. It was clearly the expectation that any decisions on green belt would be made in the context of PPG2 policy which, as you point out, emphasises the permanence of Green Belt. However, it might have been better to say something like: 'Local Planning Authorities should ensure that the extent and location of their green belts remains appropriate. The local plan process will provide opportunities to consider, in consultation with other local planning authorities, whether any review is necessary'.

To me this is perilously like 'I will staunchly maintain green belt unless I think otherwise'. Members need to know what the Department has said, and to be alert. For what it is worth the intention seems to be that any boundary changes should be made when local plans are revised, not in response to planning applications. I do not think that is new, but to emphasise it at this stage could do more harm than good.

I had just reached the above point in drafting these Notes when I received The Times of 1st July with its headline 'Planning Rules pave way for Green Belt housing bonanza'. This relates to relaxation of planning controls in the draft new National Planning Policy Framework to be published later in July. The article says that the Policy will tilt the balance in planning negotiations in favour of developers. It will then place the burden of proof on the local authorities to show that a green belt application will result in adverse impacts that 'significantly and demonstrably' outweigh the benefits. The present guidance, which the new framework will replace, contains a strong presumption against any development of the green belt. Clearly, there will be work ahead for all of us, and we cannot assume that assurances given in the past will hold without a fight. PS: The Times of 5th July contains a strong denial by the Minister of any intention to change green belt policy. [A copy of the letter is annexed to the minutes of the LGBC meeting on 6th July.]

New London/Birmingham Rail Link

A different example of how development pressures are distorting common sense is the London/Birmingham rail link, on which the Government is consulting at present. It crosses superb green belt and much fine non-green belt as well. It will cost billions of pounds to build at a time when we

are supposed to be economising but it will save time between the two city centres. How much time? The answer is 25 minutes, and even that is less significant than it might appear given that, with modern technology, much work can be done on the train during a journey.

In the past we have not usually taken sides on the need for a new major road or railway in green belt: we did not, for instance, oppose the building of the M25. We accepted that the Government had to look at all the issues and that, if the conclusion was that the road or railway was essential, we would go along with that provided that no unnecessary buildings, e.g. petrol stations, hotels etc, were erected in green belt. Put another way, it meant that we accepted the loss of openness created by the mere existence of the road or railway but not any further loss created by buildings etc. By and large that has, I think, been successful.

The difference in the present case is need and cost. As shown above the need is very questionable indeed, particularly as economy is being urged upon us every day. It must be right to say so, whilst emphasising that if the Government's conclusion goes the other way, there must nevertheless be no new development in the green belt apart from the railway itself.

Amenity interests are not the only ones alarmed by the proposals. An article in Planning last January listed nine local authorities, including five in Buckinghamshire, which intend to pool their resources for a joint fighting fund.

Planning decisions

1. Canal Boat Marina banned in green belt. You might think that canals provide peace and character and a sense of history to countryside, including green belt. But not always. A farmer, whose land was crossed by the Shropshire Union canal wanted to develop a marina there. The development, in green belt, would include embankments, 139 moorings, a car park and a recycling area. The inspector thought that the scheme would reduce openness and sowed no clear affinity with farming activity or the rural economy.
2. Mobile home for livery business in Tyneside green belt. Retrospective permission for 14 stables, a tack room, stores and other buildings had been given in 2010, but there was no accommodation for a resident employee in what was a high crime area. A vet who knew of some 200 equestrian businesses said that he knew of only one with no resident staff member. The inspector granted a permit for a residential caravan for two years.
3. Home permitted on green belt after 50 year gap. The previous dwelling, in Derbyshire green belt, had not been used since 1958, and the council claimed that it had been abandoned and no longer had a lawful residential use. The inspector confirmed that it was unusable at present but found that the owner had demonstrated a desire to repair and reuse it when local subsidence had stopped. Neighbours confirmed that he had made weekly visits to check it and tend the garden. The inspector said that a replacement dwelling would not be inappropriate development.
4. Effect on green belt site of coal extraction and restoration. There was a proposal to extract coal from a green belt site in West Yorkshire. The Secretary of State agreed with his inspector that screening mounds, buildings, security fencing, hard surfacing of roads and the use of large plant would erode green belt openness, but the extraction period would be short-lived and would not make the scheme inappropriate if it were acceptable in all other respects. Nevertheless the lasting profiles would appear unnatural over an extensive area. He saw no evidence that coal from the site was critical, and he refused the application.
5. What is a nature reserve? The S/S had allowed construction of 540 dwellings in York green belt in 2007, finding that meeting the local need, particularly for affordable housing, constituted very special circumstances. A third party now wanted to establish the land as a nature conservation area. The inspector found this consistent with PPS9 on Biodiversity and Geological Conservation, but he felt that the term 'Nature Conservation Area' implied something special about local flora and fauna. He also thought that (to quote the words in Planning) 'The public's

understanding of the planning process would be harmed if the site were described as a nature conservation area as housing development proceeded'. He rejected the application.

6. Winter storage of equipment used at fairs by showmen. A travelling showman who attended fairs all round London wanted a site where he could store his vehicles and equipment during the winter and have two caravans for accommodation. He sought a green belt site, saying that he had applied to all councils across London without success. He also said that round London 48 such sites were needed. The site where he was now staying had been subject to varying applications for gypsy accommodation, all unsuccessful. He acknowledged that he did not have any strong links with the area. The inspector noted that a 2007 circular on sites for travelling showmen said that the absence of such a connection should not be used as a basis for rejecting a particular proposal; but while the lack of available alternatives counted in the appellant's favour the substantial impact on the openness and amenity of the green belt was overriding. He rejected the appeal.

7. Animal Welfare for cats and dogs (including hydrotherapy units). The replacement building in Greater Manchester green belt would be larger than the existing one and would have a ridged roof. It would reduce the area's openness, but the inspector agreed that this would be tempered by screening, by a thick hedge, by mature trees, and by its improved design. The hydrotherapy pool for dogs would probably reduce their recovery times, and their owners' expenses. He allowed the appeal.

8. Aerodrome in Essex Green Belt. The aerodrome had a lawful development certificate for use by nine aircraft and six microlights, with no take-offs or landings in darkness. Since it was now being used by up to 41 aircraft an inspector had approved an enforcement notice. The owner appealed to the High Court, which rejected the appeal, commenting that the inspector had reasonably concluded that the airport was being used for commercial flights, and that using a barn to store aircraft was not permitted development.

9. What accommodation do pedigree pigs need? Various structures were put up on a green belt site in Lancashire. One claimed to be for pedigree pigs, included a polytunnel and a small wind turbine. Log cabins were also manufactured on the land. The inspector noted that the pig shelter was too large for agricultural purposes, the polytunnel contained a lathe which would make enough noise to adversely affect neighbours' amenity, the hard-standing encroached into the countryside, and he saw little justification for the turbine.

10. Sand extraction permit in Bedfordshire Green Belt extended by 5 years. Item 4 above deals with refusal of permission for coal extraction because of lack of need and the long-term damage to the environment. In this case in Bedfordshire sand was being extracted and the council said that it compromised highway safety and harmed the amenity of village residents. The extractors said that activity would continue until 2015 anyway through permitted waste tipping. The inspector said that evidence was that about 214,000 cubic metres were available and restoring the site without extracting its resources would be a waste of valuable resources. This outweighed the temporary harm to green belt and living conditions, and the impact on highway safety was acceptable.

11. Beer for cricketers OK in green belt. Finally, in case any of you feel depressed after reading these Notes, you might like to know that a Staffordshire cricket club in green belt has been permitted to extend its premises to store beer. The inspector ruled that it was part of the primary use of the site and not inconsistent with green belt policy.

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