



# The London Green Belt Council

---

## All-Party Parliamentary Group on the Green Belt

The All Party Parliamentary Group on the Green Belt is seeking responses from interested parties and groups about how Green Belt land is protected and preserved for the future. Responses are required by 30 January 2014.

The group intends to publish a report on the basis of this evidence in Spring 2014, with oral evidence sessions also being held.

In particular, the group wish to focus on issues including:

- What has been the effect of the abolition of Regional Spatial Strategies and the introduction of the National Planning Policy Framework in the context of the preservation of greenbelt land?
- Which local councils are taking their obligations on greenbelt preservation seriously and which local councils are placing greenbelt land under threat?
- What new policy ideas should be considered to increase greenbelt protection?
- Should brownfield land in greenbelt areas have the same protection as Greenfield land in greenbelt areas?
- How can we increase local community engagement in protecting the greenbelt?
- How can it be made clearer to the media the important distinction between 'greenfield' land and 'greenbelt' land- with the importance of greenbelt being highlighted as separate from greenfield.
- How do we balance the need to sustain the greenbelt with the need for sustainable communities?
- Should certain areas of greenbelt land be given higher protection than other areas?
- What should the greenbelt look like for the twenty first century?

LGBC members may wish to make their own response to this call for evidence. Responses and submissions should be sent to [appgreenbelt@gmail.com](mailto:appgreenbelt@gmail.com) or posted to APPG Greenbelt, Room 20, Norman Shaw North, House of Commons, SW1A 0AA.

We will respond on behalf of LGBC and would welcome comments and suggestions from members (by 23 January, please, to allow time for our response to be finalised).

## The Green Belt (London and Home Counties Act) 1938

From time to time members ask us whether this Act is still in force and how they check whether a certain plot of land is covered by the Act.

Even prior to 1938, some councils had been buying up land around London in order to keep it open. The Act put this on a more organised basis, giving local authorities the power not only to buy land, but also to pay money to secure covenants on land requiring them to be kept open. It is a feature of the Act that, having acquired land under the Act, a local authority can only dispose of it with the Secretary of State's consent.

The Act has not been repealed and remains largely in force. The main subsequent change was made by the Planning Act 2008. That Act set up a new planning regime for major infrastructure projects and Section 33(1) provided that various ministerial consents required by the 1938 Act would not be required for developments covered the new regime.

The only other derogation from the 1938 Act that I know of was made by part V of the Housing Act 1985 (consolidating provisions first enacted in 1980). This gave tenants the right to buy their homes. The question arose whether this meant that tenants have the right to buy a home on 1938 Act land without any requirement for ministerial consent. In *R v SoS for the Environment, Transport and the Regions, ex parte O'Byrne* [2000 UKHL 45], the House of Lords decided that answer to this was 'Yes, it does'.

The facts of the case were unusual and will recur rarely, if ever again. The Housing Act right to buy provisions inherently apply to an existing development which will be rare in Green Belt. In the House of Lords case, the tenant was a gardener living in a flat above the old stables (now the café) at Coombe Wood Park near Croydon.



Councils should be able to tell you which of their lands are held in accordance with the 1938 Act but, in practice many planning departments are hazy about the Act and its implications. The acquisition process will have been recorded in the Council minutes of the time if you can locate them.

The London County Council acquired some land and also contributed to the acquisition of land by surrounding County and County Borough Councils. LCC minutes are kept on the open shelves at the London Metropolitan Archives (40 Northampton Road, EC1R 0HB - <http://www.cityoflondon.gov.uk/lma> ). The minutes are indexed in six month blocks, so it helps if you know when a site was acquired, but searching a number of years is not too onerous. When you have located an acquisition in the full Council minutes, there should be more detail in the minutes of, and papers presented to, the Committee which prepared the report for the Council. Committee minutes and papers have to be ordered from store. If in doubt, ask the staff – they are very helpful.

## Carshalton Environmental Fair

LGBC was represented at the Carshalton Environmental Fair on August Bank Holiday. The event managed to dodge the summer monsoons and was blessed with a beautiful summer's day. It was a long day for Ray Liffen, Edward Glynn and Cedric Hoptroff who staffed the stall, but there was a steady stream of people to talk Green Belt with and the time passed quickly. [This event should have been mentioned in the minutes of the AGM – apologies for the omission.]



Ray and Edward with Sutton Mayor, Sean Brennan



Some of the interested visitors

Cedric Hoptroff

Ronald Smith writes:-

### **Planning decisions**

1. Members will be getting tired of my saying that it is now difficult to find useful items to include in this section of Notes because the Government's policies are so confused and ambiguous and appear to change so frequently that little can be certain enough to provide a firm precedent. I was therefore, in a way, comforted to find an item in the journal 'Planning' of 4th October saying the same things. The following case comes from that article, slightly abbreviated by me. The heading is 'Confusion continues over Green Belt Tests'. It remarks that the debate over what constitutes appropriate development in green belt areas has intensified following publication of the National Planning Policy Framework (NPPF) nearly two years ago. Plenty of local plans are based on the now defunct Planning Policy Guidance (PPG2) formula identifying 'essential' facilities for outdoor sport and recreation as exceptions to the prevention of new structures in green belt. In trying to justify a recent appeal against rejection of proposals to provide a hanger and other works at a gliding club in Warwickshire green belt, the appellant argued that the NPPF's reference to 'appropriate' facilities provided a less stringent test than PPG2's identification of 'essential', but, Planning comments, NPPF is tight-lipped on any further definition of what constitutes 'appropriate'. The appeal inspector acknowledged that the current proposal would fall within the definition of appropriate but he considered that the size of the proposal meant that it failed to meet the NPPF's statement that new building must preserve green belt openness. The inspector concluded that unless existing structures were being removed any new building would reduce the openness of the green belt. On that basis almost any proposal could be judged inappropriate and very special circumstances would have to be proved to justify consent. The writer comments that the NPPF follows PPG2's lead that respect.

A separate report in the same issue I of Planning relates to the same case but describes it as consisting of a hanger and steel storage facilities and containers; and says that the inspector agreed that the definition of 'appropriate development' should follow that set out in the NPPF. But he also noted that both the local plan and the NPPF required new facilities to preserve green belt openness, and since a hanger was 21 metres wide and 16 metres deep that would result in some reduction in openness, and therefore very special circumstances had to be shown if development was to be approved. Since the club had operated for many years without a hanger and this had not hindered its popularity, and in view of the fact that it was be funded by a limited number of club members who would have exclusive use for an initial period in his view that undermined the claim that there was a general unmet need for additional hanger capacity.

The adverse impact on openness and rural character meant that permission had to be refused. So he dismissed the appeal.

2. Another example of a green belt decision which might be brought up again in the light of recent policy statements is as follows. The decision is dated November 2012 (the only one in these notes which dates before 2013) The proposal was to redevelop a kitchen garden wall and reconstruct as an orangery with two pavilions and a pergola running into the coach house of the kitchen courtyard. [It seemed to me rather a lot to expect of a kitchen garden wall.] The house is a grade II listed building in Gerrard's Cross, Bucks. It dates from 1860 and has richly decorative brickwork. The inspector said that, in all the circumstances, the proposals must be considered as an extension to the house rather than an ancillary building. There would be 450 square metres of new floorspace; it was single-storey but quite tall, and it was over 60 metres long. For the purposes of planning framework policy it would be disproportionate, and was inappropriate development. The planning framework guidance made clear that the assessment needed more than a simple comparison of floor areas: it 'is necessary to consider also the overall size, design and impact of the extension on the green belt. The inspector concluded that the proposal would harm the openness of the green belt, and he therefore considered whether there were any very special circumstances which overrode that. He concluded that, though there were circumstances which weighed in support of the appeal they were 'not sufficient to clearly outweigh the harm to the green belt'. He dismissed the appeal.

3. But green fencing can help green belt. The site was part of a special landscape area in Greater Manchester green belt. It contained a variety of brightly coloured vehicles, mobile installations, tanks, containers, and bulky depot buildings. In this context the inspector found that the 1.8 metre high fence was not out of place or visibly harmful. He accepted that the fencing was by definition harmful to the green belt, but as it prevented fly-tipping it prevented damage to the area's appearance and therefore contributed to its visual amenity. It fitted in with the generally industrial nature of the environs.

4. In Denham it was proposed to demolish a garage, store, WC, coal shed, pantry, and dairy, and replace them by a granny annexe. The Council's decision to reject the application was made before the issue of the NPPF policy, but the Inspector's inquiry took place after it, so he gave greater weight to Government policy expressed in that. He noted that the fundamental purpose of green belt is to prevent urban sprawl and that the fundamental characteristic of green belt is openness. He notes that whereas before the new guidance buildings on green belt could be replaced by other buildings only if they were in the same use and not materially larger than the previous ones, now that applies to all replacement buildings, not just dwellings. The proposal here was to replace a garage/hay store by living accommodation, and such a replacement would not accord with the exceptions in paragraph 89 of the guidance. It would therefore be harmful by definition, so it was necessary to consider whether very special circumstances existed. The proposed two-bedroom bungalow was 5 metres high and would seriously harm the openness of the green belt. The appellant said that it was to be a lifetime home for his father, but the inspector ruled that that did not constitute very special circumstances sufficient to outweigh the harm it would do to the green belt, so he dismissed the appeal.

The above examples appear to show that the Planning Inspectorate is trying its utmost to enable the green belt to benefit from such planning clarity as remains. The trouble is that too much discretion is now given to district councils which often appear to want a quiet life rather than be firm on green belt which might risk the cost of public inquiries.

R.W.G. Smith