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June 2014

The London Green Belt Council

The Rise of the General Permitted Development Order

The purpose of the General Permitted Development Order (GPDO) was originally to make it unnecessary for planning applications to be made for certain defined types of development which were very unlikely to be refused. A redrafting of the GPDO in 2008 caused a problem because the changed wording led to excessively large extensions to some houses in the Green Belt. Although this was probably not the intention of the drafters of the Order, nothing has been done about it and it remains a potential problem.

More recently, the Government has turned to the GPDO as a way of forcing local communities and their planning authorities to accept certain types of development which they might not otherwise do. On 6th April, another amendment to the GPDO came into force, freeing from planning control the change of use of agricultural buildings. The justification given for this move was that the buildings are brownfield sites. This not consistent with the definition of previously developed land in the National Planning Policy Framework, which specifically excludes land that is or has been occupied by agricultural or forestry buildings.

Article 4 of the GPDO does allow planning authorities to make a direction removing permitted development rights, but most such directions require the approval of the Secretary of State.

Although the planning system might not seem a likely candidate for inclusion on the Budget speech, it did this year and what sounds like a major change to the system were trailed. 'Permitted development to replace planning applications for all but the largest developments' was the way it was reported in the press. The proposals are still to be worked up but in essence the proposal seems to be a three tier system

- Planning Applications for major development only
- Prior approval for developments which would require specific issues to be considered
- Permitted Development Rights (no application needed) would apply to all other developments.

A lot would depend on how large and significant an application would have to be to be considered a 'major' development and what issues would require prior approval. If the proposal goes ahead, we will want to ensure that any Green Belt development requires at least prior approval. Nick Boles has recently told us that they aim to consult 'in the summer'.

Cherkley Court

In the minutes of the last London Green Belt Council meeting it was reported that Mole Valley had decided to appeal against the Administrative Court's quashing of their decision to grant planning permission for a Golf Course and a lot of associated building at Cherkley Court near Leatherhead. The Council took the decision to grant permission (against the officer's advice) by a 10-9 majority. The judge quashed the decision, because he considered that they been irrational in not giving adequate reasons for differing from the report (with which he clearly agreed!). Now, however, the Appeal Court has set aside the judge's order.

Their decision is reported in *R on the application of Cherkley Campaign Ltd v Mole Valley District Council & Anor* [2014] EWCA Civ 567

It seems to me that there are two lessons to be drawn from this case. First, the judgment underlines the limited nature of a judicial review. Lord Justice Richards, who gave the judgment of the court, is careful not to get into rehearing the merits of the case. The case reminds us that, for a judicial review to succeed, there must be

- a procedural irregularity,
- a failure to consider a material fact, or
- a decision so out of line with the facts and evidence as to be irrational - a high threshold

There is nothing new in this but it is something campaigners often overlook. It underlines the need for the possibility of third party appeals in certain circumstances, such as where a committee does not follow an officers' recommendation to refuse.

Second, the extent to which the supporting text can be used to gloss the actual words of the policies in a local plan is strictly limited. If a proposed development complies with the the terms of a policy, the fact that it is not consistent with something in the supporting text will not make it unacceptable. When we are looking at draft local plans and commenting on them, we must all be alert to make sure any helpful words are reflected in the wording of the policies; we cannot expect to be able to rely on them if they are just in the supporting text.

Greg Mulholland's Ten Minute Rule Bill

On 30th April, Greg Mulholland, MP for Leeds North West, introduced a Bill under the Ten Minute Rule to incease local people's control of development. It included abolishing developers' rights of appeal and removing the need for planning authorities to have a 20% buffer of deliverable housing if there is a history of under delivery of housing in their area. Although there was no expectation that the Bill would progress beyond the first reading, it gave Mr Mulholland the opportunity to flag up to the Government issues that are concerning people. His speech can be found in Hansard for 30th April 2014 at col 847.
(http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140430/debtext/140430-0001.htm#14043038000334)

Correspondence between the Minister and the Planning Inspectorate

At the time of the last LGBC meeting, the hot news was that Nick Boles had written to Sir Michael Pitt, Chief Executive of the Planning Inspectorate, a letter which appeared to take the Reigate and Banstead Local Plan inspector to task for requiring a review of the Green Belt in order to provide more building land. This looked like an important weapon for those responding to local plan consultations. However, it emerged from subsequent correspondence between Mr Boles and Sir Michael that the complaint was more a question of language than substance. The Minister considered that the way the inspector's report was worded did not make clear that the decision on whether to release land from the Green Belt was taken by the Council.

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Cedric Hoptroff

Has the NPPF changed Inspectors' Planning Appeal Decisions?

Ronald Smith writes:

The items below are selected to help you consider how much green belt planning matters have changed since the publication of the National Planning Policy Framework (NPPF). The first three items are slightly shortened versions of items in Planning a year ago. They do not mention the NPPF. The other three are slightly shortened versions of items sent to me by S. Bucks District Council. I make further comments about all this at the end of these notes; all of them mention the NPPF.

1. Development of 62 affordable homes in the Wirral green belt was dismissed after the inspector decided that the adverse impacts would outweigh the potential benefits. The site was about 900 metres from shops and services in a town centre. The appellant claimed that the scheme would have a limited effect and would not lead to undue urban encroachment into the countryside. The Council was unable to demonstrate a five year supply of housing land and the need for affordable dwellings weighed heavily in favour of the appeal, they maintained.

The inspector agreed that the shortage of housing supply and the site's sustainable location supported the scheme. However she concluded that it would lead to significant encroachment of built development on to predominately open land, contribute to unrestricted sprawl and appear prominent and visually obtrusive, particularly from a public footpath.

2. The construction of a retirement community in Essex Green Belt has been refused because it would reduce the area's openness. The appellant proposed 36 care bedrooms, 27 close care apartments, 68 assisted living apartments, and common facilities on a 3.3 hectare site. The appellants said that there was a clear need for the development, given the current shortfall of 440 care beds in the area - expected to rise to 500 in the next ten years.

The inspector placed substantial weight on the adverse impact on the green belt, finding that the scheme would reduce openness and fail to protect the countryside from encroachment. He agreed that the need for this type of accommodation was significant and gave considerable weight to a lack of alternative sites and the scheme's economic benefits. However, he concluded that these factors did not clearly outweigh the identified harm to the green belt.

3. An inspector has refused to approve a lawful development certificate which would enable a building in the South Yorkshire Green Belt to be lawfully used as a dwelling house, finding that the appellant had taken significant steps to conceal its present use as such. He bought three acres of land in 1987, intending to build a house and establish a livery. A storage building was built for a gardening business that was subsequently abandoned. On two occasions the local planning authority had refused permission to convert the building to a home.

The applicants then converted the interior to a lavishly equipped dwelling while keeping the exterior unchanged with no windows and no sign of its residential use. He produced receipts for the materials and services in its conversion and witnesses to testify that he had occupied it continuously for four years, thus rendering it immune from enforcement. The inspector found that he had pursued a strategy for minimising the risk that the residential use would be discovered. He noted that the appellant had not registered the building for council tax or completed an electoral return. There was no separate electrical or water supply and whenever friends visited, they met in a local pub and walked half a mile to the appeal site. This reinforced the impression that the building was not being occupied.

The applicant's behaviour was on a par with the "diversionary tactics used by magicians to perform their illusions", commented the inspector. In his view the appellant's actions represented an attempt to circumvent the council's consistent refusal to grant permission for a new dwelling on the land. In line with evidence from local residents he decided that the building had only been occupied in the recent past, and so the four-year period required for immunity had not been achieved.

4. On green belt land at Iver, Bucks, the council refused an application for a 2-storey extension, garage conversion, raised roof pitch and front and read dormers. It calculated the proposed area was 111% larger than the original and that did not include dormers because the applicant described them as applicant as 'dummy'. There were also other defects in the information provided.

Stressing that the main issues in the case were green belt ones and the need to show that any impact on that had to be clearly justified, among other things the inspector noted that the change in the colour of roofing tiles 'along a diagonal line' suggested that bedrooms and some ground floor rooms beneath it were not original. This meant that the applicant had considerably overstated the floorspace of the original dwelling, which meant that his calculation of his proposal's excess over three original dwelling was inaccurate.

The insector concluded that the proposed development was inappropriate in a green belt context, since the NPPF specified that substantial weight should be given to any harm to the green belt and very special circumstances sufficient to override that did not exist.

5 Another example of inspectors upholding green belt in an enclosed area occurred in Wexham, Bucks, last year. The site was within a modern housing estate within the green belt. It comprised four back-to-back two-storey dwellings under a common roof. The proposal was to construct two flat roof dormers on the roof. The inspector concluded that it would be inappropriate development in the green belt even though the NPPF lists extensions of or alterations to existing buildings as development which may not be inappropriate in green belt. He stressed that openness is an essential characteristic of the green belt. In this case the bulk of the building would reduce openness and be out of harmony with the original building. Allowing the appeal would make it more difficult to resist similar development proposals which would undermine the objectives of the green belt. He dismissed the appeal.

6. Finally the South Bucks District Council was asked to give retrospective planning permission for a change of use at Iver from garden centre to cutting and dressing stone products, replacing part of a glass house, and erecting a machine shop with a steel wall. The Council refused and there was an appeal.

Stressing that the NPPF states that the fundamental aims of green belt policy are preventing urban sprawl, keeping land permanently open, and safeguarding the countryside from inappropriate development, she judged the proposals in the light of a number of headings in the NPPF, commenting that any new building should not have a greater impact on the openness of the green belt than the building it replaces. At the same time, in this case "the use adds to the actual and perceived intensity of commercial development on the site and in this respect is distinct from the former use of the site for growing and display of plants and associated garden centre activities. As a consequence, the proposal detracts from the openness of this part of the green belt."

The inspector considered various other aspects of the proposals including living conditions for residents and concludes that the proposal will harm them unacceptably. Arguments put forward that the scheme's benefits outweigh green belt considerations fail, and the very special circumstances necessary to override that situation do not exist.

I have summarised some of these items in rather more detail than usual in order to show that the inspectorate, faced with a relaxation of some aspects of control, is continuing work with the same clarity as before, and that its reports can be of great value. I am not suggesting that the examples given prove changes of policy in one direction or another - with such a complex and wide-ranging planning system as ours, examples could be selected to prove almost anything. But a fair conclusion seems to me to be that the emphasis of recent changes lies in the increased delegation of decision making from minister to local councils. Our members need to try to plug that hole as far as they can – for instance, though South Bucks District Council, the district of the last three cases quoted above, has an excellent record on green belt protection, some others certainly do not, and do not want it. Others seem to lie in between and simply want to avoid incurring expenditure.