



The London Green Belt Council

The election is over and we have a new Government in place, though in many ways it is a continuation of the same Government. We were fortunate, throughout the last Government, to have a Secretary of State at DCLG who had Metropolitan Green Belt in his constituency and would have been left in no doubt as to its importance to his constituents. Luckily, the new SoS, Greg Clark MP, is the member for Tunbridge Wells, another constituency with a substantial amount of Green Belt.

The Queen's Speech foreshadowed two pieces of legislation which could affect the Green Belt. Firstly, a Bill is planned which would 'introduce a statutory register for brownfield land, to help achieve the target of getting Local Development Orders in place on 90% of suitable brownfield sites by 2020' Another Bill would remove the need for the Secretary of State's consent for any large onshore wind farms (over 50MW). Decisions on onshore wind farms would thus be decided by local planning authorities like other planning applications.

Expert panel to speed up development

On 15 September, the Secretary of State announced the setting up of a panel of experts to help speed up the local plan-making process. It is expected to report in the new year. The panel has eight members comprising some development interests, some local planning officers and Government advisers who have been involved with the Barker Report the approach to planning of the Coalition Government, including the infamous first draft of the National Planning Policy Framework. There seems to be nobody there to present the views of environmental and amenity groups, like LGBC, who want to influence local plans. To my mind the one most important thing needed to speed up plan-making is for the Government to avoid moving the goal posts every few months.

Theydon Bois station car park

In the last 'Notes' we mentioned that Transport for London (TfL) were seeking to make a car park for the station on Green Belt and were relying on their permitted development rights as a statutory undertaker to avoid the need to make a planning application. Epping Forest District Council were prepared to allow them to proceed on that basis, but the Theydon Bois Action Group (TBAG) dug into the law and history of the site and considered there were grounds to challenge TfL.

They went right back to when the station was built on the Liverpool Street to Ongar line in 1865 and found that the land in question was for use in the construction phase only. They applied for a judicial review on the grounds that the land was not land used by TfL for their undertaking.

Rather than fight the case, TfL offered to submit to a consent order obliging them not to develop the land without applying for planning permission. TBAG accepted the offer. They could not really refuse as it would give them what they sought and they would probably not have been allowed to proceed with the judicial review if they had refused. TfL will pay TGAB's and the Council's costs.

For more details see: <http://www.theydonbois-actiongroup.co.uk/category/tfl-car-park/>

Very special circumstances v Harm to the Green Belt

Inappropriate development may only be allowed in the Green Belt if there are very special circumstances which outweigh the harm to the Green Belt including that resulting from the inappropriateness and 'any other harm'. Under PPG2, it was well established that 'any other harm' aggregated together not only harm related to the Green Belt, like loss of openness, but also other sorts of harm, like increased traffic. When Redhill Aerodrome were refused permission for a hard runway, they appealed and the inspector dismissed the appeal applying the same principle under the National Planning Policy Framework (NPPF).

The applicants, however, sought a judicial review arguing that the NPPF had changed the meaning of 'other harm' to confine it to harm to the Green Belt as such. The argument was not focussed on any particular change in the wording, but rather that the NPPF taken as a whole, with its emphasis on sustainable development had changed the context sufficiently to change the way 'other harm' should be interpreted.

Worryingly, the judge bought the argument and quashed the inspector's decision. However, Secretary of State and the two Councils involved (Tandridge and Reigate and Banstead) appealed and the Court of Appeal established that the interpretation of 'other harm' has not changed. Harm not related directly to the Green Belt should continue to be taken into account when building the mountain that very special circumstances have to surmount.

The Court of Appeal's Judgment is at: <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1386.html> and that of the judge below is at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2476.html>

Changes to the Green Belt as a result of a Planning Application

The Government has said that Green Belt changes should happen only in the context of a local plan review, and not in response to a planning application. From a practical point of view, however, there are qualifications to this.

For over 10 years regional and sub-regional strategies have identified an area in the Green Belt north of Houghton Regis (in the Central Bedfordshire Council area) as an area of search for a major development mainly to provide for the development needs of Luton. More concrete proposals have been included in draft local plans which, for various reasons have not proceeded to adoption. The latest adopted plan for the southern part of Central Bedfordshire dates from 2004.

In 2014, Central Bedfordshire allowed an application for a large development on Green Belt on the land north of Houghton Regis. Paradoxically, Luton Borough, sought a judicial review to quash the decision mainly, it seems, because it considered that the requirement for affordable housing was not sufficient.

In their case, Luton BC ran the argument that the application was premature and should not be decided before the Green Belt had been altered as part of a local plan review. The judge decided in favour of Central Bedfordshire, who had granted the application on the grounds of very special circumstances, including the urgent need for more housing and infrastructure and the fact that the development would make an enabling contribution to a link road between the A5 and the M1. Crucially, the judge also accepted that the history of the land appearing in various finalised and inchoate strategies and plans was also a special circumstance which could be taken into account. Luton BC were not helped in their case by the fact that had not raised some of their argument before the application was decided.

The full judgement is at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/4325.html>

Luton appealed, but the Court of Appeal agreed with the judge on all points and dismissed the appeal: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/537.html>

Traveller sites and the Green Belt

At the end of August, the Government issued a new policy document on planning policy for traveller sites. It includes three paragraphs intended to strengthen protection for the Green Belt. They are:

16. Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

17. Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional, limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific, identified need for a traveller site, it should do so only through the planmaking process and not in response to a planning application. If land is removed from the Green Belt in this way, it should be specifically allocated in the development plan as a traveller site only.

27 If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).

The full policy document can be downloaded from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

The 20th Green Belt Relay – 21st/22nd May 2016

Every year there is a ‘relay’ run around the whole of the Metropolitan Green Belt and we wondered whether there are any member organisations who would like to enter a team. The next running will not be until May 2016 – which will give time for some serious training! The event will start from Hampton Court and finish at the Hawker centre in Ham. Even if you are not able to take part, you could turn out to encourage the runners as they pass through your area – and enjoy the Green Belt.

For all the details see: <http://www.greenbeltrelay.org.uk/>