

GREEN BELT POLICY – “EXCEPTIONAL CIRCUMSTANCES”

1. Paragraph 83 of the NPPF states

“Once established, **Green Belt boundaries should only be altered in exceptional circumstances**, through the preparation or review of the Local Plan”.
2. The importance of this test has recently been emphasised by Nick Boles MP, Parliamentary Under Secretary of State (Planning), both in correspondence with Sir Michael Pitt, Chief Executive of the Planning Inspectorate, and in a Parliamentary debate on 13 May 2014 (extracts from Hansard attached). Moreover, the test for Green Belt release in a local plan has recently been the subject of a High Court decision, *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin).
3. The following points are made clear by the *Gallagher Homes* decision:
 - (1) a local authority must find that exceptional circumstances exist before making *any* alteration in a Green Belt boundary, whether it is considering extending or diminishing the Green Belt;
 - (2) that test applies at the time when the local authority is drawing up its local plan, as SADC is now;
 - (3) the test is “a very stringent one”;
 - (4) the NPPF has not made any change in Green Belt policy in this respect: the test under the NPPF is the same as it was under previous policy;
 - (5) whilst each case is fact-sensitive and the question of whether circumstances are exceptional requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law. The Court can declare the adoption of a plan unlawful and quash it (or parts of it) if the plan-maker has failed to take a lawful approach to exceptional circumstances. This means that it is not enough for a local authority or inspector to assert that exceptional circumstances exist: it is not possible to convert unexceptional circumstances into exceptional circumstances simply by labelling them as such.
4. It is “not arguable” that the mere fact that a local authority is drawing up its local plan is itself an exceptional circumstance justifying a boundary change.

5. It is well-established through case law that general planning merits cannot be exceptional circumstances: for example, it is not sufficient that the local authority consider that the relevant land would, or would not be, a sustainable location for development, or that they would have drawn the boundary line in a different place had they been starting from scratch. In the *Gallagher Homes* case, an inspector examining Solihull's local plan had performed an exercise of balancing the various current policy factors and, using his planning judgment, had concluded that it was unlikely that the two sites in issue would be found suitable for development. He therefore approved a change in the Green Belt boundary to add these sites into the Green Belt. The Court held that that process fell very far short of the stringent test for exceptional circumstances that any revision to the Green Belt boundary must satisfy.
6. I would suggest that it is also obvious, from a reading of the NPPF as a whole, that the mere fact that there is objectively assessed need (e.g. for housing) which cannot be met from non-Green Belt land, cannot automatically constitute exceptional circumstances. Otherwise Green Belt policy would not be a reason given in paragraphs 14 and 47 for not meeting that need in full.
7. If a local authority determines that exceptional circumstances exist, it is nevertheless not obliged to change Green Belt boundaries to meet those circumstances. There may be good reasons, as a matter of planning judgment, why such changes would be inappropriate.
8. If a local authority decides that exceptional circumstances do necessitate a revision to Green Belt boundaries, then they cannot revise the boundaries further than is necessary to meet those exceptional circumstances. A council cannot say that exceptional circumstances necessitate the building of, say, 50 additional homes per year on Green Belt land, and then release land to allow for the building of 100 homes per year.
9. If the authority decides that exceptional circumstances do exist and a revision to the Green Belt boundary is necessary, it must have regard to the matters set out in paragraphs 83-85 of the NPPF when redrawing the boundary, as well as to general principles of sustainable development.
10. This Note is written in my personal capacity as a resident of St Albans District. It does not constitute legal advice given to St Albans District Council or to any other person and no reliance may be placed on it as such.

Joanne Wicks QC

May 2014

Hansard 13 May 2014 : Column 238WH (emphasis added)

Local Plans

4.31 pm

The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles):

The green belt and the protection of green-belt land are of enormous importance to the Government. That is why the national planning policy framework has repeated in very clear terms the very high levels of protection that apply to green-belt land. I can state clearly that there has never been a time when the protections of green-belt land have been clearer or more explicit in national policy than now.

To return to green-belt protections, the national planning policy framework is clear on the importance of those protections, the permanence of green-belt land and its role in preserving the openness of the countryside and in preventing settlements from merging.

Nick Boles: This Government's policy is clear: we want to achieve locally arrived at, co-operative solutions to difficult problems, rather than having top-down Government imposition of solutions or one authority being able to ride roughshod over another. Everyone in our communities has a right to a voice, but that does not mean that any of us can entirely abdicate responsibility for difficult decisions, such as fulfilling the housing needs of future generations. We all deserve to have our voices heard and we all deserve to be part of that solution. **We are keen to ensure that, so far as possible, the future development needs of our country are met without threatening the protection of the green belt,** of grade 1 agricultural land and of our most beautiful countryside with other designations.

That said, it has always been the case—there is no change in this—that local authorities can revise their green-belt boundaries through a local plan process involving intense consultation with local people. There are a number of communities around the country that are doing just that. It is painful and difficult, and it is right that it happens through an intensely transparent, open and democratic process that takes into account all the opinions expressed by all the different communities affected.

When it does that exercise, the local authority has to pass a very high test: it has to be able to demonstrate that exceptional circumstances justify taking a particular site out of the green belt or redrawing a green-belt boundary, perhaps to swap land currently in the green belt for land that is not, but is of greater environmental importance. Those are the kinds of arguments that local authorities need to bring forward and the kinds of evidence they need to provide to satisfy a planning inspector that any such proposal is reasonable. I do not criticise any council that is going down that road, because it is right that it, as the duly-elected local authority, should be able to. The local authority must, however, go openly and transparently into that process with evidence and after a great deal of consultation.