NORTH HERFORDSHIRE LOCAL PLAN EXAMINATION

Note of response on behalf of Gladman Developments Limited to submissions made by Andrew Parkinson on behalf of Save Our Green Belt

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1 On 24th January 2018 Andrew Parkinson ("AP"), counsel on behalf of Save our Green Belt ("SOGB") made new submissions, including submissions on law in context of Issue 7.2. Those submissions have now been rendered to a draft written note dated 25th January 2018. These submissions are intended to be deliberately limited and directed to issues of law raised in that written note. Other matters are more appropriately for the Council to deal with and, although the matters set out in the written note are not accepted by Galdman, are not dealt with here.

2 AP contends, so far as is relevant:

(1) That the assessment of the Green Belt contained in Council's Green Belt Review "is a narrow, one-dimensional, assessment of openness which is contrary to the guidance given by the Court of Appeal in ***Turner v SSCLG [2017] 2 P. & C.R. 1*** on how openness should be assessed"[1].

(2) Reliance is placed upon the quotation of paragraphs 14 – 16 of ***Turner.***

(3) More specifically, the Council's approach taken in the Green Belt review is

(a) Contrary to the "open-textured" approach required by the Court of Appeal in ***Turner***.

(b) Most importantly, there is no consideration, at all, of visual matters in assessing the contribution that each potential development site makes to the Green Belt. This is a plain and obvious error of law in the Green Belt Review, derived from an incorrect interpretation of the word "openness" as it is used in paragraphs 79-80 of the NPPF.

[1] SOGB note para 5

(c) The result is that the approach taken by the Green Belt Review is inconsistent with national planning policy and, as the key document in the evidence base informing the release of individual sites from the Green Belt, the plan as a whole is unsound.

3 It is submitted that those submissions are erroneous and should be rejected for the following reasons:

(1) Whilst the interpretation of policy is a matter of law, for the Courts to determine (see ***Tesco -v- Dundee [2012] UKSC 13***, in particular paragraphs 18 and 19), its application is the local planning authority. The interpretation of policy here, by the Council, is correct and its application is supported by relevant evidence.

(2) ***Turner*** does not stand as authority for the propositions advanced AP. His approach is, with respect, to wrench the passages cited completely out of context.

(3) Turner dealt with a section 288 challenge to an Inspector's refusal of permission

(a) The appeal dealt with a proposal to replace the mobile home and storage yard with a three bedroom residential bungalow and associated residential curtilage[2].

(b) The appellant's case included a comparison between the proposed redevelopment with the existing lawful use of the land for the mobile home and 11 parked lorries. This was in order to suggest that the volume of the proposed bungalow would be less than the volume of the mobile home and those lorries and that, accordingly, the proposed redevelopment "would not have a greater impact on the openness of the Green Belt" than the existing lawful use of the site. As a result, the applicant contended that the development should not be regarded as inappropriate in the Green Belt.

(c) Further[3], another important part of the that appellant's case before the Inspector was his contention that his application fell within the sixth bullet point in para. 89 of the NPPF, so that the proposed development by building the bungalow would not count as inappropriate development in the Green Belt. The Inspector dismissed this contention[4].

[2] Judgment para 4
[3] Judgment para 8
[4] See judgment para 8, quoting DL para 12

(d) The claim before the Court of Appeal was that the Inspector wrongly conflated the concept of openness in relation to the Green Belt with the concept of visual impact.

(e) The principal matter in issue was whether the Inspector adopted an improper approach to the question of openness of the Green Belt when he made that comparison. The Court of Appeal rejected the appellant's appeal and concluded that the approach adopted by the Inspector (and the judge below) was correct.

(f) In particular, the Court of Appeal concluded that the concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by the appellant. That is the point in the case.

(g) Instead, the Court considered that the word "openness" is open-textured and a number of factors <u>are capable of being relevant</u> when it comes to applying it to the particular facts of a specific case. (my emphasis).

(h) Among these will be how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one). In addition, factors relevant to the visual impact on the aspect of openness which the Green Belt presents. It is in that context that the visual impact is implicitly part of the concept of "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF.

(i) The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there.

(4) However, AP's submissions upon the visual aspect is, in any event, without significance in this case as the Council's Review did have regard to visual impacts. Whilst not seeking to be comprehensive, see CG1 pages: 20, 21, 22, 29, 42, 45, 48, 50, 51, 52, 53, 71, 74, 80, 84, 85, 89, 91, 94, 95, 143, 153 and 159

4 Further, AP's approach is also flawed as seeking to conflate alleged errors of law with what amount to criticisms of the Council's planning judgements. As Lindblom LJ said in ***Barwood -v- Secretary of State CLG and East Staffs BC [2017] EWCA Civ 893*:**

> *"I would, however, stress the need for the court to adopt, if it can, a simple approach in cases such as this. Excessive legalism has no place in the planning system, or in proceedings before the Planning Court, or in subsequent appeals to this court. The court should always resist over-complication of concepts that are basically simple. Planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgment, in which the decision-maker must understand relevant national and local policy correctly and apply it lawfully to the particular facts and circumstances of the case in hand, in accordance with the requirements of the statutory scheme. The duties imposed by section 70(2) of the 1990 Act and section 38(6) of the 2004 Act leave with the decision-maker a wide discretion. The making of a planning decision is, therefore, quite different from the adjudication by a court on an issue of law (see paragraphs 8 to 14, 22 and 35 above). I would endorse, and emphasize, the observations to the same effect made by Holgate J. in paragraphs 140 to 143 of his judgment in* ***Trustees of the Barker Mill Estates***. [5]

5 In light of the above, no discrete issue arises for the Inspector in this case.

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[5] [2016] EWHC 3028 (Admin)