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Green Belt: Making a very special
circumstances case

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PAPER 1: DEVELOPMENT IN THE GREEN BELT
MAKING A VERY SPECIAL CIRCUMSTANCES CASE
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Introduction

1. This paper has been written by three barristers. The first part is written by myself and looks at the factors which have led to inspectors and the Secretary of State allowing appeal for major development in the Green Belt. This first paper deals with seven key housing appeals in the Green Belt decided in the period 2018 to 2020. The second paper by **Thea Osmund Smith** has written a paper looks at the two most housing recent decisions issued in 2021. The third paper by **James Corbet Burcher** looks at employment development, of which there have been several major appeals in the Green Belt issued recently, and upon which he has personal experience.
2. For much of the past decade, since the Conservative Party came to power in 2010, there has been very little appetite to progress application for major new development in the Green Belt. Protecting the Green Belt was a key part of the Conservatives General Election campaign in 2010. As was the desire to abolish the Regional Spatial Strategies which sought to address housing need at a strategic level where Green Belt was often being questioned. What happened in 2010 was that the Conservatives failed to win a majority and up until Boris Johnson's General Election victory, they limped through the decade in a series of coalition, minority and wafer thin majority Government's. The consequence of this was that the Conservatives had to talk tough about protecting the Green Belt.
3. There was therefore no encouragement from the Government for bringing forward housing proposal in the Green Belt, even when an LPA had no up-to-date local plan nor a five year housing land supply. In fact, it was quite the reverse. Ministers have been falling over themselves to say how much the Green Belt will be protected. These are often very generalised statements which do not even mention very special circumstances. But in 2013, Brandon Lewis made a Written Ministerial Statement making clear that housing need on its own would "not normally" amount to very special circumstances. The Statement was issued in the context of concern about unauthorised travellers sites in the Green Belt. But there was a subtle reference in there to conventional housing needs as well.

"The Secretary of State wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the green belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the green belt." (my underlining)

4. That is plainly right. To allow unmet housing need on its own to equate very special circumstances would drive a coach and horses through Green Belt protection. That is because there is so much unmet housing need in this country, especially in Green Belt area, that most speculative planning application for development on the Green Belt would be successful.
5. But these statements led to a marked reluctance on the part of the development industry to progress such scheme on a speculative basis. As too did some high profile refusals of permission for greenfield sites in the Green Belt, despite significant shortfalls in an LPAs five year supply. Secretary of State decisions where such refusal took place included in Bath, Nuneaton and Castle Point in Essex, where the LPA had only a one year supply of housing land.
6. The courts have had something to say about this matter as well. The High Court made clear in 2019 that unmet housing need, on its own, is potentially capable to amount to exceptional circumstances. This was explained, albeit not as clearly as it might be by Ouseley J in Compton Parish Council and Others v Guildford Borough Council and Others [2019] 3242 (Admin) at paragraphs 72 and 73.

“72. General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that "exceptional circumstances" exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need. I accept that it is clearly implicit in the stage 2 process that restraint may mean that the OAN is not met. But that is not the same as saying that the unmet need is irrelevant to the existence of "exceptional circumstances", or that it cannot weigh heavily or decisively; it is simply not necessarily sufficient of itself. These factors do not exist in a vacuum or by themselves: there will almost inevitably be an analysis of the nature and degree of the need, allied to consideration of why the need cannot be met in locations which are sequentially preferable for such developments, an analysis of the impact on the functioning of the Green Belt and its purpose, and what other advantages the proposed locations, released from the Green Belt, might bring, for example, in terms of a sound spatial distribution strategy. The analysis in Calverton PC of how the issue should be approached was described by Jay J as perhaps a counsel of perfection; but it is not exhaustive or a checklist. The points may not all matter in any particular case, and others may be important especially the overall distribution of development, and the scope for other uses to be provided for along with sustainable infrastructure.

73. Mr Kimblin put forward Mr Cranwell's contention that the supply of land for ordinary housing, even with the combination of circumstances found here to constitute exceptional circumstances by the Inspector, could not in law amount to "exceptional circumstances." I cannot accept that, and I regard it as obviously wrong. These judgments were very much on the planning judgment side of the line; I do not see how they could be excluded from the scope of that phrase as a matter of law. This contention involves a considerably erroneous appreciation of the whole concept of "exceptional circumstances" and the role of the Inspector's planning judgment.”

7. It is important to bear in mind that the Court of Appeal has made clear that in the context of Green Belt policy, the “exceptional circumstances” test for releasing land through a local plan is a lower threshold than the test of “very special circumstances” for planning applications: R v on the application of Luton Borough Council v Central Bedfordshire Council & Houghton Regis Development Consortium and Others [2015] EWCA Civ 537. The Court making clear that very special circumstances was a “stricter test”. The point was succinctly summarised subsequently by Ouseley J in the aforementioned Compton PC v Guildford case (at para 70)

“70. “Exceptional circumstances” is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires “very special circumstances.” That difference is clear enough from the language itself and the different contexts in which they appear, but if authority were necessary, it can be found in R(Luton BC) v Central Bedfordshire Council [2015] EWCA Civ 537 at [56], Sales LJ. As Patterson J pointed out in IM Properties Development Ltd v Lichfield DC [2014] EWHC 2240 at [90-91 and 95-96], there is no requirement that Green Belt land be released as a last resort, nor was it necessary to show that assumptions upon which the Green Belt boundary had been drawn, had been falsified by subsequent events.”

8. So, unmet housing need is a very important part of an exceptional circumstances case for releasing Green Belt land for housing in the context of a local plan. It may even be sufficient on its own, albeit the nature the site will always of necessity be relevant. And unmet housing need can also be an important part of building a very special circumstances case for a speculative planning application. But it will not, of itself, be sufficient. And Ministers have been clear about that for obvious reasons of avoiding the creation of simple precedent. A shortfall in the five year supply of housing and a shortage of affordable housing will be critical. But that will not be sufficient. There needs to be more.
9. So what then do you need by way of factors that can get an applicant to the threshold of very special circumstances. These are the factors which help the decision maker conclude that the proposal amounts to very special circumstances, sufficient to outweigh the substantial weight that is given to the harm arising from almost any built development being judged “inappropriate development” in the Green Belt, and any other harm including to the five purposes of the Green Belt (present prevent sprawl, coalescence etc). Well it is going to be a range of factors. And that is what this paper is seeking to identify and highlight.
10. The good news is in the last 2-3 years a whole series of Inspectors have allowed appeals for various forms of residential development on greenfield land in the Green Belt, finding that very special circumstances exist. This is in direct contrast to many the period 2010 to 2017 when there were hardly any such appeals.
11. These Inspectors have allowed or recommended approval residential development on greenfield or part greenfield sites in the Green Belt in various major appeals. I am

going to concentrate on seven of the earlier appeals for major residential development which were allowed between 2018 and 2020.

12. I briefly summarise each of the seven cases and then drawing from each of them I identify the key factors which I think have emerged as key ingredients in making up the very special circumstances. Thea Osmund Smith, in the paper below, will be concentrated on the two very latest ones, both issued in 2021.
13. I am able to speak with some degree of confidence about what I think are the key factors in each case have advised on most of these appeals, including the latest one at Colney Heath in St Albans (covered by Thea). I have also appeared for the Appellant at the inquiry in respect of three of them: West Malling, Bromley, Wheatley Campus. But the difficulty I sometimes have, is that being asked to advise on so many Green Belt cases, I sometimes get two inquiries listed for hearing at the same. But I still advise on strategy. So if you take Colney Heath as an example, I advised on pursuing the appeal in the first place and also the evidence needed for the inquiry. That included the witnesses to call, the need for dedicated affordable housing, the need to increase the affordable housing offer, and to provide some self build plots.

The Earlier Appeals – Proposed allocations and partial brownfield land

Appeal No1 - West Malling, Kent: Retirement Villages

14. The recent flurry of Green Belt cases started with this appeal heard in 2018. I was approached in 2017 by Retirement Villages to look at a whole series of potential sites where applications had been submitted for Extra Care retirement villages. These included this one in the Green Belt. Retirement Villages had just been bought by the giant insurance company Axa. Axa were keen to pursue the appeal. The appeal was for 80 extra care retirement apartments and cottages on a greenfield site on the edge of the settlement. Heard in December 2018, the decision was issued by Inspector Robert Mellor within just two weeks of the appeal having been concluded (that is very quick, as it normally takes 6-8 weeks for the decision to be issued). The decision is here: <https://www.no5.com/media/1937/appeal-decision-3202040.pdf> Quite rightly the inspector attached substantial weight to the harm to the Green Belt. As well as harm by reason of inappropriateness, he found visual and spatial harm to openness and harm derived from encroachment into the countryside. But he accepted the harm to openness and encroachment was mitigated by the site's visual containment. And in finding there were very special circumstances, Inspector Mellor placed substantial weight on the lack of a five-year supply of housing and the benefits to the health and well-being of future elderly residents moving into accommodation better suited to their needs. He also gave significant weight to the absence of any credible assessment of the need for elderly persons housing and the fact the development would free up much needed family housing in the area, based on some innovative research. The wider context is that the Council's adopted local plan is badly out-of-date and the site is a draft allocation for housing in the emerging local plan. But since it was only a proposed allocation which was still subject to public consultation, and the plan had not yet submitted to the Secretary of State at the time of the appeal, the Inspector gave

this factor only limited weight in his assessment of the very special circumstances. The Council rightly pointed out the Council had not confirmed the allocation. Significantly, in 2020 the local plan was found unsound. Axa however already had its planning permission, so it had not concern about that.

Appeal No2 – Station Approach, Lower Sydenham, Bromley, London (June 2019)

15. This appeal by Dylon 2 and Lousada PLC sought permission for 151 apartments on land which was two thirds greenfield playing fields and one third disused single storey buildings previous used as a sports social club. The whole site was on Metropolitan Open Land (MOL) in London. MOL has the same status as Green Belt and the same very special circumstance test is applied. This is why MOL is sometimes called London's Inner Green Belt. <https://www.no5.com/media/1938/appeal-decision-3206569.pdf> The two apartment buildings which ranged in height from nine storeys to four storeys were located on the PDL part of the site: the location of some disused sports club buildings which were one storey in height. They covered about one third of the site. The proposed buildings were plainly very much higher. But were designed by leading world architect Ian Ritchie. Inspector George Baird found the exceptional quality of the design formed part of the very special circumstances in the case. He also found the council could not demonstrate anything like five-year supply of housing land, despite the Council having very recently convinced the Local Plan Inspector there was. The location of the site, as the address suggests, being right next to a railway station and provision of a new public park on the site (in an area where all the MOL is private owned and inaccessible) were both additional factors the Inspector felt contributed to demonstrating very special circumstances.

Appeal No3 – Great Boughton, Chester (July 2019)

16. Another Extra Care scheme. This time proposed by Castleoak Care Development. It was allowed on appeal for a site in Cheshire Green Belt. The site was part greenfield land, part brownfield, with the latter comprising disused buildings from a redundant garden centre. <https://www.no5.com/media/1939/3203413-rwqc-final-decision.pdf> The buildings obviously assisted the Appellant in this case, but Inspector S. J. Lee recognised that the use of the greenfield land to accommodate a large part of the scheme would cause substantial harm to the Green Belt. To overcome this the Appellant sought to rely on the combination of housing and care needs to make out its case on very special circumstances. The VSC accepted by the inspector were very similar to that West Malling decision which Castleoak relied upon in it's evidence.

Appeal No4: Boroughbridge Road, York (October 2019)

17. This appeal was made by Miller Homes for 266 new dwellings on a pure greenfield site in the York Green Belt. It was allowed by Inspector Yvonne Wright <https://www.no5.com/media/1940/appeal-decision-miller-boroughbridge-rd-york-23->

[1-19.pdf](#) She treated the site as being in the Green Belt, despite the inner boundary of the York Green Belt never having been defined because, astonishingly, York has never had a local plan. I advised Miller on this site, but I was not available for the appeal.

18. The site was a proposed allocation in the draft neighbourhood plan. But this allocation was deleted in the final version of the neighbourhood plan and so the Inspector attached no weight to this. More significantly however, the site is identified as a housing allocation in the emerging local plan, which was obviously advantageous. But the local plan inspectors have not reported yet, as the examination-in-public is presently on-going. Unsurprisingly, the appeal Inspector found that building 266 houses on greenfield land would result in a considerable loss of openness. Yet, the most interesting aspect of the case has to be the fact Inspector Wright found that the development would not cause harm to any of the five purposes of including land in the Green Belt.

Appeal No5: Burley-in-Wharfedale, Bradford (November 2019)

19. This was an application by CEG for 500 houses on a greenfield site on the edge of a large sustainable village (population 7,000). This was a call-in inquiry (as opposed to a recovered appeal) which means that the local planning authority itself actually supported the application. But the Secretary of State felt he ought to determine the appeal for himself. This is usually done at the request of the local MP. Bradford City Council has a Core Strategy. But has still not adopted an allocations DPD. Due to other constraints, the Council accepts the need for around 11,000 homes to be located in the Green Belt. But no actual sites have been selected. Therefore, the appeal site had no status in the development plan or any emerging local plan. Despite this, Inspector David Wildsmith decided that the lack of five-year supply and the location of the site on the edge of a main settlement warranted a recommended for approval of the appeal proposals which are plainly large scale. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844987/19-11-05_DL_IR_Sun_Lane.pdf
20. Sadly, the appeal was originally dismissed refused by Robert Jenrick, the Secretary of State. But despite this, at the time it was the most significant Green Belt release endorsed by an Inspector for years. The Inspector plainly “got it”, even if Ministers at the time did not. Whether Robert Jenrick had anything to do with the decision is unclear. The decision was made 48 hours before the start of the purdah period began for the General Election held earlier this month. The Housing and Planning Minister Esther McVey may have made the decision. Her partner is Philip Davis, the local MP for this part of Bradford.
21. The Appellant, CEG, rightly challenged the decision in the High Court. It was quashed and redetermined by Robert Jenrick on 3 March 2021. This time the Secretary of State “got it”. He allowed the appeal, despite the continued opposition of the local Tory MP. He gave substantial weight to the shortfall in the five year housing

land supply. By this stage, the site had been identified by the Council as the most suitable site to take 500 of the 700 homes identified for Burley-in-Wharfedale. The Secretary of State was therefore able to place weight on the fact the site was a draft allocation. Interestingly, the Secretary of State gave “significant weight” to the biodiversity net gain which the proposal would deliver. He also gave “very significant weight” to the heritage benefits of the scheme, which involved utilising and revealing a Roman Temporary Camp improving its utilisation as an education resource.

Appeal No 6: Cheadle Hulme, Stockport,. Manchester (April 2020)

22. In 2020, Robert Jenrick following his inspector’s recommendations and allowed two major appeals for housing in the Green Belt. The first was on 22 April 2020 for a special school and 325 houses in the Manchester Green Belt. It was an appeal by the Seashell trust at Cheadle Hulme in Stockport. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880235/Combined_DL_IR_R_to_C-160_stanley_rd.pdf
23. The new school involved the redevelopment of an existing site (so PDL). But all of the houses were on greenfield land. The Inspector and the Secretary of State found there were very special circumstances, comprising from the need for the school to expand. It was for children with complex and multiple special needs and so there was a strong moral dimension to the need case. The houses were cross subsidising the redevelopment of the school, so there was an enabling development argument too. But the Secretary of State also relied on the lack of a five year supply of housing sites and the need for affordable housing as key parts of the very special circumstances case. He found the fact the housing benefits overall carried very significant weight (para 30).

Appeal No7: Oxford Brookes University Wheatley Campus, South Oxfordshire (April 2020)

24. The University was granted planning permission by the Secretary of State on 23 April 2020, the very next day after the Stockport decision. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880829/combined_DL_IR_and_R_to_C_Oxford_Brookes_University.pdf
25. The Wheatley Campus site is located within the Green Belt. A large 10-storey tower stands prominently in the middle of the site and can be seen from a wide area around the site. The campus has supported the education and provided accommodation for thousands of students, but it is now surplus to requirements and deserves a productive new use. A multi-disciplinary team worked for several years to develop a residential scheme of up to 500 units, delivering significant additional benefits in respect of affordable housing, sports provision and accessibility. This carefully took account of listed properties outside the appeal site boundary and a scheduled monument within the site. South Oxfordshire District Council were prepared to allocate 300 in their emerging Local Plan, but only the footprint of the existing built form. The Council’s approach to its emerging Local Plan has been well-documented elsewhere.

26. In determining the application, the councillors reject their officers advice and refused permission for the scheme citing Green Belt, and additional landscape, heritage and accessibility concerns. The Secretary of State allowed the appeal and granted permission, following the recommendation of his Inspector, D M Young. The Secretary of State endorsed the University's vision for the Site, in a decision that contains a number of important insights into how to secure permission in the Green Belt. On the presumption in favour of sustainable development, the Secretary of State identified that the presumption was engaged by NPPF 11d by virtue of the datedness of the most important policies for determining the application – comprised within South Oxfordshire's development plan (a Local Plan adopted in 2006 and a Core Strategy adopted in 2012): DL18. But he rejected the inspectors other conclusion that NPPF 11c could be met if the local plan was not up-to-date. This despite agreeing with the Inspector that the proposal was in keeping with the development plan as a whole.
27. In terms of Green Belt, the Secretary of State found that a large portion of the site comprised previously developed land, to be considered under NPPF 145g. That included all the University's extensive greenfield playing pitches. This absolved the University from needing to demonstrate very special circumstances across the vast majority of the site. The small portion lying outside this broadly defined PDL area (representing only 14% of the total area) required very special circumstances. In assessing the impact on Green Belt openness, the Secretary of State identified that the removal of the tower and other large, unsightly structures would amount to a very substantial benefit: DL22. Housing need and affordable housing need were given very substantial weight despite the Council being able to demonstrate a five-year supply of housing land. The provision of 173 affordable homes on site – against a situation which the Council accepted as "acute" – was given very substantial weight: DL35. As to market housing, irrespective of the fact that SODC were able to demonstrate a 5 year housing land supply, the delivery of housing also attracted very substantial weight in combination with other benefits: DL46.
28. There was an interesting observation on heritage. There were various heritage asserts around the site and a Scheduled Ancient Monument within it. The Inspector and the Secretary of State identified that the redevelopment of the site would lead to significant heritage benefits, including the removal of the stark backdrop of the campus buildings and the removal of the tower in views from a listed church. This would also amount to a significant benefit and that there would be no overall heritage harm: DL30;
29. In summary, this is a good example of how the appeal process can work for well-planned major schemes in the Green Belt. It is a positive sign for the promotion and delivery of such schemes beyond lockdown: a textbook example of planning for the recovery.

Conclusion: Key Features of these Green Belt Appeals

30. The key features which emerge for these various cases are:

(i) It is beneficial if the site is a draft allocation in an emerging local plan: that was the key feature of the Secretary of State's decision in Brockworth, Gloucester back in 2015, where 1,500 homes were released in the Green Belt. But critically in that case, the Council had submitted their Local Plan to the Secretary of State and the Local Plan inspector had endorsed the site. In contrast, in the York appeal this year the local plan is still being examined and the inspectors have reached no conclusions on any sites yet. Even more significantly, in the Wheatley Campus and West Malling appeals, the Councils were still consulting on whether the appeal site was suitable for removal from the Green Belt and had not even submitted the draft local plan to the Secretary of State.

(ii) It helps if despite seeking permission for residential development on greenfield land, if at least part of the site is previously developed, as is evident from the Bromley, Wheatley and Chester appeals.

(iii) It assists if the Council accepts that there is a need for Green Belt releases on greenfield land to meet their housing needs, which appears to be what persuaded the Inspector to find very special circumstances existed in the Bradford, Bromley and Stockport appeals. This was also a feature of an appeal for a greenfield site in the village of Ruddington in Nottingham which was allowed by an Inspector on appeal in 2018. [APPEAL DECISION 3185493.pdf](#) The Council had identified a need to place housing on a greenfield site at Ruddington, which is entirely surrounded by Green Belt. But the Council's draft allocation plan did not favour the Appellant's site.

(iv) It is definitely a huge advantage if an emerging local plan is badly out-of-date, progress has stalled, it has been found unsound or abandoned. This was a feature in West Malling, York, Stockport (out-of-date and delay) and Wheatley (out-of-date and stalled). Interestingly it was not a feature at all in Bromley, where the Council has a very recently adopted new local plan.

(v) It helps if the site is visually well contained, which was a feature which found favour with the Inspectors in both the West Malling, Wheatley and Bromley appeals.

(vi) If the development facilitates education development or meets education needs that seems to be a very important factor as seen in both the recent Secretary of State decisions at Stockport and to a lesser extent Wheatley. It was also a feature of an earlier decision of an appeal allowing by the Secretary of State in the Green Belt at Effingham in Surrey, where the money generated from the delivery of new houses were being used to fund the renovation of an existing school in March 2018: [18-03-21 DL IR Lower Road Effingham 3151098.pdf \(publishing.service.gov.uk\)](#)

(vii) Other relevant factors adding to the case for very special circumstances have included

(a) close proximity to a railway station (Bromley appeal),

(b) the health and wellbeing benefits of more appropriate housing for the elderly (West Malling and Chester appeals),

- (c) exceptional architecture (Bromley)
- (d) the provision of new publicly accessible open space (Bromley).
- (e) enhancement of heritage assets (Bradford and Wheatley)

31. This is of course a list which seeks to exclude unmet housing need. That is plainly a key factor in all of these decisions. The lack of a five year supply of housing land features in nearly all of them, even if it is for C2 Extra Care (because Extra Care units can still contribute to meeting the five year supply shortfall). Interesting it was not a feature of the decision at Wheatley Campus, where disputed evidence, the inspector found there was a 5YS of housing land. But that perhaps only serves to show the very significant weight that is given to proposals which involve draft allocations and an element of PDL.
32. A shortfall in the delivery of affordable housing is also critical. That is a problem everywhere. But it is getting worse. It was a particularly feature at Colney Heath, as we shall see in the Colney Heath appeal discussed by Thea below. Both of the relevant LPAs, St Albans and Welwyn Hatfield (the site straddled the border) had delivered next to no affordable housing in recent years and their waiting lists were enormous. To a lesser extent the same can be said for self build housing, which most LPAs do not proper address in terms of the statutory duties placed upon them to provide it.
33. Yet, perhaps the most significant aspect of these five Green Belt decisions, is the fact that only three were called-in or recovered for determination by the Secretary of State. I remember doing inquiries fifteen years ago when proposals for a single dwelling in the Green Belt were called-in. Ministers will be routinely lobbied by MPs, local council leaders and other well-connected individuals to have all such appeals for housing in the Green Belt recovered. Yet it owes much to the skill and judgement of the top advisors in the Ministry of Housing, Communities and Local Government that Ministers will have been advised not to do so. And that is good advice given, the Conservatives promised to recover less planning appeals when in office than their predecessors, suggesting more decisions should be made locally. Initially, they failed spectacularly in this ambition when they sought to recover countless appeals in neighbourhood plan areas. But after that started to send the wrong messages about housing delivery, Ministers have been more circumspect about using their call-in and recovery powers.
34. The irrational antipathy of Ministers and Mayors to the release of housing on suitable Green Belt sites is ill-judged. Foolishly, they mistakenly believe that the public want the entire Green Belt preserved at all costs. Yet there are plenty of Green Belt sites which are suitable for development, including the greenfield land in all four of these appeals allowed this year. Indeed research done by London First (an organisation set up by business leaders in London) found that when a 'Citizen's Jury' made up of 12 member of the public was presented with two days of detailed evidence about the Green Belt, including evidence on a range of derelict, disused and visually discrete sites the jury supported a review of the Green Belt to find new sites for housing, by a majority of 11:1.

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PAPER 2: 2021 HOUSING CASES
VERY SPECIAL CIRCUMSTANCES
THEA OSMUND-SMITH

1. The focus for this part is two recent appeal decisions, **Colney Heath (3265925)**, and **Codicote (3273701)**. There are two more 2021 decisions that are also worth reviewing: **Fawkham (3260956)** and **Roman Road Brentwood (3256968)**. The question that arises is whether the existence of a housing land supply deficit alone can ever be sufficient to justify development for housing in the Green Belt.

2. The policy framework is set out elsewhere in Paper 3, which emphasises that the VSC test is one of planning judgement, not law. It is important to remember that VSC is not a particular “thing” or “benefit” of a scheme, but the outcome of a balancing exercise that considers all the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, and whether that is outweighed by the other considerations. If that is outweighed, then VSC exist, and so it will be immediately obvious that VSC is the outcome of the balance, rather than any one particular factor that feeds into it. Equally as important as the benefits are the harms that arise in the first place, which is why site selection, and overcoming technical objections to a site in the Green Belt are so important. The less harm there is to overcome, the better the chance of establishing VSC.

3. Turning then to two recent decision that are useful to reflect on when considering how Appellants might construct a VSC case:
 - (1) **Codicote (3273701)**, proposals for 167 dwellings granted permission in September following an appeal.

- (i) This was a site that was bound by existing dwellings, the church and a primary school. 40% of the site was proposed to be kept open and the harm to openness was considered to be in the range of **moderate to significant**.
- (ii) In terms of encroachment into the countryside, the Inspector found that given the immediate relationship with the village, the harm would be **moderate**, and that was something that was consistent with the Council's evidence base for the emerging plan which had found there were exceptional circumstances for green belt release.
- (iii) The ELP was and is at an advanced stage and the appeal site is proposed for housing development in that emerging plan.
- (iv) The Council did take an issue on prematurity, but there was no evidence that the local plan Inspector has concerns with the draft allocation, and the Council had supported it throughout.
- (v) In terms of housing need, there was a 1.47 years supply.
- (vi) There were over 2000 applications for general needs AH, and a wait time of nearly 5 years for a 2-bed flat.
- (vii) No affordable housing had been delivered in the settlement for **14 years** and a **policy compliant level of 40% AH** was offered.
- (viii) The Appellant offered playing pitches for the adjacent school which was in desperate need of expansion with no apparent way of achieving that. The need was described as "urgent" because the school had no other option than to start using up its own playing fields and pupils were having to travel elsewhere which was unsustainable.
- (ix) That was a ***"clear and important benefit that should be afforded significant weight"*** and would also help unlock other allocations that would be relying on provision of school places.
- (x) The Inspector referred to the ***"immediate imperative"*** for people to be housed, and for children to be educated in the settlement.
- (xi) It is worth mentioning the other harms that were found, because this was an appeal in which the Inspector found LTSH to listed buildings and a registered park and garden.
- (xii) In terms of VSC the Inspector recorded that the circumstances of the application were "extreme" and the housing benefits and the education benefits were sufficient to outweigh the GB and other harm such that VSC existed and the proposals accorded with the DP.

(2) Colney Heath Decision (3265925) a proposal for 100 dwellings on a site that straddles the boundary St Albans City and District, and Welwyn Hatfield Borough - that was granted permission following an appeal in June 2021.

- (i) Not proposed for allocation, no offer of land for a new school, or some other unusual site-specific benefit.
- (ii) St Albans Local Plan which identified the extent of the Green Belt dates back to 1994 and is the oldest local plan in the country.
- (iii) Inspector found that the considerable reduction in openness would carry substantial weight against the proposal, but that the proposals, because of their context, would not result in harm in terms of the encroachment of the Green Belt.
- (iv) There was harm to heritage assets and only limited harm in terms of character and appearance - the site was visually contained.
- (v) In terms of the benefits, this really was only housing, and that is why it is unusual - but the position was compelling.
- (vi) Neither local authority had a housing land supply. They were both in the region of 2-3 years, and there was no short or medium term solution to that issue.
- (vii) The proposal would deliver up to 10 self build or custom build dwellings- that was something that attracted substantial weight because neither of the relevant plans provided a framework for delivery of those units.
- (viii) In respect of AH that achieved VERY substantial weight because there was a shortfall of around 4000 dwellings in each district – a very large magnitude of unmet need. An additional level of affordable housing was offered here, but it’s not something the decision focuses on in any great detail.
- (ix) At para 47, the Inspector noted the previous ministerial statement but said that it has not been incorporated into the Framework, and similar guidance had been removed from the PPG, and so it was a material consideration that achieved only little weight.
- (x) So VSC existed primarily because the benefit of housing overcame the Green Belt and other harm. The modest level of harm arising from the site undoubtedly helped in establishing VSC.

Further advice on building a VSC case based on site specific benefits

4. An easy way of increasing the benefits of the site might be to increase the Affordable Housing offer, or indeed other forms of specialist housing. Before doing that, an Appellant should understand what is the need both in the district, and in the settlement if possible. Consider whether there are compelling arguments for enhancing the offer, is the waiting list enormous, has there been any AH in that settlement? What are the prospects of a solution being found by the LPA to the housing problem? If the evidence base does not support the enhanced offer, then it is unlikely to assist.
5. The NPPF regards the ability of Green Belts to offer public access and provide opportunities for outdoor sport and recreation as important (§145). Is that something you can offer? Can the scheme open up land which has been privately owned and publically inaccessible?
6. What does the community need? Land for education? Land for sports? Can you bring about some other wider community benefit either on the site or by the offer of land that sets the scheme apart from any other Green Belt site?
7. Can you offer landscaping and open space that will assist in mitigating the visual impacts of the scheme, and prevent the scheme encroaching into the countryside?

**PAPER 3: SPECIAL CIRCUMSTANCES,
COMMERCIAL/EMPLOYMENT DEVELOPMENT
& ECONOMIC BENEFITS**

JAMES CORBET BURCHER

Introduction

1. The “very special circumstances” or “VSC” test is one of the most important, and yet least well-defined concepts in the English planning system:

147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

2. In parallel, NPPF support for employment and economic benefits, whilst powerful, is textually sparse:

81. ...Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

83. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

3. Two guiding principles should drive the development of a strong economic-benefits-based VSC case.
4. First, it needs to be based on a focussed and clearly-defined set of pillars: e.g. job creation, economic growth, innovation.

5. Second, once those pillars are identified, a wide range of policy, guidance and economic data should be sourced to support each individual pillar.

Case Law

6. It cannot be emphasised enough that the VSC test is one of planning judgement, not law. However, whilst the courts have repeatedly rejected further definition, the case law does contain some helpful waymarkers which can guide the formulation of any VSC case.

(a) Qualitative Judgment

7. In *Wycharon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, , the Court of Appeal rejected a submission that the term “very special” was “the converse of “commonplace””:

“21. ...The word “special” in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes.”

(b) Combination of Factors

8. In *R (Basildon DC) v First Secretary of State and Temple* [2004] EWHC 2759 (Admin), the High Court dismissed a submission that test require “Each factor relied upon must be a factor which is of a quality that can reasonably be called ‘very special’”, Instead:

10. ...a number of factors, none of them ‘very special’, when considered in isolation may, when combined together, amount to very special circumstances. I agree. The claimant's approach does not accord with either logic or common sense. There is no reason why a number of factors ordinary in themselves cannot combine to create something very special. The claimant's approach flies in the face of the approach normally adopted to the determination of planning issues: to consider all relevant factors in the round. The weight to be given to any particular factor will be very much a matter of degree and planning judgment. To adopt the numerical approach above, whilst some factors may

score nought, planning judgments are rarely so clear-cut or absolute, and seven times one seventh equals one.”

(c) Rigour

9. In *Pertemps v SSHCLG* [2015] EWHC 2308 (Admin), Lindblom LJ held that the test had to be applied with a particular rigour:

25. The meaning and proper application of national policy for development in the Green Belt has been considered by the courts on a number of occasions...I need not explore that case law here. It is not controversial. As the parties in this case accept, the court has consistently recognized both the decision-maker's primary task of ascertaining whether or not the proposal in hand is "inappropriate" development in the Green Belt and the rigour required in considering whether the applicant for planning permission has demonstrated "very special circumstances" to justify the approval of development that is inappropriate.

(d) Capable of Outweighing of All Harm

10. In *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386, [2015] PTSR 274, the Court of Appeal observed that VSC "other considerations" had to be sufficient to outweigh Green Belt harm and "any other harm":

20. It is common ground that all "other considerations", which will by definition be non-Green Belt factors ... must be included in the weighing exercise. ... If all of the "other considerations" in favour of granting permission, which will, by definition, be non-Green Belt factors, must go into the weighing exercise, there is no sensible reason why "any other harm", whether it is Green Belt or non-Green Belt harm, should not also go into the weighing exercise.

21. ... There is no dispute that the underlying purpose of the policy was, and still is, to protect the essential characteristic of the Green Belt – its openness – but there is nothing illogical in requiring all non-Green Belt factors, and not simply those non-Green Belt factors in favour of granting permission, to be taken into account when deciding whether planning permission should be granted on what will be non-Green Belt grounds ("very special circumstances") for development that is, by definition, harmful to the Green Belt."

(e) Greater than Exceptional Circumstances

11. Finally, in *Compton PC v Guildford BC* [2019] EWHC 3242 (Admin), [70], Sir Duncan Ouseley observed that the test for “exceptional circumstances” for release through the Local Plan was a “less demanding” test than “very special circumstances”. Importantly, he rejected submissions that the housing need must be of a particular character – expressing this in a helpfully permissive manner:

72. General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that "exceptional circumstances" exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need....

2012 to 2018: NPPF Mk 1

12. In the NPPF era, from 2013 onwards, the two Written Ministerial Statements of Brandon Lewis MP (1 July 2013 and 17 January 2014) cast a long shadow over the application of the test in the housing context.
13. However, no parallel WMS operated in respect of employment and economic benefits. Important prominent successes in the early years of the NPPF, included the following:¹

Pinewood Studios (2199037) (18 June 2014)

Expansion of film studios and associated development

Key DL references: DL34-34 and IR842-847

Four components:

- 1) Delivering sustainable economic growth through the appeal scheme to a world-leading business in a priority sector for the UK

¹ All appeals shall be referred by their 7-digit reference number for brevity. DL and IR numbers refer to summaries rather than longer excerpts

- 2) The absence of a credible and viable alternative
- 3) The range and scale of the socio-economic and other benefits from the appeal scheme
- 4) The harm to the Pinewood Studios Ltd business and the creative industries sector that would arise from a rejection of the appeal proposal

Former Aerodrome, Upper Colne Valley (2109433) (14 July 2014)

Strategic rail freight interchange

DL31-34 and 53; IR13.76 – 13.103 and IR13.119

- 1) The need for Strategic Rail Freight Interchanges (SRFI) to serve London and the South East;
- 2) The lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt.

Perrybrook / Brockworth (2229497) (31 March 2016)

1500 dwellings and a range of additional development (3.3ha employment)

DL18-21 and 25; 15.42-53 and 15.66

- 1) Unmet housing need
- 2) Longstanding strategic planning aims
- 3) Economic benefits (Considerable weight)

2018 to Present

14. The NPPF text remained the same with the transfer to the NPPF 2018. However, with the elapse of time and developing acuteness of development needs – further employment-based development was promoted throughout this period.

15. For present purposes, this presentation will focus on the following case study:

- Denby Hall / Garner Holdings (3265062) (17 September 2021)

Extension of business park through construction of 3 new new B1/B2/B8 use units

DL44-62: Other considerations; DL63-68: Very Special Circumstances

16. Further observations will be drawn from the following major called-in decisions

- Junction 25, Wigan (3253242) (21 June 2021)

DL23-29; IR10.37-38 and 10.23-43

- Wingates Industrial Estate, Wimberry Hill Road, Westhoughton, Bolton (3253244) (21 June 2021)

DL15-18; IR227-232

Denby Hall Business Park

17. Denby Hall Business Park is an established business park within Amber Valley Borough Council, an area with a strong industrial/manufacturing heritage with strong links to Derby and other surrounding centres. The provision of new manufacturing jobs is therefore central to local communities and local and regional economic growth.

18. The Council has not updated its local plan since 2006, notably voting to withdraw an advanced draft Local Plan in 2018 – ostensibly on the basis of local political opposition to Green Belt release. The current development plan policy text contained major emphasis upon meeting employment needs, but the plan period ended in 2011 and there were insufficient allocations to meet that need.

19. There were three identified businesses that wished to build new units on the Appeal Site. All were involved in extrusion manufacturing, whereby heated material was forced at pressure through machines of 50+ metres of length to produce precision

components for construction: window frames, door frames, decking etc. There was a clear operational need for them to be located close to the existing business park with significant storage space. There were physical constraints on the existing workspace and the lack of storage space required significant lorry movements for storage purposes and for separate parts of the manufacturing process (e.g. painting) [DL44-46].

20. The economic benefits case was established around a series of four key pillars: (1) job creation, (2) economic growth, (3) innovation through clustering and (4) environmental benefits (e.g. reduced road transport movements) [DL44]
21. The case was anchored by job creation, emphasising in particular the local benefits of the proposal. The proposals would create 810 net jobs and safeguarding 100 more jobs (in addition to 390 construction jobs). Manufacturing jobs accounted for one fifth of local jobs. The economy had shrunk by 14% through the pandemic, with 90% rise in benefit claimants and 8% unemployment rates amongst those 18-24 years. [DL53-54]
22. In that context, the proposal was considered to drive a *“very considerable contribution to sustaining this area’s primary employment sector and improving its longer term resilience in terms of productivity and employment”*...driving *“a meaningful reduction in unemployment in the Borough and the wider LEP area in the short term”* [DL57].
23. The economic case contained a number of broader elements, including local retained expenditure [DL58], training and apprenticeships [DL60] and social and health benefits [DL60].
24. The Council did not challenge these benefits at the inquiry, although this was not conceded until late in the day. Equally, the Council did not seek to argue that there were any alternatives to expansion in the short and medium term [DL49].

25. The Inspector noted that the appeal proposal was not speculative and was built upon a clear business plan – with “*known locally established end users who wish to rapidly cluster, expand and innovate in the area*”. The Appellant had a strong track record of delivery and it was identified that the identified benefits would be delivered within 5 years. [DL62].
26. Key practical lessons from the case include the following:
27. First, an economic benefits case should be run by a designated specialist witness. Ideally, the economic benefits analysis should be commissioned at application stage and agreed through any Officer’s Report.
28. Second, that evidence must however be anchored in a strong local and regional story, i.e. what the proposal can deliver for the local community. That will call upon not just economic data, but planning submissions, local authority reports (e.g. investment/regeneration reports) and on occasion, the client’s own description of their track record.
29. Third, it is important to consider creatively why co-location, clustering or other combination will drive greater productivity and innovation, in line with NPPF 81. It is important to illustrate why there is functional need for space, especially floorspace for storage and height for equipment.
30. Fourth, the parameters of any alternative sites assessment should be agreed as early as possible to save inquiry time.
31. Fifth, the identification of a proposed end user is a powerful consideration in demonstrating that the benefits will be delivered rapidly, and certainly before any Local Plan process is underway.

32. Whilst the facts of this case were unusually strong, the decision provides clear messages from the decision as to what kind of package of economic benefits may be capable of meeting the VSC test before an individual Inspector.

The Wigan and Bolton Called-In Applications

33. Following various resolutions to grant in 2018/2019, the Secretary of State called in four applications in St Helens, Bolton and Wigan and recovered a fifth in St Helens. Four separate inquiries were held by Inspectors. The called-in inquiries proceeded with some consensus in respect of the economic benefits and the absence of alternative sites.

34. The key messages from the decisions are set out within the respective DL sections: Junction 25, Wigan (3253242) (21 June 2021): DL23-29; IR10.37-38 and 10.23-43; Wingates, Bolton (3253244) (21 June 2021): DL15-18; IR227-232.

35. In the Wigan case, the Secretary of State referred and agreed with the Inspectors' conclusions that employment land supply was critically low (DL23, IR10.31) and this was not attributable to any lack of demand (10.33). There were no suitable alternative sites (DL24, 10.36). There was in effect an "existing policy vacuum on employment land supply" contrary to NPPF 33, 81 and 120 (DL25, 10.38), with consequences for local residents should existing businesses leave. The need was therefore "particularly stark" and could not be met through non-Green Belt sites (DL27, (10.44). Very substantial weight should therefore be attached to the proposals, and there was clear support from NPPF 80 and 82, addressing a specific locational requirement for the logistics sector.

36. In the Bolton case, the Secretary of State and Inspector's decisions followed a similar pattern noting the "substantial planning need" for major logistics (DL15, IR232). It was noted that there was significant local deprivation (DL17, IR235-237), with evidence of "unfulfilled enquiries for development" of the kind proposed. The Secretary of State referred again to the clear support from NPPF 80 and 82

“particularly with regard to the need for storage and distribution facilities at a variety of scales, in accessible locations (DL18), IR238). The proposals would directly and indirectly support up to 2500 jobs with other economic benefits in an area of severe economic deprivation, attracting very substantial weight in the planning balance (DL27, IR279).

Summary

37. Each successful appeal or called-in application initially begins in the failure of the plan-making process. At its root, a strong VSC case for employment-generating development will need to explain why the existing plan is so out-of-date to merit departure – but also far more problematically, why an emerging development plan document does not provide the answer. The facts in Amber Valley, Bolton and Wigan were unusually strong in this respect, reflecting the stalling of plans (including the GMSF). However, they may well be replicable in other authorities with older plans over the next few years, where plan-making has either been put on hold or has otherwise slowed.
38. The strong, connecting theme of all of these cases is the contribution that the development will make to local employment, particularly where there are signs of deprivation or unemployment. Whether this can be correlated with the Levelling Up Agenda will depend on the clarity of Government policy in this respect. In each case, the Appellants/Applicants provided substantial socio-economic analysis. This is a central plank of any case and should ideally be commissioned right from the start – reflecting current economic conditions.
39. It goes without saying that in every such case it is vital to minimise other bases for objection – notably highways considerations – nothing the “other harm” aspect of the test. In respect of landscape and openness considerations, careful consideration of landscaping, open space, biodiversity net gain may go some way towards persuading Inspectors of the quality of the scheme and its rapid deliverability.
40. In summary, a VSC should ultimately be capable of simple expression, however intricate the underlying evidence base. The development should seek to deliver

economic benefits, ideally at scale, matching local, regional or national needs and capable of rapid delivery. If those elements can be properly evidenced, this will go a considerable way towards persuading Officers at the LPA level and hopefully Committees, or if political considerations intervene, an Inspector and/or the Secretary of State.

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