Case Name: *Guildford Borough Council v Secretary of State for Levelling Up Housing and Communities & Anor* [2023] EWHC 575 (Admin) (17 March 2023)

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Commentary: This successful challenge by way of statutory review was made by Guildford Borough Council, as Local Planning Authority ("LPA"), in relation to the grant of planning permission made by an inspector appointed by the Secretary of State following the LPA's initial refusal. The planning application in question related to the conversion of a garage to habitable accommodation with two storey side and rear extensions, a raised height and a single-story side extension to the main house, Foxwell Cottage, in the Green Belt (the "Application").

Permission to bring the claim was granted on one ground only, that the inspector misinterpreted Policy P2 ("P2") of the Guildford Local Plan. P2 deals with exceptions to NPPF policy in paragraph 149 that the construction of new buildings in the Green Belt is inappropriate, subject to the listed exceptions, including:

"c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces."

Policy P2 provides that:

"...(2) The construction of new buildings in the Green Belt will constitute inappropriate development, unless the buildings fall within the list of exceptions identified by the NPPF. For the purpose of this policy, the following definitions will apply to those exceptions:

"Extensions or alterations" (a) The "original building" shall mean either: i. the building as it existed on 1 July 1948; or ii. if no building existed on 1 July 1948, then the first building as it was originally built after this date.

"Replacement buildings" (b) A new building will only constitute a "replacement" if it is sited on or in a position that substantially overlaps that of the original building, unless it can be clearly demonstrated that an alternative position would not increase the overall impact on the openness of the Green Belt."

Foxwell Cottage and garage were built pursuant to planning permission dated 2003, for the demolition of the previous bungalow and erection of the detached chalet bungalow. A Land Registry plan dated 1975 was used to demonstrate the dwelling prior to demolition, which was smaller than and to the north of (but overlapping) the new building, Foxwell Cottage. The garage did not appear to exist in 1975.

The court was asked to determine the correct method for assessing whether the alterations proposed by the Application would result in disproportionate additions over and above the size of the original building. The inspector framed this assessment in terms of the total floorspace of the existing Foxwell Cottage and the garage as a "normal domestic adjunct". The LPA suggested that this assessment in reference to the existing buildings was a misapplication of P2. The LPA submitted that the inspector should have taken the measurements of the demolished building, which was smaller than the existing building and therefore the uplift in floorspace proposed by the Application was significantly greater than the inspector concluded.

The Defendant proposed that the factual situation was not precisely covered by P2 and so this was a matter of planning judgment to be executed by the inspector as to how to proceed as per the principle referred to in Tewksbury BC v Secretary of State for Housing Communities and Local Government [2021] EWHC 2782, which was not in dispute between the parties. The parties also agreed upon the principle summarised in Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government [2014] EWHC 754 that "When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question".

The Court agreed with the LPA that the inspector should have concluded that the now demolished building was the appropriate baseline for measuring the total uplift in floorspace as the demolished building was either existing in 1948 or was the first building as it was originally built after that date in line with P2. The court considered that such policy was "likely to be directed at avoiding the cumulative effect of extensions and additions which may be modest in themselves but which may cumulatively amount to disproportionate development." The reference to "original building" in P2 was held to be sufficiently clear in determining that the baseline floorspace measurement should be the original building, and not the building as is immediately prior to any present application for extension. The court also noted that the inspector did not in its report suggest that P2 did not cover the present circumstance and did not detail to what extent the inspector used its planning judgement to legislate for a circumstance to which P2 did not apply.

Case summary prepared by Matt Speed