Legal Viewpoint: Judgment offers guidance on very special circumstances for green belt approvals

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A recent judicial review judgment from the Planning Court is a helpful reminder of the balancing exercise that decision-makers, in applying national policy, must undertake in determining planning applications for development of green belt land.

George Morton Jack (image supplied)

The case followed a planning permission gained by a family of travellers, the Dohertys, to change the use of a green belt site on Merseyside from a pony paddock to six Gypsy/Traveller pitches. In December 2018, Sefton Metropolitan Borough Council refused planning permission for the development. The council applied paragraphs 143 and 144 of the National Planning Policy Framework (NPPF), which require very special circumstances clearly to outweigh harm to the green belt for approval of development in such areas. In its view, there were no very special circumstances clearly outweighing harm in the form of loss of openness.

In April 2020, the Dohertys successfully appealed against the council's refusal of planning permission (DCS Number 200-009-439). The inspector granted planning permission on the basis that although the proposal was inappropriate and harmful to the green belt, the factors in favour of allowing the development clearly outweighed the harm resulting from it, such as to constitute the very special circumstances required by paragraph 144 of the NPPF.

The factors in favour cited by the inspector included the best interests of the family's children, the wider family's personal circumstances, the site being sustainably located in compliance with the local plan, the lack of alternative suitable sites that would meet the family's particular needs and the very high likelihood that any other suitable site would also be in the green belt.

In the Planning Court, the council's judicial review challenge centred on the argument that the inspector had failed to interpret and apply paragraph 144 properly. It argued that he had failed to take a sufficiently forensic or mathematical approach to weighing the green belt harm resulting from the development. It maintained that a correct approach would have seen the inspector properly distinguishing between different kinds of green belt harm in order to aggregate different specified weights for each kind of harm, and thereby to balance the aggregate weight of the harms against any factors in favour of approval.

The court found that Sefton's argument on paragraph 144 was "excessively forensic" and failed to "take proper account of the nature and purpose of the NPPF and of paragraph 144 in particular". His Honour Judge Eyre QC held that paragraphs 143 and 144 "do not require a particular mathematical exercise, nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance".

Rather, the judge found, these paragraphs require "a single exercise of judgement to assess whether there are very special circumstances which justify the grant of permission notwithstanding the particular importance of the green belt". He concluded that the inspector had conducted "a classic exercise of planning judgement" which did not display any error of law. Accordingly, the council's challenge failed.

The court's ruling is a useful reminder of how decision-makers need to approach the balancing exercise required under paragraph 144. Further, it will be an indispensable point of reference for how to consider the current policy requirement on "very special circumstances", which may make some future planning applications for green belt development – including housing – acceptable.

Case: Sefton Metropolitan Borough Council v Secretary of State for Housing, Communities and Local Government and Doherty

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