

**Case Name:** *Keep Chiswell Green v Secretary of State for Housing, Communities and Local Government and Ors* [2025] EWCA Civ 958 (23 July 2025)

**Full case:** [Click Here](#)

**Commentary:**

This was an application for statutory review of the decision of the Secretary of State to allow two appeals and grant planning permission for two residential development proposals in Chiswell Green, Hertfordshire.

Both development schemes were located within the Green Belt, and permission for both had been refused by the local planning authority. An inquiry was held in Spring 2023. After the inquiry had closed, but before the Secretary of State (as was) made his decision, the Council published some new evidence it had commissioned in connection with the preparation of its new local plan. The evidence was a review of the Green Belt, which made recommendations for release of land from that designation, and its recommendations differed from some earlier evidence the Council had published. The earlier evidence was discussed as part of the evidence to the inquiry. None of the parties to the appeal, nor anyone else, made the Planning Inspectorate aware of the publication of the new Green Belt review. The Claimant, however, considered that the Secretary of State had erred in not having regard to the new Green Belt review, as it was, they said, obviously material to his consideration of the two schemes. At first instance the court had dismissed the claim, finding that there was a procedural bar to challenging a decision based on new material that hadn't been placed before the Secretary of State. The Claimant appealed.

The Court of Appeal found as follows:

1. There was no procedural bar to the challenge, and that the relevant question was whether the new evidence was a material consideration that should obviously have been taken into account;
2. The courts are entitled to consider – when addressing that question – whether it is inappropriate to allow a claim to be brought when the Claimant knew about the matter and decided to withhold it;
3. The Green Belt review was not so obviously material to the decision being made that it was irrational for the Secretary of State not to take it into account, because:
  - The main issue in the appeals was whether or not the harm to the Green Belt was outweighed, a matter which was not addressed in the Green Belt review (prepared as it was for plan-making purposes); and
  - The conclusions of the Green Belt review had not yet been accepted and incorporated into a draft plan, or tested at examination.

Comment: the judgment makes useful comment on the relevance of Green Belt reviews (which are prepared for strategic planning purposes) to the consideration of individual development proposals. In this case, the Inspector had found that the development was inappropriate and that there would be substantial harm to the Green Belt, but had gone on to conclude (and the SoS agreed) that there were very special circumstances ("VSC") such that permission should be granted. The Green Belt review did not – nor could it – address whether VSC would exist in any particular case. In relying on Green Belt reviews in connection with the promotion of development in the Green Belt, a helpful finding about the contribution of the site towards the five purposes will, then, only take one so far.

*Case summary prepared by Aline Hyde*