Green belt – what is inappropriate development?

Pressure on the Green Belt continues to be a media favourite and a recent flurry of cases shows that Government policy still can require the courts to clarify which development proposals can obtain planning permission and in what circumstances.

In publishing the National Planning Policy Framework (NPPF) in 2012 the government sought to bring together what had become a weighty and disparate body of planning guidance within a single policy of "sustainable development".

With regard to the Green Belt the NPPF confirmed previous policy regarding its importance and states in the relevant paragraphs:

"The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

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, is clearly outweighed by other considerations."

Three recent cases help to shed some light on what might be appropriate development in the Green Belt and what might constitute "very special circumstances".

In the case of Timmins v Gedling Borough Council the local planning authority granted permission to Westerleigh Group for a crematorium and cemetery in the Green Belt. Judicial review of that grant was sought by a rival and a local resident. In the High Court the permission was quashed and the Court of Appeal agreed with that decision.

Paragraph 89 of the NPPF provides that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt subject to certain exceptions. Relevant to the case was an exception for the "provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries…"

The Court of Appeal considered the provisions of the NPPF and held that:

1. Development was inappropriate unless it fell within one of the exceptions. The exceptions did not permit the provision of a new cemetery although additional facilities for an existing cemetery might be appropriate.

2. The lists of exceptions in paragraphs 89 and 90 of the NPFF were closed and a development not in those lists was necessarily inappropriate. There was no general test that development is not inappropriate if it preserves the openness of the Green Belt and does not conflict with the purpose of including land within the Green Belt.

In the case of Veolia ES (UK) Ltd v Secretary of State for Communities and Local Government, Veolia sought to quash the decision of the Secretary of State refusing planning permission for the demolition of existing buildings and the construction of a recycling and energy recovery facility in the Green Belt. All
parties accepted that the proposal constituted “inappropriate development” and could not proceed unless very special circumstances could be shown that outweighed the harm to the Green Belt.

The application for consent for the plant was made at a time when Hertfordshire County Council (as waste planning authority) was preparing its Waste Site Allocations 2011-2026 Local Plan. This Plan had to be submitted to the Secretary of State for approval by one of his inspectors and was the subject of several public hearings.

Veolia argued successfully that in determining their planning application the inspector had failed to take into account that the Waste Site Allocations Plan was imminently to be adopted and that it proposed that the site of the energy plant was removed from the Green Belt.

The High Court held that:

1 Until the review of the Green Belt boundaries had taken place the requirement to demonstrate very special circumstances continued to apply. However in weighing up whether such circumstances existed the allocation of the site in the Waste Site Allocations Plan should be considered as it had been tested through the processes leading to adoption of that Plan.

2 The correct test is whether the very special circumstances of a proposal taken overall “clearly outweigh” harm to the Green Belt and any other harm. Such benefits may do nothing to mitigate or lessen harm to the purposes of the Green Belt but may still outweigh that harm.

Finally in the case of Lee Valley Regional Park Authority v Broxbourne Borough Council, the local planning authority granted planning permission for the development of 4.4 ha. of land, within the Regional Park and within the Green Belt, for the demolition of existing former nursery buildings and structures, and redevelopment with 90 dwellings, public open space and public car parking spaces.

The Park Authority, a statutory body established under the Lee Valley Regional Park Act 1966 for the purposes of improving and preserving the land adjoining the River Lee, objected to the proposal because it was contrary to Green Belt policy and its own policies for the Regional Park.

The judge in quashing the planning permission identified various errors in the planning officer’s report and the planning committee’s decision including

1 A failure to appreciate that the site was split into two defined character areas. The slightly larger northern part of the site was not for the purposes of Green Belt policy previously developed land although the land in the southern part was as upon this part were the existing former nursery buildings and structures.

As a result the planning committee failed to take consider that development of the northern part of the site would be a breach of Green Belt policy in the absence of very special circumstances.

2 The removal of dereliction in the southern part, which was the most important of the very special circumstances, could not support the housing development in the north.

3 The development in the north would lead to a significant loss of openness to the north which was not made clear to the committee. The lower quality of this northern site as Green Belt land did not reduce the harm done by inappropriate development.

It is no surprise that the decisions in these cases continue to value the importance of the Green Belt. On the one hand development will not be permitted simply because it does not conflict with the purposes of including land within the Green Belt and preserves its openness. Nevertheless if it is development where very special circumstances exist then the fact that harm will result is not a bar to consent being granted. It is essential to ensure that any application for development can be shown to meet the limited grounds for permitting development in the Green Belt.