RE: NPPF 154(g)

OPINION

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1. I am asked by JR Planning to advise on the correct interpretation of paragraph 154(g) of the NPPF.

2. The correct interpretation of policy is a matter of law whereas its application in any given case is a matter of planning judgment; *Tesco Stores Ltd v Dundee City Council* [2012] P.T.S.R. 983.

3. The NPPF was revised in December 2024 and included extensive changes to Green Belt policy. Alongside the revised NPPF a Written Ministerial Statement was published which makes it abundantly clear that the purpose of the changes being brought in was to significantly boost housing delivery[1]:

   "*This Government has inherited an acute and entrenched housing crisis. The average new home is out of reach for the average worker, housing costs consume a third of private renters' income, and the number of children in temporary accommodation now stands at a historic high of nearly 160,000. Yet just 220,000 new homes were built last year and the number of homes granted planning permission has fallen to its lowest in a decade.*

   That is why the Plan for Change committed to rebuild Britain, with the hugely ambitious goal of delivering 1.5 million new homes this Parliament, and the vital infrastructure needed to grow our economy and support public services."

4. The changes introduced by the December 2024 NPPF were deliberate changes following an extensive consultation result. The purpose of the changes was to change

[1] Building the homes we need, Statement made on 12 December 2024

the effect of individual policies and the NPPF more broadly. As stated in the governments response to the consultation exercise[2]:

"*3. The final set of policy changes set out below reflect this government's commitment to radically boosting the supply of housing, while delivering homes and places that are high-quality and genuinely affordable. The plan-led approach is, and must remain, the cornerstone of the planning system. The imperative of rapidly driving up planning consents in the context of a system with inadequate local plan coverage will increase the number of permissions secured outside of plan allocations, but we are clear that there can be no trade-off between supply and quality – indeed, as we act to allocate more land for development, we expect it to be delivered quickly and to a higher quality.*"

5. One of the changes introduced was a broadening of the categories of development that were not considered inappropriate development in the Green Belt under para 154. The previous version of 154(g) stated:

"*154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:…*
g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
– not have a greater impact on the openness of the Green Belt than the existing development; or
– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."

6. The current version states:

[2] https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system/outcome/government-response-to-the-proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system-consultation

"*154. Development in the Green Belt is inappropriate unless one of the following exceptions applies:…*
g) limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt."

7. The scope of paragraph 154 as a whole has been broadened. The previous paragraph was specifically only concerned with the construction of new buildings, whereas the revised paragraph is concerned with all development. As a result there is a greater range of development that is capable of falling within the exemptions contained in paragraph 154.

8. This increase in breadth of the potential exemptions is reinforced in paragraph 154(g). The paragraph refers to "redevelopment" and then makes clear that this includes material changes of use to residential or mixed use residential. This clarification is unnecessary given the breadth of the opening to para 154 but does emphasise the governments intention that residential development on previously developed land in the Green Belt is capable of not being inappropriate.

9. That the exemption is concerned with previously developed land is unchanged.

10. The final change is then the reference to substantial harm to openness. Previously there were two limbs to the paragraph 154(g) exemption: the first which was generally applicable, referred to development not having a "greater impact" on the openness of the Green Belt. That test has been deliberately removed. The test is now "substantial harm" to openness which was the test under the second limb of 154(g) which previously applied solely to affordable housing development. A "greater impact" was clearly a much lower threshold of harm than a "substantial harm" to openness. The deliberate removal of that test clearly indicates that the exemption under 154(g) now is much broader and that more development should be permitted under 154(g). Development on previously developed land in the Green Belt can now only be considered inappropriate if it causes substantial harm to openness.

11. Substantial harm is a high threshold. In the NPPF the phrase substantial harm is only used in relation to the test under 125(c), harm to heritage assets and under 154(g), regarding development on brownfield land. There is no higher threshold of harm identified in the NPPF.

12. In the context of heritage assets the courts have considered the definition of substantial harm. In *Bedford BC v SSCLG* [2013] EWHC 2847 (Admin) Mr Justice Jay found that "*One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*." In *London Historic Parks and Gardens Trust v Minister of State for Housing* [2022] EWHC 829 (Admin) Thornton J confirmed that in the NPPF substantial means substantial.

13. Whilst harm to a heritage asset is not directly analogous to harm to the Green Belt these decisions illustrate how high of a threshold substantial harm is. For something to be a substantial harm to the openness of the Green Belt the level of harm must be so serious that there is a fundamental alteration to the openness of the Green Belt.

14. The Oxford Dictionary defines "substantial" as "of considerable importance or worth" or "concerning the essentials of something". Consistent with the jurisprudence on substantial harm in the heritage context, the dictionary definition of substantial confirms the high threshold that is substantial harm; it must be a considerable harm that effects the essential functioning of openness.

15. The Supreme Court considered the definition of Green Belt openness in *R (Samuel Smiths Old Brewery Tadcaster) v North Yorkshire Council* [2020] UKSC 3 and found:

"*22. The concept of "openness" in paragraph 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open …"* ***Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the***

Green Belt. *As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept.* ***Nor does it imply freedom from any form of development***. *Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.*" (emphasis added)

16. Applying the concept of substantial harm discussed above to the Supreme Court definition of openness, in my opinion, the clear meaning is that for harm to be considered substantial harm to openness it must be so harmful that it in someway undermines the purposes of the Green Belt and results in seriously harmful urban sprawl. Simply introducing development to an area that was previously free (or freer) from development is not sufficient to cause substantial harm to openness, there must be something that is so considerable that it harms the essential functions of the Green Belt which arise as a result of its openness.

17. In summary:

    a. The NPPF and its Green Belt policy has been deliberately revised by the Government to be more permissive of development in the Green Belt;
    b. There are numerous reasons for this but the main focus is on increasing housing delivery;
    c. There is a clear national drive to permit more housing development in the Green Belt;
    d. In this context the exemption provided in 154(g) from inappropriate development has been intentionally broadened to be more permissive of development on previously developed land in the Green Belt;
    e. The threshold of harm contained in this exemption is the highest threshold of harm contained in the NPPF – "substantial harm":

f. Applying relevant jurisprudence on the meaning of substantial harm and openness, along with the ordinary meaning of the word substantial, it is clear that for a substantial harm to openness to be caused it must be at such a level that it in someway undermines the essential functioning of the Green Belt which arises as a result of its openness; and

g. Whilst it is ultimately a matter of planning judgment in any given case whether there is substantial harm to openness, it is abundantly clear that this is a very high policy threshold – there is no higher threshold in the NPPF.

FREDDIE HUMPHREYS

13th May 2025

Kings Chambers

Manchester – Leeds – Birmingham – London