

**LAND TO THE NORTH EAST OF KING GEORGE V PLAYING FIELDS  
(NORTHAW ROAD EAST), CUFFLEY**

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**OPINION**  
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INTRODUCTION

1. In this matter I am asked to advise Lands Improvement Holdings Ltd (“LIH”) in relation to their application for planning permission on land to the north east of King George V Playing Fields, Cuffley ("the Site") to be determined by Welwyn Hatfield Borough Council (“the Council”).
2. The Site lies within the Green Belt (“GB”) and accordingly I am asked to advise on the operation of paragraphs 87 and 88 of the National Planning Policy Framework ("NPPF"). Specifically, I am asked to advise how the Council should approach the question of whether or not the application has established that “very special circumstances” (“VSC”) exist whereby planning permission for housing can be granted at the Site despite its GB location.
3. I have been told that this Opinion will be shared with Welwyn Hatfield District Council.

THE NATIONAL PLANNING POLICY FRAMEWORK

4. The relevant extracts from the NPPF read as follows:

"87. 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.

88. 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."

5. Paragraph 89 of the NPPF further states:

*"A local planning authority should regard the construction of new buildings as inappropriate in Green Belt."*

6. These policies replace very similar provisions in PPG2 which the NPPF was not intended materially to vary (as the start of paragraph 87 indicates).

7. The remainder of paragraph 89 identifies exceptions to this general rule, none of which are relevant in this case. It follows that the application for planning permission at the Site represents "inappropriate development" whereby VSC must be demonstrated to justify grant of planning permission.

#### CASE LAW ON "VERY SPECIAL CIRCUMSTANCES"

8. The classic exposition of the operation of the VSC balance is to be found in Lord Donaldson MR's lead judgment in PEHRSSON v SECRETARY of STATE (1991) 61 P & CR p 266:

*"In my judgment, the effect is that, if a proposed development is in a green belt and is of a nature which is inappropriate, it is by definition one which would cause demonstrable harm to interests of acknowledged importance. This is not determinative of the application, but it then becomes incumbent upon the applicant to show that the advantages of the particular development in the particular circumstances are such as*

*to outweigh this harm to such interests. This is a balancing exercise, since the extent of the harm to green belt interests and the extent of the advantage to be derived from development can both vary from case to case, but in the very unlikely event of equilibrium being reached, the application should be refused."*

9. Since that decision there has been a considerable amount of litigation on the factual basis upon which the balance should be undertaken and a brief résumé of lead cases establishes the following principles:
- (i) What might amount to a very special circumstance was a matter for the decision taker in any particular case - Mr. Lockhart-Mummery QC (sitting as a DHCJ of QBD) BRENTWOOD BC v SEC. of STATE and GRAY [1996] 72 P & CR 61 at page 78.
  - (ii) The weight to be given to any particular piece of evidence is a matter for the decision taker - ELS WHOLESALE (WOLVERHAMPTON) LTD. v SEC STATE [1987] 56 P & CR 69 pages 72/73 (subject only to challenge on WEDNESBURY grounds).
  - (iii) *"The words "very special circumstances" must be given their ordinary and natural meaning and the policy requirement that an applicant must demonstrate the existence of such circumstances must be given full weight and effect"* – Sullivan J (as he then was) R Ex p. CHELMSFORD BC v SEC of STATE AND DRAPER [2003] EWHC 2978 (Admin).
  - (iv) *"In planning, as in ordinary life, a number of ordinary factors may, when combined together, result in something very special."* Sullivan J R oao BASILDON DC AND FIRST SEC of STATE AND MRS TEMPLE [2004] EWHC 2759 (Admin).

- (v) *"Rarity may of course contribute to the 'special' quality of a particular factor but it is not essential as a matter of ordinary language or policy. The word special in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes."* Carnwarth LJ in WYCHAVON DC v SEC OF STATE AND BUTLER + ORS [2008] EWCA Civ 692 at para 21.
- (vi) The court will be reluctant to interfere with a judgment as to the existence of VSC that has been reached and properly explained – *"Should she (Mrs. Porter) be dispossessed from the site onto the roadside or should she be granted a limited personal planning permission? The Inspector thought the latter, taking the view Mrs. Porter's 'very special circumstances' 'clearly outweighed' the environmental harm involved. Not everyone would have reached the same decision but there is no mystery as to what moved the Inspector"* Lord Brown in SOUTH BUCKS DC v PORTER (No 2) [2004] 1WCR 1953 (paras 38-41).
10. The High Court and Court of Appeal have continued to follow the same approach to the VSC test to NPPF paragraphs 87 to 89 since March 2012.
11. In REDHILL AERODROME v SEC OF STATE [2014] EWCA Civ 1386 the Court of Appeal confirmed that the test of "any other harm" in NPPF paragraph 88 did not indicate any change in national planning policy and, that that component of the wording therefore referred to *"any other harm that is relevant for planning purposes, such as harm to landscape character, adverse visual impact, noise disturbance or adverse traffic impact"*.
12. That was again followed by the Court of Appeal in R(TIMMINS) V GEDLING BC [2015] EWCA Civ 10, paragraphs [24] and [25].

13. In PERTEMPS INVESTMENTS LTD V SEC OF STATE [2015] EWHC 2308 (Admin), Lindblom J (as he then was) referred at [25] to PEHRRSON, DONCASTER, BASILDON, WYCHAVON, EUROPA OIL AND GAS V SEC OF STATE [2014] EWCA Civ 825 and finally REDHILL AERODROME and emphasised: *“I need not explore that case law here. It is not controversial. As the parties in this case accept, the court has consistently recognized both the decision-maker’s primary task of ascertaining whether or not the proposal in hand is “inappropriate” development in the Green Belt and the rigour required in considering whether the applicant for planning permission has demonstrated “very special circumstances” to justify the approval of development that is inappropriate.”* (emphasis added).
14. The courts have nonetheless consistently recognised that that decision remains one of planning judgment for the given LPA, see for example OAKLEY V SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL [2016] EWHC 570 (ADMIN): *“The existence of such circumstances is a matter of planning judgment to be exercised by the local planning authority, but in order that approval might occur they would have clearly to outweigh the harm caused to the openness and purpose of the Green Belt, and any other factors militating against the development.”*.
15. Finally, the recent CA decision in R oao LUTON BX v CENTRAL BEDFORDSHIRE CC, AND ORS [2015] EWCA Civ 537 (in the lead judgment of Sales LJ) clearly establishes that there is no bar to grant of planning permission on GB land whilst a Local Plan is emerging (which itself intends to amend GB boundaries) so long as VSC are established:
- “57. Paragraph 83 does not lay down a presumption or create a requirement that the boundaries of the Green Belt must first be altered via the process*

*for changing a local plan before development may take place on the area in question. Paragraphs 87-88 plainly contemplate that development may be permitted on land within the Green Belt, without the need to change its boundaries in the local plan, provided 'very special circumstances' exist.*

56. *Nor does para 83 somehow create a presumption that the boundaries of the Green Belt must first be altered by changes to the local plan (effected through the local plan development process, which includes independent examination by an inspector) before permission for development can be given, in a case where (as here) there is a parallel proposal to alter the boundaries of the Green Belt set out in the local plan. Whilst it may be easier to proceed in stages, by changing the local plan to take a site out of the Green Belt (according to the less demanding 'exceptional circumstances' test) and then granting permission for development without having to satisfy the more demanding 'very special circumstances' test, there is nothing in para 83 (read in the context of the entirety of the NPPF s.9) to prevent a planning authority from proceeding to consider and grant permission for development on the land in question while it remains within the designated Green Belt, provided the stringent 'very special circumstances' test is satisfied."*
16. A recent and important practical example of the operation of GB policy is contained in the Secretary of State's called-in appeal decision: APP/G1630/V/14/2229497, LAND AT 'PERRYBROOK' TO THE NORTH OF BROCKWORTH AND SOUTH OF THE A417, BROCKWORTH, GLOUCESTERSHIRE (dated 31 March 2016) familiarly known as the BROCKWORTH decision, a mixed use development including 1,500 dwellings in Tewkesbury Borough Council.
17. The Inspector considered that the harm to the GB carried substantial weight, see IR/15.66 and that there was more limited harm to landscape, heritage and BMV agricultural land: IR/15.67-15.70. The Inspector went on to conclude that the Appellant had made out its VSC case, IR/15.71-15.74 (with emphasis added), including meeting the undersupply of housing land and in light of the strategic support for the site through the plan-making process:

*“15.71. As to factors weighing in favour of the proposal, it has been shown that there is a significant undersupply of land for housing, as well as a pressing housing need. Correspondence was provided to the inquiry between the local Member of Parliament and the Minister of State for Housing and Planning. This reiterates the point that the single issue of unmet demand for housing alone would be unlikely to outweigh harm to the Green Belt. Also, it is of note that the recently determined St Alban’s appeals were dismissed, notwithstanding the severe shortfall in housing land supply which was identified in that instance. However, the contribution of those proposals to unmet housing need was still found to weigh positively in the balance. In view of the aim in NPPF to significantly boost the supply of housing, I consider that the contribution which this site would make to housing delivery in this locality would amount to a significant benefit worthy of very considerable weight. To this should be added moderate weight from the benefits associated with the provision of affordable housing and meeting a wide range of housing needs. [8.1516, 9.2, 10.64]*

*15.72. In addition to meeting demand for housing, the proposal would accord with longstanding strategic planning aims. Despite never reaching the stage of a formal allocation in an adopted plan, the application site has been recognised as having a key role to play in plan making in the wider area for many years. Although the decision of the Council’s Planning Committee may have been close, the principle of development on this site has support not only as a result of that decision but also by virtue of its status in the emerging JCS and the weight of evidence in support of the relevant policies in that plan. This should be accorded significant weight.*

*15.73. It would also deliver considerable economic benefits as well as more limited benefits in relation to support for local sports provision, health care and environmental gains.*

*15.74. The adverse effects of the proposal should not be underestimated. They would be considerable, especially in relation to impact on the Green Belt and the open countryside. However in my opinion, the other considerations are sufficient to clearly outweigh all of the harm identified so that very special circumstances have been demonstrated.”*

18. In the Decision Letter, the Secretary of State endorsed the Inspector’s conclusions, especially on GB harm, housing supply and support of the JCS Local Authorities, see DL/10-DI/21. The summary section is of particular note:

*“The planning balance and overall conclusion*

*24. The Secretary of State agrees with the Inspector’s assessment at IR15.66-70 about the harm to the Green Belt and other harm that the proposal would cause.*

*25. The Inspector noted correspondence from the Minister of State for Housing dated 9 July 2015 that reiterated that the single issue of unmet demand for housing alone would be unlikely to outweigh harm to the Green Belt (IR15.71). More recently, Government policy as set out in a letter dated 31 August 2015 and followed up in a Written Ministerial Statement on 17 December 2015 has stated that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However in the particular circumstances of this case, in addition to the considerable weight that the Secretary of State gives to the housing benefits of the scheme referred to at paragraph 18 above he also attaches significant weight to the longstanding strategic planning aims referred to at IR15.72 and paragraph 19 above, and also considerable weight to the economic benefits of the scheme referred to at IR15.73 and paragraph 20 above. To this must also be added the limited weight he attaches to the various other benefits referred to at IR 15.73 and paragraph 21 above. Overall, the Secretary of State agrees with the Inspector that the various considerations in favour of the proposal are sufficient to clearly outweigh the harm to the Green Belt and all the other harm identified, and that very special circumstances have been demonstrated in this case (IR15.74).*

*26. The Secretary of State also agrees with the Inspector’s planning balance and overall conclusions at IR15.75-15.80. He agrees that the proposal would accord with the social, economic and, on balance, the environmental dimensions of sustainable development. He therefore considers that the proposal would be sustainable development in terms of paragraphs 6-10 of the Framework.*

*27. However, as the proposal concerns land designated as Green Belt, the presumption in favour of sustainable development at paragraph 14 of the Framework does not apply in view of the provisions of footnote 9 (IR15.77).*

*28. The proposal is in direct conflict with the adopted development plan as regards its policies on the Green Belt and housing, including settlement boundaries. There is also some conflict with policy on*

landscape (IR15.78). The Secretary of State has therefore gone on to consider if there are any material considerations that indicate the planning application should be determined other than in accordance with the development plan.

29. As the Inspector notes at IR15.79, although LP Policy GRB1 is consistent with the Framework with regard to its treatment of built development, it does not make provision for assessing the question of very special circumstances. LP Policies HOU2 and HOU4 are dated, since they are based on the revoked Structure Plan. They also represent relevant policies for the supply of housing so that, in any event, they should not be regarded as up to date in view of the accepted lack of an adequate housing land supply in Tewkesbury Borough. Thus the Secretary of State agrees with the Inspector that, whilst there is conflict with the adopted development plan, there are other important considerations to be weighed in the balance. With regard to the conflict in relation to the LP's Green Belt policy, as concluded at paragraph 25 above he agrees with the Inspector that very special circumstances have been demonstrated, so that the proposal would accord with Framework paragraph 88 (IR15.80).

30. With specific reference to housing, the Secretary of State agrees that two points made by the Inspector at IR15.80 are of particular importance: firstly, the stated aim in the Framework to significantly boost the supply of housing; and, secondly, the strategic approach of the emerging JCS. As regards the first, although the actual figure for the full objectively assessed housing need of Tewkesbury has not yet been established, the evidence to the JCS examination to date points overwhelmingly to high and persistent levels of unmet need. In relation to the second, the approach of the JCS is based on strategic allocations and associated alterations to the Green Belt and it adheres to the recognition of the planning merits of an urban extension north of Brockworth. Moreover, the appeal Inspector notes that the JCS Examiner had indicated acceptance as to the question of exceptional circumstances. The Secretary of State considers that the points made at IR15.80 are consistent with further provisional findings of the JCS Examiner that the appeal Inspector did not see (paragraph 5 of this letter).

31. Bearing in mind that the JCS has been prepared so as to be broadly consistent with current national policy, the Secretary of State agrees with the Inspector that considerable weight should be attached to the broad approach of the JCS and, as a consequence, the contribution which the application site is expected to make to the strategic planning of the area.

*For these reasons, combined with there being very special circumstances in this case, the Secretary of State agrees with the Inspector that there are sufficient considerations to outweigh the conflict with the development plan (IR15.80).*

19. In short, Brockworth confirms that the Secretary of State considers that the following elements can form part of a VSC case:
- (a) A major shortfall in housing need;
  - (b) The social and economic benefits arising from delivery of housing;
  - (c) LPA support for a scheme and strategic planning aims.
20. In particular DL/25 confirms that the Chief Planner's Letter of 31 August 2015 and the Written Ministerial Statement of 17 December 2015 do not prevent inclusion of unmet need within a VSC case. On the contrary, they can form part of a VSC case, alongside other components.

#### THE PRESENT APPLICATION

21. The case in favour of grant of planning permission based on the existence of "VSC" is set out in material submitted by Marrons Planning on behalf of the Applicants, including a Very Special Circumstances Report document.
22. This sets out five components to the VSC case:
- 1. The essential nature of GB release in the Borough;
  - 2. The lesser harm to GB identified at this site, as compared to other sites;
  - 3. Parish Council support for the proposal
  - 4. The lack of 5 year supply of housing
  - 5. Addition and improved access to existing games facilities

*1) and 2) The Need for Green Belt Release and Suitability of this Site*

23. Points 1 and 2 can be addressed together. The Borough Council are in the course of preparing a new Local Plan and as part of that process they have acknowledged the need to release some green belt land to accommodate necessary housing growth within the District.
24. The Council is therefore satisfied in principle (and subject to the Local Plan examination process itself) that "exceptional circumstances" exist to justify redrawing of GB boundaries in order to accommodate necessary housing growth in the emerging Local Plan.
25. The Council has also undertaken studies to assess which areas of land could be removed from the GB with least impact on the purposes of the GB. Those studies have shown that the application site is classed as a less sensitive location.
26. Although the Local Plan has some way to go before adoption, these findings, namely (i) the need to release land from the GB to meet housing needs and (ii) the potential suitability of the application site to accommodate housing without unacceptable harm to GB purposes are both clearly important relevant material considerations in the VSC balance which the Council ought to take into account.
27. It would make no sense in determining this application for the LPA to ignore its own conclusions as to the need to release GB land for housing or its own evidence base which has found that the application site could be released without unacceptable harm to GB purposes compared to GB releases elsewhere.
28. In summary, just as in the Brockworth case, the LPA can accord very substantial weight to the strategic planning position and the commitment to remove the site from the Green Belt.

### *3) Parish Council Support*

29. The support of the Parish Council also weighs substantially in favour of the development of the development of this site now, consistent with the Framework's emphasis on locally-led planning: NPPF paragraph 17. The position is again just as for Brockworth, one where the support of such administrative bodies can be accorded weight as part of the VSC case.

### *4) Housing Land Supply*

30. The Secretary of State's policy that lack of 5 year supply of housing land should not of itself amount to VSC justifying grant planning permission in the GB is clearly a relevant consideration in the balance.
31. However, this policy must not be mis-interpreted so as to exclude the absence of a 5 year supply as being one of the series of material considerations which can, in concatenation with other factors, represent VSC.
32. The Brockworth decision's DL/25 now makes very clear that the Secretary of State does consider that in specific circumstances, a contribution to unmet need can and should be included within a VSC case.

### *5) Addition to Existing Games Facilities and Improved Access*

33. The addition to existing games facilities, and improved access to these, is an important social benefit, in line with the strong policy support for healthy communities. It can be seen that sports provision was accorded positive weight in Brockworth: IR/15.73 and DL/21 and DL/26.

CONCLUSION

34. The matters identified in the Marrons Planning submission and Very Special Circumstances Report are therefore all relevant planning considerations which, taken together, are capable of amounting to VSC justifying grant of planning permission.
35. In this case an overwhelming case for the existence of VSC has been made out in a location where the LPA's own studies have shown that development would not unacceptably harm GB purposes and in circumstances where the LPA accepts the inevitability of the need to amend GB boundaries to accommodate housing development as part of the Local Plan process.
36. I will of course be happy to advise further if requested so to do.

**1 September 2016**

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