

Date: 30/01/2015

Before :

MR JUSTICE OUSELEY

Between :

THE QUEEN (on the application of LEE VALLEY REGIONAL PARK AUTHORITY)	<u>Claimant</u>
- and -	
BROXBOURNE BOROUGH COUNCIL	<u>Defendant</u>
-and-	
BRITANNIA NURSERIES	<u>Interested Party</u>

Broxbourne gave permission to Britannia Nurseries to build houses. The Lee Valley Reg Park Authority successfully challenged this permission. The court quashed the permission.

Lee Valley won on two main grounds

- a) The use of the prev developed land argument was wrong in law
- b) The harm to the openness of the GB was not properly assessed.

Arguments that failed were that

- a) Housing shortage was not a special circ – held that it could be
- b) Benefit of good quality design – held to be a consideration though not a big one

- a) and b) are directly relevant to TFM

Grounds of challenge

Meaning of previously developed land: error to treat the whole plot as previously developed just because of a part of it

44. I reject Mr Harwood's first submission. At no stage does the report draw any distinction between the northern and southern parts of the site in this context, and certainly not in the context of which parts were previously developed land. That is important in view of the way in which the new flexibility is introduced in the report as offsetting or diminishing the significance of the breach of GBC2. Paragraphs 8.3 and 8.6-8.10 of the report treat the application site as one: it is derelict, redundant, with dilapidated buildings and anti-social behaviour; development of the whole would not affect the Green Belt; the long derelict site would be cleared and replaced with high quality housing. The effect of the reference to the new policy exception for previously developed land in paragraph 8.3, in the context of the reference to the need for very special circumstances, is to treat the policy exception as constituting or as being part of very special circumstances for the whole site, and to avoid the committee grappling with the clear effect of the admitted breach of Green Belt policy over at least the northern part of the site. It was, I note, never suggested that the development of the northern part was necessary to enable clearance and redevelopment of the southern part. I appreciate that the majority of committee members had seen the site, but the report does not draw the distinction which their visit would have suggested, and so would have diminished rather than affirmed any distinction which they ought to have appreciated in the application of policy as between the southern and northern parts.

Harm to openness of GB

47. That is then compounded in paragraphs 8.7 and 8.10. If these are very special circumstances, they all ignore the harm done by reason of the very inappropriateness of this development in the Green Belt. It is also difficult to see how the absence of some more severe harm to the Green Belt could be a very special circumstance permitting harm by reason of inappropriateness, unless perhaps the development must take place in the Green Belt and the question is which is the least harmful location for it, which was not the issue here. **The lower quality of an area of Green Belt land does not reduce the harm done by inappropriate development**, and though it may or may not affect any particular specific harm, the way in which the lesser quality of the surface area of the Green Belt might reduce harm to openness would require careful explanation. It may also be right that the development would not result in the actual merging of urban areas; were it in fact to do so, that would be a very strong form of harm. But the absence of such a form of severe harm cannot reduce the harm by reason of inappropriateness or the harm actually done to the openness of the Green Belt. The assertion that the urban area would not "extend excessively into the open countryside" or "unacceptably into high quality Green Belt" in reality is an unrecognised but real assertion of harm by inappropriateness, and of specific but not great harm to openness. **That cannot be a very special circumstance at all. Those passages merely set out as positive points a degree of the harm, not very special circumstances clearly outweighing it.**

56. I cannot accept Mr Harwood's submissions. They presented a rather more sophisticated analysis of how a tenable decision might have been arrived at than the report provided. The report simply did not deal with the extent of built development on the site as a whole and compare it with the proposed development by foot print, whether by reference to the footprint of buildings alone or to the area occupied by man-made development. No such exercise was done, nor was it suggested that the basis of the comparison which should be undertaken. Nor does the report suggest that if the built area of the existing buildings were compared to the footprint of the proposed houses alone and found to be greater, that the effect of an openness of dispersal of the smaller footprint of the housing over a much wider area, with its accompanying enclosed gardens, ancillary buildings, roads, paved areas and so on, could be traded off against the reduction in height.
60. The spread of urban housing development over the northern site is such an obvious and extensive increase in the developed area and in the area of openness lost, that I do not see, in the absence of clear analysis and explanation, how the report rationally could have avoided saying that there was a significant loss of openness- most of the currently open northern part was to be developed- and that was a breach of the NPPF as well as of GBC2. The conclusion in paragraph 8.10 was irrational on the information and analysis available to the committee, and might well be irrational however presented.