

Council warnings on Local Plan urgency are unfounded

St Albans court decision cited by green belt protection campaigners

Warnings by Guildford Borough Council that it must produce a Local Plan speedily in order to resist uncontrolled building on the green belt by opportunist developers are unfounded and should be withdrawn, according to the newly-formed Guildford Greenbelt Guardians.

They point to an Appeal Court judgement on December 12th – St Albans –v- Hunston and the Secretary of State which ruled that housing need is not in itself sufficient to set aside the protection of the Green Belt.

A newly formed coalition of 20 residents/campaign groups in Guildford (Guildford Greenbelt Guardians or GGG) welcomes the news. They say that this means we can spend time getting a good local plan.

In the St Albans case, the Appeal Court judges said that housing need is not – in itself - sufficient to set aside the protection of the Green Belt, where most land is protected by Green Belt or AONB designation. This legal ruling will need to be taken into account in future planning decisions, and is important in the way the NPPF can be interpreted in future.

The judges considered the NPPF 87 statement "*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*" and ruled that housing need does not of itself necessarily represent such a very special or special circumstance where most of the undeveloped land is protected (see appendix 1). So housing need alone is **not** grounds to permit the protection of green belt to be set aside in a planning appeal.

Furthermore, land can only be removed from the Green Belt through the local plan process. NPPF 83 states that "*once established Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan.*"

In the Council's response to a petition by the Wisley Airfield Action Group (a member of GGG) last Thursday, Councillor Juneja said, "*The best way to make sure we can control development and protect key areas across the borough is to have an up to date Local Plan... To remove any potential sites at this very early stage, when we have just looked at the issues and options to help draft the new plan, could leave us open to a situation where planning decisions are made for us.*"

Councillor Mansbridge added, "*We need a new Local Plan to avoid the risk of inappropriate development and outside planning approval.*" GBC's Notes to Editors at the foot of the page state, as if a matter of fact, that "*The National Planning Policy Framework, published last year, states that if the Council does not have a current Local Plan it will have to grant planning permission for sustainable development. To retain control of future development and ensure the borough grows in a way that benefits local people whilst satisfying government requirement, the Council has to produce a new Local Plan.*"

We do not accept these points. We consider that the Note to Editors remark quoted above is inaccurate. The NPPF does have a presumption in favour of sustainable development, but that does not mean planning permission must always be granted. We consider that GBC's interpretation of NPPF is not correct.

We also note GBC's comments in the Notes to Editors in relation to growth. We feel that these are also cannot be decided on our behalf by Councillors; it affects us, and it should be the subject of local consultation (with properly designed questions).

Susan Parker, a spokesperson for GGG, said:

"There is a need for a local plan, but we must get it right. Guildford needs a plan that is based on accurate information and public consultation. The people of Guildford - and councillors - should not be rushed into accepting a plan that allows more development than we would ideally like. After this judgement, we believe that the protection of the Green Belt cannot be set aside by housing need alone."

Notes for Editors

1. St Albans Case – Court of Appeal – case decided 12/12/13

St Albans' local plan was out of date (1994) and there was a proposal by Hunston, a developer to build on Green Belt land, which was refused. There have been a series of cases ending in the Court of Appeal. The judge has ruled that this is a matter on which he can rule (paragraph 4). This ruling now has the force of law.

Extracts from the judgement

"The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, whether because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker [in this context this means a planning inspector] would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable....

.... It would, in my judgment, be irrational to say that one took account of the constraints embodied in the policies in the Framework, such as Green Belt, when preparing the local plan, as paragraph 47(1) [of the NPPF] clearly intends, and yet to require a decision-maker to close his or her eyes to the existence of those constraints when making a development control decision. They are clearly relevant planning considerations in both exercises.

....decision-makers ..., faced with their difficult task, have to determine whether very special circumstances have been shown which outweigh the contribution of the site in question to the purposes of the Green Belt. The ultimate decision may well turn on a number of factors, as I have indicated, including the scale of the shortfall but also the context in which that shortfall is to be seen, a context which may include the extent of important planning constraints in the district as a whole. There may be nothing special, and certainly nothing "very special" about a shortfall in a district which has very little undeveloped land outside the Green Belt."