

Warwick District Council Local Plan

Consultation on Proposed Modifications (2016)

Modification 16

Land off Bamburgh Grove, Leamington Spa on behalf of Mr Daryl Hunter

Question 7

1. Policy DS19 (Modification 16) removes land from the Green Belt at North Milverton and allocates the land for housing development for (H44). Consistency with national planning policy – one of the statutory tests of soundness – requires the demonstration of exceptional circumstances for altering Green Belt boundaries (Framework 83).
2. There is a significant amount of case law on the meaning of ‘exceptional circumstances’ including *Carpets of Worth Ltd v Wyre Forest District Council* (1991), *Lang Homes Ltd v Avon County Council* (1993); *COPAS v Royal Borough of Windsor and Maidenhead* (2001) and *R (Hague) v Warwick District Council* (2008). The case law demonstrates that ‘exceptional circumstances’ are required for any revision of a Green Belt boundary and that what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if they fail to adopt a lawful approach to exceptional circumstances.
3. Case law shows that there can be no exceptional circumstances to justify changing a Green Belt boundary unless it is necessary to change it; and it cannot be necessary to change it unless something has fundamentally changed since the boundary was drawn demonstrating that whilst a site did fulfil a Green Belt function when the matter was last reviewed, it does not now.

4. One issue is whether meeting the full Objectively Assessed Housing Need (OAN) is itself an exceptional circumstance which would justify a revision to Green Belt boundaries.
5. Whilst cases are fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, once a Green Belt has been established, it requires more than general planning concepts to justify an alteration: (Gallagher Estates paragraph 125(iv)).
6. However, “sustainable development” is a concept which is an archetypal example of planning judgment (IM Properties v Lichfield DC [2014] EWHC 2440 (Admin) para 92).
7. The duty to contribute to sustainable development imports a concept which embraces strategic consideration and how best to shape development in Warwick District to ensure that proper provision is made for the needs of the 21st century in terms of housing and economic growth and for mitigating the effects of climate change; travel patterns are important, as are SEA and SA: (IM Properties, paragraph 93).
8. The only statutory obligation in relation to national policy and guidance is to have regard to them: s.19(2)(a) Planning and Compulsory Purchase Act 2004 (“PACPA”).
9. The Local Planning Authority and Inspector are under a statutory duty to exercise any function in relation to the Local Plan “*with the objective of contributing to the achievement of sustainable development*”. The National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG) must be considered in this context.
10. The NPPF adopts the UN’s definition of ‘sustainable development’ as “*meeting the needs of the present without compromising the ability of future generations to meet their own needs*”. The NPPF establishes what paragraphs 18 to 219 set out the Government’s practical

meaning of sustainable development, Paragraph 7 stresses that there are economic, social and environmental dimensions to it.

11. Case law establishes that OAN means what it says and that the extent and nature of needs are to be established without reference to planning constraints; Hunston Properties v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 especially at paragraph 25, commenting on NPPF paragraph 47 –

"to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the market area, as far as is consistent with the policies set out in this Framework,"

12. Sir David Keene said: *"that qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs"*. [Although this was a s.228 appeal the interpretation of OAN is relevant to plan making: Gallagher Estates v Solihull MBC [2014] EWHC 1283 (Admin) para 91).

13. "Sustainability" inherently requires a balance to be made of the factors that favour any proposed development and those that favour refusing it, but *"policy may give a factor particular weight ... where it does so, that weighting or approach is itself a material consideration that must be taken into account"*: Gallagher Estates paragraph 25.

14. The NPPF put *"considerable new emphasis on the policy imperative of increasing the supply of housing"* and contains "a policy objective to achieve a significant increase in supply ... Paragraph 47 makes full objectively assessed housing needs (OAN), not just a material consideration, but a consideration of particular standing.

15. Where OAN are to be assessed then a distinct assessment made as to whether (and, if so, to what extent) other policies dictate or justify constraint. Here, numbers matter, because the larger the need, the more pressure will or might be applied to infringe on other inconsistent policies”: Gallagher Estates paragraphs 31 and 94.
16. The policy test for Green Belt boundary revision remains that circumstances will not be exceptional unless they necessitate revision: Gallagher Estates paragraph 125(ii)(b).
17. The NPPF and PPG recognise the policy weighting in favour of meeting OAN. This policy objective may be outweighed by other policies of the NPPF. A planning judgment must be made on this question. The presence of policy constraints **may** restrain the LPA’s ability to meet its needs, but this is, again a question of planning judgment.
18. The NPPF and PPG recognise that NPPF policy on altering Green Belt boundaries remains the same: only in exceptional circumstances and only through the Local Plan.
19. The NPPF and NPPG do not suggest that the meeting of OAN cannot constitute or contribute to the existence of exceptional circumstances. It is a question of planning judgment for the LPA and the Inspector, in the context of the s.39(2) PACPA duty which is, itself, reflected in the highly pertinent spatial guidance set out in NPPF paragraph 84 i.e. *"when drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to **promote sustainable patterns of development. they should consider the consequences for sustainable development of channelling development towards urban areas inside the Green belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary"***

20. On this basis and having regard to the particular facts of the scale of Warwick District's housing requirement and an inability to meet this on non-Green Belt land within the District it is entirely appropriate that Green Belt boundaries should be subject to a review and revision.
21. The SA accompanying the Proposed Modifications demonstrates that the removal of land at North Milverton would achieve sustainable development as a contributor to meeting the OAN for housing in the District, providing an exceptional justification for redrawing the Green Belt.
22. It is demonstrably evident that there has been a fundamental change in meeting for the first time within a development plan for Warwick District and the OAN for housing development. The current adopted Warwick District Plan was prepared pursuant to strategic policies within the Regional Planning Guidance and the Warwickshire Structure Plan – both of which have been revoked from the statutory development plan. The Local Plan provided land allocations for meeting housing needs up to 2011. Moreover, the strategic policies in the Regional Strategy and the Structure Plan were not written in the context of being consistent with Government's commitment to 'boost significantly the supply of housing.'