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Neutral Citation Number: [2017] EWCA Civ 141

Case No: C1/2016/1664

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT, QUEENS BENCH DIVISION
Mr Charles George QC
(sitting as a Deputy High Court Judge)
CO/4129/2015**

Royal Courts of Justice
Strand, London, WC2A 2LL
14 March 2017

B e f o r e :

**LADY JUSTICE GLOSTER
(VICE PRESIDENT OF THE COURT OF APPEAL, CIVIL DIVISION)
and
LORD JUSTICE LEWISON**

Between:

DARTFORD BOROUGH COUNCIL **Appellant**

- and -

**THE SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT AND ORS** **Respondent**

**MR A BOWES (instructed by Sharpe Pritchard LLP) for the Appellant
MR C BANNER (instructed by the Government Legal Department) for the Respondent
Hearing date : 9 March 2017**

HTML VERSION OF JUDGMENT 

Lord Justice Lewison:

1. The sole issue on this appeal was the meaning of "previously developed land" (often called "brownfield land") as defined by the glossary forming part of the National Planning Policy Framework.
2. That definition reads as follows:

"Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

3. The context in which the issue arises is that on 23 July 2015 a planning inspector allowed an appeal against the refusal by Dartford BC to grant planning permission for a change of use of land to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan. The site in question was within the residential curtilage of Shirehall Farm. Shirehall Farm is within the Green Belt, and is not in a built-up area.
4. The inspector decided that the site qualified as previously developed land because:
 - i) It was within the curtilage of a permanent structure (namely Shirehall Farm) and
 - ii) It was not excluded as "land in built-up areas such as private residential gardens, parks, recreation grounds and allotments".
5. Dartford does not challenge the first of those reasons: the challenge is to the second. The argument is that all private residential gardens are excluded from the definition of previously developed land, whether or not they are in a built-up area. Any other interpretation, so it is said, would give rise to conflicting policies within the NPPF. At the conclusion of the hearing we announced that the appeal would be dismissed with reasons to follow. These are my reasons for joining in that decision.
6. The approach to the interpretation of the NPPF is the same as the approach to the interpretation of a development plan document: *R (Timmins) v Gedling BC* [2015] EWCA Civ 19, [2015] PTSR 837 at [24]; *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2016] EWCA Civ 168, [2016] PTSR 1315 at [24]. The correct approach to the interpretation of a development plan document was laid down by the Supreme Court in *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13, [2012] PTSR 983. In that case Lord Reed said at [18] that "policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." He went on to make an important point at [19]:

"That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse... Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

7. It is particularly that feature, namely that broad statements of policy may be irreconcilable, that differentiates a development plan document from a contract which one would expect to be internally consistent. Like a development plan document, the NPPF is also full of broad statements of policy; and it would be crying for the moon to start the process of interpretation with the idea that there is no tension between statements of policy pulling in different directions.

8. The starting point is, of course, the words themselves read as a matter of ordinary English. The critical words are:

"land in built-up areas such as private residential gardens, parks, recreation grounds and allotments"

9. In my judgment the words "such as" state clearly that what follows are examples of something. Examples of what? They can only be examples of the more general expression that precedes them, namely "land in built-up areas". As a matter of ordinary English I cannot see that any other meaning can be given to this sentence. "Land in built-up areas" cannot mean land *not* in built-up areas. It is argued that this interpretation means that other parts of the NPPF are in conflict with each other. Even if that were true it is not the business of an interpreter to go searching for possible ambiguities or conflicts in order to detract from the obvious meaning of the words to be interpreted.

10. The alleged conflict within the NPPF upon which Mr Bowes relied was the juxtaposition of two of the core planning principles in paragraph 17 of the NPPF, and a conflict between paragraphs 14, 55 and 111. I start with paragraph 17. This provides that twelve core principles should underpin both plan making and decision taking. Two of those principles are:

"take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;" and

"encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;"

11. There is in truth no conflict between these two core principles, as is demonstrated by the more detailed policies about the Green Belt. Paragraph 87 of the NPPF states that:

"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."

12. Paragraph 89 goes on to say that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. But that general policy is immediately qualified by exclusions, one of which is:

"limited infilling or the *partial* or complete *redevelopment of previously developed sites* (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development." (Emphasis added)

13. Accordingly, the NPPF accommodates the definition of previously developed land within the general policy about development in the Green Belt. If a new building is a partial redevelopment of a previously developed site it is not to be regarded as inappropriate redevelopment in the Green Belt, provided that it has no greater impact on the openness of the Green Belt than the existing development. The proviso also means that the encouragement of development on brownfield land is not, at least in the Green Belt, unqualified. So any possible tension is resolved.

14. Nor do I see any conflict between the definition and paragraphs 55 or 111 of the NPPF. Paragraph 55 states that:

"Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances..."

15. However, the definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that a new dwelling within that curtilage will not be an "isolated" home. There will already be a permanent structure on the site. Paragraph 111 states:

"Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value."

16. This paragraph expressly adopts the expression "previously developed land" and I cannot see that there is any conflict in so doing.

17. Mr Bowes also relied on statements made by the Minister when introducing changes to previous versions of planning policy contained in PPS3. Before commenting on that argument it is worth recalling why Lord Reed said that development plan documents were to be objectively interpreted. His explanation also at [18] was:

"The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities."

18. The same is true of the NPPF. In the Foreword to the NPPF the responsible Minister stated:

"By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning."

19. In *Timmins* at [24] Richards LJ said that the NPPF was "on the face of it a stand-alone document which should be interpreted in its own terms and is in certain respects more than a simple carry-across of the language in the guidance it replaced." In *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466 at [21] Sales LJ said:

"The NPPF was introduced in 2012 as a new, self-contained statement of national planning policy to replace the various policy guidance documents that had proliferated previously. The NPPF did not simply repeat what was in those documents. It set out national planning policy afresh in terms which are at various points materially different from what went before."

20. However, in both *Timmins* and *Turner* the court accepted that, at least in the case of the Green Belt, previous policy guidance remained relevant. I do not, however, consider that previous policy guidance should be invoked in order to create ambiguities in the NPPF where the language of that document is clear. Nor do I consider that that was the process that the court sanctioned in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386, [2015] PTSR 274. The question in that case was whether "any other harm" should be given a restrictive meaning limited to what was described "Green Belt harm" as opposed to "non-Green Belt harm". In the result the court interpreted the words by giving them their ordinary meaning. "Any other harm" meant "any other harm"; not "some other harm". The reference to previous guidance was deployed in order to rebut an argument that there had been a policy shift which justified a more restrictive and unnatural interpretation.

21. Mr Bowes drew our attention to the decision of this court in *Adedoyin v Secretary of State for the Home Department* [2010] EWCA Civ 773, [2011] 1 WLR 564. That case concerned the Immigration Rules which, unlike ministerial statements of planning policy, must be placed before Parliament. The question was whether the word "false" meant "dishonest" or merely "incorrect". At [70] Rix LJ said:

"... in a situation where a word, such as here "false", has two distinct, and distinctively important, meanings, there is a genuine ambiguity which makes it legitimate, in construing Rules which are expressions of the executive's policy, to consider what the executive has said, publicly, about its rules. Clearly, what a minister says in Parliament, expressed as an assurance, and especially on the occasion of a debate arising out of the tabling of amended rules, is of particular, and may be of decisive, importance..."

22. I do not consider that he derives any help from that case. That was a case in which there was an ambiguity on the face of the rules. Here there is no ambiguity on the face of the NPPF. The Minister's statement relied on was not a statement about the NPPF, so it is not covered by Rix LJ's observations. Nor was there any ambiguity in PPS 3 itself. Mr Bowes does not in fact rely on previous policy guidance: so his reliance is not within what was contemplated by *Timmins* or *Turner*. The alleged ambiguity only arises if the Minister's statement in Parliament is literally interpreted without regard to the text of the revised policy that he was introducing. I do not regard that as a legitimate approach to the interpretation of the NPPF.
23. In my judgment it would be quite wrong to expect the public, for whose benefit the NPPF is published, or indeed a would-be developer, to have to undertake the investigation of previous iterations of government planning policy in order to understand the NPPF, let alone ministerial statements introducing previous iterations of policy. Indeed that would defeat one of the main purposes of promulgating the NPPF in the first place. If I may repeat something I have said before:

"The public nature of these documents is of critical importance. The public is in principle entitled to rely on the public document as it stands, without having to investigate its provenance and evolution." (*R (TW Logistics Ltd) v Tendring DC* [2013] EWCA Civ 9, [2013] 2 P & CR 9 at [15])

24. For these reasons I did not consider that statements made by ministers about previous iterations of policy could detract from the clear words of the definition of previously developed land.
25. I note that when Lindblom LJ granted permission to appeal he did not do so on the ground that the appeal had a real prospect of success, but because there was some other compelling reason for the appeal to be heard. I agree with his view on the merits of the appeal, which is why I agreed to its dismissal.

Lady Justice Gloster, Vice-President of the Court of Appeal, Civil Division:

26. I agree with the reasons given by Lord Justice Lewison for the dismissal of this appeal.