

CO/2093/2007

Neutral Citation Number: [2007] EWHC 2648 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 26th October 2007

B e f o r e:

MR JUSTICE SULLIVAN

Between:

THE QUEEN ON THE APPLICATION OF SATNAM MILLENNIUM LTD_
Claimant

v

WARRINGTON BOROUGH COUNCIL_

Defendant

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(Official Shorthand Writers to the Court)

Mr Christopher Lockhart-Mummery QC and Mr David Blundell (instructed by Messrs Wright Hassall Solicitors) appeared on behalf of the **Claimant**

Mr Stephen Sauvain QC and Mr Colin Crawford (instructed by Warrington Council Solicitors) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE SULLIVAN: Introduction.
2. In this application under Section 287 of the Town and Country Planning Act 1990 ("the Act") the claimant seeks an order quashing the proposals map of the Warrington Borough Council Unitary Development plan ("the UDP") insofar as it shows the claimant's land at Peel Hall, within the North Cheshire Green Belt. The defendant is the local planning authority responsible for the preparation and adoption of the UDP.
3. At the public inquiry into objections to the Revised Deposit Draft of the UDP, the claimant objected to the inclusion of its land in the Green Belt. In very brief summary, the claimant contended at the inquiry that in allocating the Peel Hall site as Green Belt the defendant had altered the general extent of the Green Belt, which had been approved in the Cheshire Replacement Structure Plan, "Cheshire 2001" ("the Structure Plan"), but had not sought to justify that alteration on the basis that there were exceptional circumstances. It was common ground at the inquiry that the defendant was not contending that there were exceptional circumstances. The defendant was contending that there had been no alteration to the general extent of the Green Belt established by the Structure Plan; all that had happened was the definition for the first time in this part of the area covered by the UDP of detailed Green Belt boundaries. Since the detailed Green Belt boundaries had not been previously defined, there had been no alteration to them and there was therefore no need to show exceptional circumstances.

PPG2 Green Belts

4. Before considering the relevant paragraphs in part 2 of PPG2, which deals with designation of Green Belts, it is convenient to note that the last of the five purposes of including land in Green Belts set out in paragraph 1.5 is "to assist in urban regeneration by encouraging the recycling of derelict and other urban land". The relevant paragraphs in part 2 of PPG2 are as follows:

"2.1 The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead.

Regional guidance and development plans

2.2 Regional and strategic planning guidance set the framework for Green Belt policy and settlement policy, including the direction of long-term development. Regional guidance focuses on issues which are of regional importance or which need to be considered on a wider geographical basis than that of individual structure plans. Strategic guidance performs a similar role in metropolitan areas.

2.3 Green Belts are established through development plans. Structure plans provide the strategic policy context for planning at local level. The general extent of Green Belts has been fixed through the approval of structure plans.

2.4 Many detailed Green Belt boundaries have been set in local plans and in old development plans, but in some areas detailed boundaries have not yet been defined. Up-to-date approved boundaries are essential, to provide certainty as to where Green Belt policies do and do not apply and to enable the proper consideration of future development options. The mandatory requirement for district-wide local plans, introduced by the Planning and Compensation Act 1991, will ensure that the definition of detailed boundaries is completed.

2.5 In metropolitan areas, unitary development plans (UDPs) perform the functions of structure and local plans.

Defining boundaries

2.6 Once the general extent of a Green Belt has been approved it should be altered only in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the authority has considered opportunities for development within the urban areas contained by and beyond the Green Belt. Similarly, detailed Green Belt boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally. Detailed boundaries should not be altered or development allowed merely because the land has become derelict.

2.7 Where existing local plans are being revised and updated, existing Green Belt boundaries should not be changed unless alterations to the structure plan have been approved, or other exceptional circumstances exist, which necessitate such revision.

2.8 Where detailed Green Belt boundaries have not yet been defined, it is necessary to establish boundaries that will endure. They should be carefully drawn so as not to include land which it is unnecessary to keep permanently open. Otherwise there is a risk that encroachment on the Green Belt may have to be allowed in order to accommodate future development. If boundaries are drawn excessively tightly around existing built-up areas it may not be possible to maintain the degree of permanence that Green Belts should have. This would devalue the concept of the Green Belt and reduce the value of local plans in making proper provision for necessary development in the future.

2.9 Wherever practicable a Green Belt should be several miles wide, so as to ensure an appreciable open zone all round the built-up area concerned. Boundaries should be clearly defined, using readily recognisable features such as roads, streams, belts of trees or woodland edges where possible. Well-defined long-term Green Belt boundaries help to ensure the future agricultural, recreational and amenity value of Green Belt land, whereas less secure boundaries would make it more difficult for farmers and other landowners to maintain and improve their land. Further advice on land

management is in Annex A."

5. In Carpets of Worth Limited v Wyre Forest District Council [1991] 2 PLR 84, the Court of Appeal rejected a submission that the word "alteration" as then used in paragraph 3 of Circular 14/84 green Belts meant an "alteration which results in diminishing the area of the Green Belt" and concluded that the policy applied equally to cases where the alteration was an extension of the Green Belt: see per Purchas LJ at pages 92B to 94H and Taylor LJ at page 95E to H. For present purposes, there is no material difference between the policy guidance in respect of alterations to Green Belt boundaries in Circular 14/84 and the policy guidance in paragraph 2.6 of PPG2 above.

Peel Hall

6. The Peel Hall site is some 58.5 ha in extent. It lies immediately to the north of the existing built up area of Warrington. On three sides, to the west, south, and east, the Peel Hall site is bounded by the urban area. To the north Peel Hall is entirely bounded by the M62, the northern site boundary being some 1.7km in length. The claimant does not own the western part of the Peel Hall site. That part of the site is owned by the Regional Health Authority. It contains a learning disabilities unit and resource centre, to which I will refer later.
7. Although the arguments advanced by Mr Lockhart-Mummery QC on behalf of the claimants at the inquiry before the UDP Inspector and before me, if they are correct, apply with equal force to the whole of the Peel Hall site, this application to quash the proposals map is confined to that part of the Peel Hall site which is owned by the claimant. Subsequent references to "the site" include the whole of the Peel Hall land in the absence of any indication to the contrary.

Structure Plan Policy

8. In summarising the policy background prior to the UDP I will refer only to those events which are of particular relevance to this application.
9. Warrington was designated a New Town in April 1968 and the Secretary of State approved the Warrington New Town Outline Plan in 1973. There followed a period of substantial population growth. The old style County Development Plan and Town Map had contained no proposals for a Green Belt but in 1960/1961 the then Cheshire and Lancashire County Councils put forward proposals for a number of areas of Green Belt, including a proposal for a North Cheshire Green Belt on a non-statutory basis. These proposals were not approved by the Minister of Housing and Local Government because it was necessary to consider regional housing needs.
10. The first formal Green Belt policy was contained in the 1977 Cheshire Structure Plan, which was approved in 1979. Under the heading "The Definition of the Green Belts" paragraph 13.39 of the 1979 Structure Plan said:

"There will be two broad areas of Green Belt in the county -

- a. Across the north of the County, from the vicinity of Chester, Neston

and Ellesmere Port in the west, extending south of and between Runcorn and Warrington New Towns, north of Northwich, to the vicinity of Poynton, Disley and Macclesfield in the east;

and

b. In the south of the County between Alsager and Congleton, to link with the North Staffordshire Green Belt.

The extent of the Green Belts is broadly depicted on the Key Diagram, and the boundaries will be defined precisely in local plans."

11. The Key Diagram showed that Warrington was proposed to accommodate housing for local needs for incoming workers and for New Town Growth. The New Town Designated Area was indicated in diagrammatic form. The Green Belt was shown as surrounding the designated area, save for a part of the western boundary of the designated area. In simple terms, the Green Belt as "broadly depicted" on the Key Diagram allowed the New Town to grow within its designated area. The M62 was also indicated to the north of the diagrammatic representation of the designated area.
12. The designated area had been established before the M62 was constructed and so there were some small areas of the designated area to the north of the motorway while other small areas to the south of the motorway were not included in the designated area. I have said that the designated area was indicated diagrammatically on the key diagram. It is important to bear in mind that the Key Diagram in the 1979 Structure Plan, as was the case with the key diagrams in all structure plans, was required by the relevant regulations not to be on a map base. Structure plans contained a written statement which set out the County Council's general policies in respect of the use and development of land and a key diagram which illustrated those policies. At all times, the relevant regulations stipulated that the key diagrams illustrating the written policies in structure plans must not be on a map base: see regulation 12 of the Town and Country Planning (Structure and Local Plan) Regulations 1974 and, most recently, regulation 5 of the Town and Country Planning (Development Plan) (England) Regulations 1999.
13. In 1992, the Secretary of State approved the Cheshire Replacement Structure Plan "Cheshire 2001". By that time, the substantial growth experienced by the New Town in the 1970s and 1980s was slowing down and the Warrington New Town Development Corporation had been wound up in 1989, its responsibilities initially passing to the Commission for New Towns. The Explanatory Memorandum to the Structure Plan contained information as to housing completions in Cheshire from 1986 to 1992. Average annual housing completions in Warrington over the period 1986 to 1992 had been 983. Housing policy H1 stated that, of the 59,000 new dwellings to be provided the county between 1986 and 2001, "about 12,000" would be provided at Warrington (800 dwellings per annum). Policy H2 said.

"In the former New Towns of Warrington and Runcorn, the number of sites for new dwellings will be related to the amount of land available

within strategically important local constraints especially the Mersey flood plain, high grade agricultural land, areas of landscape importance and the need to preserve breaks between areas of development."

The explanatory text said in respect of Warrington:

"The level of provision is just over one-half that made in the 1980s reflecting the end of the period of New Town development and in recognition of constraints to development around it. The Secretary of State has recognised the uncertainty surrounding the balance of development in Warrington and in the housing provision in the Borough. He recognises that changes in travel to work patterns may help to moderate any local housing shortage. He has said that the Borough's housing development rates should be monitored and reviewed at an early date. Until this is done, and the scope for cross-boundary provision established through regional planning guidance together with a review of both Cheshire's Structure Plan and Strategic Guidance for Merseyside, there remains the need for the Borough Local Plan to retain flexibility as to the level of provision and phasing of development of land in the longer term."

14. The Green Belt policy in Cheshire 2001 was as follows:

"ENV3

There will be two areas of Green Belt in the County broadly depicted on the Key Diagram:

- a. across the north of the County, from the vicinity of Chester, Neston and Ellesmere Port in the west, extending south of and between the former new towns of Runcorn and Warrington, north of Northwich to the vicinity of Poynton, Disley and Macclesfield in the east; and
- b. in the South of the County between Alsager and Congleton, to link with North Staffordshire Green Belt..."

The explanatory text said:

"Green Belts ... are characterised by their permanence. Much of the Cheshire Green Belt was originally drafted some 30 years ago. The detailed boundaries of Green Belts are defined within local plans, though some remain yet to be statutorily defined. Government guidance suggests Green Belts should be defined for a period longer than that of a structure or local plan and that their boundaries be changed only in exceptional circumstances. It is important therefore that when being defined their boundaries take into account a realistic allowance for development beyond 2001."

15. The Key Diagram showed that at Warrington new dwellings related to land available within constraints were proposed in accordance with policy H2. To the north of Warrington the M62 was shown and the "broad depiction" of the Green Belt showed it as being to the north of the M62 save for a short stretch of the M62 where it runs off the Key Diagram into the adjoining development plan area to the east. There, well beyond the junction of the M62 and the M6, which is a little to the east of the site, the Green Belt is shown as crossing over to the south side of the M62.
16. It is a curious feature of the Structure Plan that, to use the words of Mr Estall, the defendant's principal planner responsible for preparing the defendant's proofs of evidence at the UDP inquiry "up to the point of the Secretary of State's considering Cheshire 2001 there had been no reference at all to the Green Belt serving the purpose of protecting the open land north to the town of Warrington." Although Mr Estall's proof said that the Secretary of State had proposed a modification to the description of the purpose of Green Belt to the effect that it should cover the area to the north of the town, what the Secretary of State in fact did was to clarify the position in his decision letter dated 23rd January 1992 approving the Structure Plan:

"The Secretary of State agrees with the Panel's recommendation that the overall extent of the Green Belt contained in policy GS11 and defined in the Key Diagram should be retained. In the description of the overall extent of the Green Belt he has deleted the reference to 'New Town'. For the avoidance of doubt the North Cheshire Green Belt continues to link with the Merseyside and the Greater Manchester Green Belts. There will be no change to the overall extent of the Green Belt, other than as considered in paragraph 7.3 below as a result of this modification."

Paragraph 7.3 is not relevant for present purposes.

17. That letter also stated (paragraph 8.25) that Warrington was "the area of greatest uncertainty in making strategic planning decisions in Cheshire". There was a difficult balance to maintain during the run down of Warrington's house building rates and in that context the Secretary of State had agreed policy H1 should be rounded up to 12,000 dwellings. It is common ground between the parties that in interpreting the Structure Plan one should have regard not merely to the written statements of policy as illustrated by the Key Diagram but also to the clarification in paragraph 7.2 of the Secretary of State's letter above.

Local Plan Policy

18. In 1994, the Warrington Borough Local Plan ("the Local Plan") was placed on deposit. In the Deposit Draft of the Local Plan the site was shown as one of the Areas of Search. The M62 was shown as the southern boundary of the Green Belt to the north of Warrington. The Areas of Search were intended to accommodate future possible development. They were the equivalent of safeguarded land as subsequently described in PPG2.

19. The Federation of Cheshire Green Parties and local residents objected to the site being notated as an area of search and argued at the Local Plan inquiry that the site should be included in the Green Belt. The Local Plan Inspector's report was published in 1998. He concluded that the site should not be included in the Green Belt, saying:

"The allocation of land, due to its sheer scale and nature, clearly possesses the characteristic of openness. However to my mind that alone is not enough to justify its inclusion in the Green Belt. Despite the extent of this site, the environment of this immediate area is strongly influenced by the neighbouring housing development; from most vantage points the presence of the surrounding properties within this landscape is inescapable and this has a noticeable urbanising effect. The same consideration applies to the motorway. These features combine to create an obvious sense of enclosure around this site which accordingly, in terms of character and appearance, is distinctly different from the area of countryside (designated by the Local Plan as Green Belt) to the north. Indeed the motorway represents a very clear division between these 2 contrasting areas and it provides the most logical and defensible boundary for the Green Belt hereabouts.

For all these reasons, I am convinced that the allocation site would be incapable of serving usefully any of the acknowledged purposes of including land within a Green Belt and there is accordingly no basis for modifying the Plan in the manner these Objectors propose."

20. In 1998 Warrington was designated as a Unitary Authority and the Local Plan was abandoned on legal advice because the new unitary authority would need to prepare a Unitary Development Plan for its area. The first Deposit Draft of the UDP was not published until June 2001. In the meantime, the Warrington Community Healthcare NHS Trust made an application for planning permission for the erection of a learning disabilities unit and resource centre on its part of the site. Planning permission was initially refused on two grounds. The first ground stated that all areas of search should be treated as Green Belt, pending resolution of their status through the UDP, and that no special circumstances justified a departure from that policy. The NHS Trust appealed to the Secretary of State. Counsel instructed by the defendant advised that it would not be possible for the defendant to resist the appeal on the first "Green Belt" ground and that, if it did so, it would be at risk of having to pay the appellant's costs. The reasons were explained to the committee in a report by Mr Estall and included the following:

"The appeal site is within the 'Area of Search 8' (Peel Hall), as defined in the now-discontinued Borough Local Plan. It is evident that the whole of that proposed Area of Search lies outside the broad extent of the Green Belt as shown on the Approved (Cheshire 2001) Structure Plans Key Diagram."

He also referred to the Local Plan Inspector's conclusions (see above) and concluded that:

"Therefore, in addition to the fact that the site lies outside the broad extent of the Green Belt as shown on the Approved (Cheshire 2001) Structure Plans Key Diagram, the appellants can demonstrate 'special circumstances'."

21. The defendant's change of position was explained to the section 78 appeal inspector in a context statement prepared by Mr Estall:

"The Structure Plan's 'Key Diagram' shows the general extent of the Green Belt covering North Cheshire, and, within the Borough, enclosing the majority of the former Warrington New Town area. Whilst it is not the intention that a Key Diagram should be read as defining the precise boundaries of the Green Belt, the Cheshire Key Diagram can be readily interpreted as excluding the Appeal site from the general extent of the Green Belt, which includes the area north of M62 in this part of the Borough. The Key Diagram is shown at Appendix 2 to this statement."

For completeness, I should also refer to paragraph 12 of the Context Statement, in which Mr Estall said:

"In recommending that Area of Search 8 be allocated for development, the Inspector had taken the view that the M62 Motorway would provide a clearly-defined southern boundary to the Green Belt in that part of the Borough. The Borough Council had, in evidence, pointed out to him that the 'hard' edge to built development, generally south of the Area of Search, could provide a satisfactory alternative boundary."

The UDP

22. The first Deposit Draft of the UDP was published in June 2001. The site was excluded from the Green Belt, the southern boundary of which ran along the M62. The site was one of 20 areas of land, totalling 452.4 ha which were "safeguarded land" under policy GRN2. Safeguarded land made provision for Warrington's development needs beyond 2016. Until then development that was not appropriate development in a Green Belt would be refused. In March 2002, the Secretary of State published his proposed changes to RPG13, the Regional Planning Guidance for the North West. As Mr Estall explained at the UDP inquiry, the new approach set out in the Secretary of State's proposed changes was "subsequently to be vindicated in the finally approved RPG13 published in March 2003, which generally supported the changes proposed by the Secretary of State". For present purposes, there is no material difference between the new regional policies proposed in March 2002 (referred to as SRPG in Mr Estall's proof of evidence) and those now contained in RPG13. Mr Estall described the change in the regional policy context for the UDP as follows:

"The government's policy approach to growth in Warrington, and the region as a whole has changed substantially, as reflected in the final RPG13 published in March 2003, and in 'Sustainable Communities in the North West - Building for the Future' (SCNW) published in February

2003. RPG now focuses on the regeneration of the metropolitan poles of Liverpool and Manchester/Salford and restricts the rate of housing development in Warrington to less than half that planned for in Cheshire 2001 and achieved during its 15-year operative period (1986-2001). SCNW supports RPG through the identification of 'pathfinder' authorities in areas of housing and market failure, to assist the regeneration of the inner cities."

Elsewhere in his evidence he referred to the change to a more concerted focus on urban regeneration and the use of previously developed land as a "sea change" in Government policy for the region.

23. In chapter 3 of RPG13 the Spatial Development Framework indicates those areas/localities where development and "urban renaissance" activities need to be focused. There is:

"• a firm focus on concentrating growth and change in the Region's two Regional Poles (the major city centres of Liverpool and Manchester/Salford), their surrounding inner areas and the adjacent metropolitan towns, and key cities and towns beyond to enable their fuller regeneration and renaissance and to take advantage of the concentration of existing physical resources and development opportunities within those areas ..." (Paragraph 3.5)

"• the importance of maintaining urban form, and discouraging urban sprawl, with the assistance of extensive areas of Green Belt in and around highly urbanised areas and historic towns in the North West."

For Warrington, policy SD2 states:

"In Warrington the focus should be on achieving regeneration and restructuring of the older areas and not allowing further significant outward expansion of the settlement on to open land beyond existing commitments, current at the start of the calendar year 2002 thus curtailing further sprawl of the settlement into the countryside, unless fully justified by reference to the new RPG, its Core Development Principles and the Spatial Development Framework."

24. Under policy UR7 Warrington is expected to provide 380 dwellings per annum from April 2002 to April 2006 and beyond until such time as a different rate is specified following a review of RPG 13. Policy SD5 in RPG13 deals with Green Belts. So far as material, it states:

"The need for exceptional substantial change to any Green Belt in the Region should be investigated by a strategic study, which should involve:

- identification of the extent of allocated, undeveloped, safeguarded, and redevelopable brownfield land;

- identification of any Green Belt land which does not serve the purpose of its designation, and whose removal would not impact adversely on the maintenance of the Green Belt;
- trends in the rate of consumption of both greenfield and brownfield land for both residential and all forms of non-residential development; and
- assessment of the feasibility of individual districts' housing and employment needs being met by provision in adjoining districts consistent with the principles of social inclusion and sustainable development.

Any subsequent change to Green Belt boundaries should have full regard to:

- the principles of sustainable access;
- the relation to social inclusion and economic competitiveness of any release of Green Belt land for employment uses;
- the effect of any release on urban regeneration;
- the guidance in National Planning Policy Guidance on the density of residential development;
- the potential robustness of revised Green Belt boundaries;
- the intentions of the Spatial Development Framework;
- the need to preserve the extent and quality of the countryside; and
- conformity with the purposes of Green Belts as set out in National Planning Policy Guidance...

Strategic studies of the Green Belt should be undertaken on the following basis, in line with the Core Development Principles and the Spatial Development Framework.

In Merseyside and Halton ...

In other designated Green Belts in the North West...

- in Warrington, a detailed Green Belt boundary is to be established in the UDP for the first time and there will be no need to undertake a further study of strategic or detailed boundaries before 2021."

Paragraph 3.31 of RPG13 says:

"The strategic extent of Green Belt in Warrington is defined in the Cheshire 2001 Structure Plan which remains extant in Warrington. The

intention had been for the Warrington Borough Local Plan to define Green Belt boundaries but this will now be achieved through Warrington's UDP. Once this has been completed it is envisaged that there will be no need to undertake a strategic review of Green Belt in Warrington before 2021."

25. Mr Estall's proof explained to the UDP Inspector that in preparing the Revised Deposit Draft of the UDP, which was published in October 1992 (referred to as RUDP in his proof of evidence) the defendant had placed "a great deal of weight" on the newly emerging regional strategy and that the revised Deposit Draft "took its context" from the Secretary of State's proposed changes to Regional Guidance. As a consequence of those changes, policy GRN2 was deleted and the site, together with all of the other areas of safeguarded land, was included in the Green Belt in the revised Deposit Draft of the UDP. Mr Estall's proof explained (1.58):

"It is this key policy and the overall approach set out within RPG, which underpins the approach taken in the RUDP policy HOU1 and, in the Council's view, that deletion of FUDP [First Deposit Draft UDP] policy GRN2 'Safeguarded Land' and the associating tightening of the Green Belt boundaries (GRN1)."

A little later on in the proof he explained (1.92):

"Policy GRN2 was deleted on the strength of SRPG and the improved housing land supply position having provided sufficient confidence that other sources of supply would meet post-2016 requirements. The green belt boundaries were tightened as a consequence of the deletion of policy GRN2. The Council felt able to take the view that the 'uncertainty' that the LP Inquiry Inspector had referred to in recommending safeguarding of an extensive amount to meet an uncertain future housing requirement had now gone."

26. The link between the deletion of policy GRN2 and the inclusion of the GRN2 sites in the Green Belt was further explained in paragraph 3.13, which said:

"Policy GRN1 remained largely unchanged between [the First Deposit Draft and the Revised Deposit Draft of the UDP stages] in relation to the policy wording. However, the defined green belt was extended by the deletion of policy GRN2, with all of the previously proposed safeguarded sites being included within the green belt. Minor changes took place where land was removed from the green belt in response to objections. These are not of strategic significance and are thus not considered further in this proof..."

In response to objections, Mr Estall's proof said:

"The justification for the deletion of the safeguard land policy and the consequent inclusion in the green belt of all sites to which that draft

policy had applied has been substantially reinforced by the policies now confirmed within approved RPG..." (3.25)

27. As its title implies, a UDP performs the role of both the Structure Plan and the Local Plan within its area (until the new development plan framework takes effect). Thus, part I of a UDP consists of a written statement formulating the authority's general policies in respect of the development and use of land in their area (section 12(3), corresponding to section 31(2) of the Act in respect of Structure Plans). Part II of a UDP consists of a written statement formulating those policies in such detail as the authority thinks appropriate and, a map showing those policies on a geographical base (section 12(4)(a) and (b), corresponding to section 36(2) and (6) of the Act in respect of Local Plans).
28. Policy GRN1 and the deleted policy GRN2 were in Part I of the UDP. The explanatory text referred to the defendant's "high degree of reliance" on RPG13, set out the relevant policies in the regional guidance, and said in respect of policy SD5 "The Green Belts" in RPG 13:

"While not applying in principle to Warrington, which is to be dealt with through this UDP, policy SD5 identifies considerations which should be addressed in any strategic studies required to inform exceptional substantial change to green belts elsewhere in the region. Since the decisions as to boundaries being proposed in this UDP inherently address the issue as to whether it is appropriate to change the strategic extent of the green belt in Warrington, as indicated in the extant Cheshire Replacement Structure Plan (Cheshire 2001), it is, arguably, proper that those considerations should be applied in Warrington's circumstances. They are..."

The factors in SD5 are then set out:

"Considerations applying to any subsequent changes to green belt boundaries that may be at issue in other parts of the region are also, arguably, relevant to the issues in Warrington which have been addressed in preparing the UDP. Matters to which changes to (or, in the case of Warrington, establishment of) green belt boundaries should have regard are..."

Again, the considerations in SD5 are set out.

29. Curiously, no conclusion was expressly reached in the UDP explanatory text as to whether it had been found appropriate to change the strategic extent of the Green Belt in Warrington in response to the changes in regional strategy.

The UDP Inspector's report

30. The claimant appeared at the UDP inquiry in April 2004. The UDP Inspector's report was published on 1st March 2005 and the UDP was finally adopted in accordance with the Inspector's recommendations, so far as material, on 26th January 2006. Objections and representations were made in respect of all of the 20 safeguarded land sites. The

Inspector considered the issue of principle, whether the safeguarded land sites should be retained for future possible development or included in the Green Belt, as part of his consideration of policy GRN1. He concluded that the total deletion of policy GRN2 was the correct approach and then considered, on a site by site basis, the site specific objections to the inclusion of each site in the Green Belt. Having summarised the national and regional policy background, he said in paragraphs 1.139 to 1.141, under "The Issues:

"1.139. It seems to me therefore that providing it can be shown that the Green Belt boundary proposed by the Council in the RUDP will endure for a period that satisfies national guidance and RPG, the approach of drawing that boundary tightly around Warrington town and the larger settlements will wholly accord with the underlying aims of regional policy aimed at regenerating the Regional Poles and the other targeted urban areas.

1.140. Any land that is proposed for Green Belt designation will of course need to fulfil one or more of the Green Belt purposes set out in PPG2 ¶1.5. However, it follows logically, in my view, from what I say in the previous paragraph that almost without exception the inclusion in the Green Belt of any land beyond those settlement boundaries will satisfy the fifth Green Belt purpose listed in PPG2 ¶1.5. That is to say it will assist in urban regeneration, by encouraging the recycling of derelict and other urban land, in the Regional Poles and the other areas upon which RPG13 Policies SD1 and SD2 are focused - not least Warrington town. As to whether other Green Belt purposes are met will be addressed in considering site specific objections.

1.141. The main issues to be addressed are therefore:

- what is an appropriate end date for testing whether the Plan's Green Belt boundaries will endure?
- is there likely to be a need for additional land to be released before that end date?
- either way, should land be safeguarded for possible release before that end date or possibly later?"

Having considered the three issues identified in paragraph 1.141, the Inspector concluded that there was no need to allocate additional land for residential development or to designate land as safeguarded land in the UDP.

31. The Peel Hall site was the only site where it was argued at the UDP inquiry that there had been an alteration to the general extent of the Green Belt so that it was necessary for the defendant to justify that alteration on the basis of exceptional circumstances. The Inspector identified the three issues in respect of the Peel Hall site as follows:

"A. Should the site be allocated or safeguarded for development?"

B. Is it necessary to demonstrate very special circumstances?

C. Does the land serve a Green Belt purpose?"

His reasoning and conclusions were as follows:

"1.346. I conclude previously that the need to allocate additional land for residential development or to designate land as safeguarded through the UDP does not exist (GRN1). Thus, as with other sites originally put forward in the FUDP for safeguarding, site specific matters in support of allocation or safeguarding, for example proximity to existing services, potentially beneficial transport links and other sustainability advantages, do not need to be addressed by me.

1.347. Moving to **Issue B**, the main thrust of the Objector's case, having regard to the advice in PPG2 paragraph 2.6 and the judgements in *Carpets of Worth Ltd v Wyre Forest District Council* and *Copas v the Royal Borough of Windsor and Maidenhead*, is that once the general extent of the Green Belt is determined and settled in the Structure Plan it can be altered only in exceptional circumstances. The Council did not claim very exceptional circumstances and therefore it was not open to the Authority to include the objection site in the Green Belt at the RUDP stage of the Plan.

1.348. There is no dispute that once the general extent of the Green Belt has been approved it should be altered only in exceptional circumstances. Similarly, detailed Green Belt boundaries defined in adopted local plans of UDPs, or earlier approved investment plans, should be altered only exceptionally. It is agreed also that, when proposing the inclusion of additional land within as well as the exclusion of land from approved Green Belts, it is necessary to demonstrate exceptional circumstances. In the case of north Warrington, detailed Green Belt boundaries have not been approved. In that respect the situation in Warrington differs significantly from that in *Carpets of Worth* and *Copas* where the general extent and detailed boundaries of the Green Belts had been approved.

1.349. The general extent of the North Cheshire Green Belt was defined in the first structure plan for the county and carried forward into the current approved Cheshire Replacement Structure Plan. Structure Plans are intended to establish the general extent of a Green Belt. Structure Plan Policy ENV3, which '*broadly depicts*' the two areas of Green Belt within the County, states that there shall be a Green Belt '*across the north of the County, from the vicinity of Chester, Neston and Ellesmere Port in the west, extending south of and between the former new towns of Runcorn and Warrington, north of Northwich to the vicinity of Poynton, Disley and Macclesfield to the east*'. The UDP proposals do not change that definition of the general extent of the Green Belt.

1.350. Although the objections site is of some size, and I accept is of strategic significance in terms of the amount of development which it could accommodate, in the context of the overall size of the North Cheshire Green Belt, I do not consider it to be of such size as to represent an alteration to the general extent of the Green Belt. I accept that the Structure Plan key diagram shows the M62 motorway as forming the southern boundary of the Green Belt in the north Warrington area. However, the key diagram is intended for indicative purposes only. It is for the UDP to define the detailed boundaries of the Green Belt. I do not believe that in one area of the County alone it was intended that a detailed boundary be pre-determined in the Structure Plan. As Structure Plan Policy [ENV3] states, detailed boundaries are to be defined in local plans. I do not accept therefore that there is a need to demonstrate very special circumstances.

1.351. **Issue C.** Until the publication of the RUDP it had always been accepted that Peel Hall fell outside the Green Belt. It was not included in the Green Belt in the FUDP or the WBDLP. In terms of the purposes of the Green Belt, the Objector's case relies on the finding of the local Plan Inspector. He concluded that the land served no Green Belt purpose. However, as I have previously explained, he was making his assessment in a different policy climate to that which now exists. In particular, even if he had given detailed consideration to whether the protection of the site would have assisted urban regeneration, and there is no direct evidence that he did, the policies of the RPG that are aimed at urban renaissance in the NWMA were not then in force. The situation now is that the Council is pursuing an approach, with which I concur (see Policy GRN1), involving the use of tightly drawn Green Belt boundaries to achieve the aims of RPG. On urban regeneration grounds alone there is ample justification for including the objection site within the Green Belt boundary contained in the RUDP. While those boundaries may not be as physically substantial as the M62 boundary, they can nevertheless be readily identified on the ground."

32. The defendant's position at the UDP inquiry was explained in the response proof prepared by Mr Estall, which was read by one of his colleagues, Mr Manns, because of Mr Estall's absence through illness. Mr Estall's explanation of the defendant's position was as follows:

"4.24. Mr Griffiths is correct in accepting that the Cheshire 2001 Key Diagram indicates the broad extent of the Green Belt in diagrammatic terms only. I do, however, maintain that he seeks to attach greater substance to the apparent delineation of the Green Belt boundary along the line of the M62 than actually exists, given, especially, that the related text of Policy ENV3 states that the extent of the Green Belt is merely 'broadly depicted' on the Key Diagram. The manner in which the decision to define the broad extent of the Green Belt in North Cheshire came about and the reference to its purpose and strategic extent in the approved

Cheshire 2001, suggests there was far more room for consideration of options at the point of defining detailed boundaries than accepted by Mr Griffiths' assertion that, almost as a matter of course, it must follow the line of the M2 in this area.

4.25. Up to the point of the Secretary of State's considering Cheshire 2001, there had been no reference at all to the Green Belt's serving the purpose of protecting the open land north of the town of Warrington. The Secretary of State did, however, propose a modification to the description of the purpose of the Green Belt, to the effect that it should cover the area to the north of the town, such that it would be contiguous with the Greater Manchester and Merseyside Green Belts. It is my view that, within that very loosely termed indication of the extent of the Green Belt, this UDP is not precluded from changing the status of Peel Hall from proposed safeguarded land to Green Belt. Since the detailed Green Belt boundaries in this area have not previously been established as part of any adopted development plan, I believe it is unnecessary to refer to any exceptional circumstances for altering the boundary in this area, as required, in principle, by paragraph 2.6 of PPG2. The re-drawing of the boundary between the First and Revised Deposit UDP, results from a re-interpretation of the Cheshire 2001 strategic policy rather than an 'alteration' to it, for which, I appreciate exceptional circumstances would have had to be shown.

4.26. It is clear to me that, in any event, paragraph 2.6 of PPG2 is designed to address situations in which a proposed alteration seeks to take land out of an approved or adopted Green Belt, rather than to add land to the Green Belt, since it guides Local Authorities to consider opportunities for development in urban areas, before taking such a measure.

4.27. The position now taken by the Council in proposing to include Peel Hall in the Green Belt is more appropriately justified in the context of paragraph 2.8 of PPG2. In that regard the UDP properly takes its lead from the first sentence of paragraph 2.8..."

It is clear from paragraph 1.348 of the Inspector's report that the defendant did not pursue the contention in paragraph 4.26 of Mr Estall's proof, which was plainly incorrect in the light of the Court of Appeal's decision in Carpets of Worth (see above).

33. At the inquiry, there was cross-examination. Mr Griffiths, a chartered town planner and director of the claimant, who gave evidence on its behalf at the inquiry, says in a witness statement prepared for these proceedings that Mr Manns had agreed in cross-examination:

4.1. That the M62 as the green belt boundary in the Structure Plans was imprecise and unambiguous;

4.2. That the Council had always accepted that the Site fell outside the

green belt boundary;

4.3. That the fundamental assumption which had resulted in the Site falling outside the green belt was the line of the M62;

4.4. That that fundamental assumption had not been falsified by subsequent events;

4.5. That what was proposed was a strategic change to the extent of the green belt in this location; and

4.6. That no exceptional circumstances were claimed."

In response, Mr Stephens, who is the Team Leader, Development Plans and Neighbourhood Plans, in the defendant's Planning Policy Division, said, after discussing the matter with Mr Manns:

"a) In relation to 4.1, I am informed that Mr Manns did accept that the M62 as a green belt boundary was precise and unambiguous and that the M62 appeared as the boundary in the Key Diagram to the Structure Plan, but importantly he stated that this was not the only defensible boundary to meet the advice in PPG2...

b) In relation to 4.2, I am informed that this is again a partial account. The Council's case throughout the inquiry was that no detailed Green Belt boundary had been set. The answer given relates to the approach taken by the Council in relation to the earlier aborted local plan prepared in the context of the then prevailing policy on the need for safeguarded land. As the UDP Inspector pointed out in his report, at para.1.147, this was a 'very different planning environment.' I refer also to the explanation in the Core Proof at para. 191 dealing with key strategic issues including the Green Belt issue. In any event, whatever the previous approach of the Council may or may not have been, I am informed that Mr Manns made it clear that the detailed boundary had never been determined and that, as the Inspector accepted, the general extent permitted its inclusion.

c) In relation to 4.3, I am informed that this is again a partial account as must follow from the above response to 4.2. The M62 had been seen as important in setting the boundary of the green belt, but only in the overall context of there being a need to identify significant areas of land as 'safeguarded land'. Once the need to safeguard land between the M62 and the built up area was established the M62 was the logical boundary. As ... the proof of Mr Estall (to which Mr Manns was speaking) made clear, the context had changed. The current policy context was the adequacy of available land to meet long term development needs, the policies in Regional Planning Guidance and the fifth purpose of green belt.

d) In relation to the point at para 4.4 I am informed that Mr Manns made it clear that as the policy context changed so did the weight given to the

previous assumptions as to the appropriate green belt boundary.

e) In relation to 4.5, the change was as a result of strategic policies, but since no detailed green belt boundaries had been set, and the general extent permitted its inclusions, there was no change to the general extent.

f) In relation to 4.6, it is certainly the case that no exceptional circumstances were claimed by the Council in its written evidence, since the general extent was not being altered, but simply the detailed boundaries fixed. The view of the Inspector was that there was no alteration of the general extent."

Submissions and conclusions

34. On behalf of the claimant, Mr Lockhart-Mummery accepted, as he had accepted before the Inspector at the UDP inquiry, that this was not a case where detailed Green Belt boundaries had been defined in an adopted local plan. The question was, therefore, whether, in including the Peel Hall site in the Green Belt, the defendant was making an alteration to the general extent of the Green Belt; see the first sentence of paragraph 2.6 at PPG2. When considering whether there had been such an alteration, he accepted that the Key Diagram was just that: a diagram which was not prepared on a map base. He also acknowledged that Policy ENV3 stated that the two areas of Green Belt in the County are "broadly depicted" on the Key Diagram. Nevertheless, he submitted that whatever the position may be in respect of other parts of the North Cheshire Green Belt, in respect of the M62 as the southern boundary for the area of Green Belt to the north of Warrington, the Key Diagram, even when considered as a diagram, was clear and unambiguous and had always been recognised as such by the defendant since the adoption of the Structure Plan. For example, in the 2000 planning appeal (see above) and indeed by Mr Manns at the UDP inquiry itself (see the evidence relating to cross-examination above).

35. Mr Sauvain QC's submissions on behalf of the defendant are best summarised in paragraph 20 of his skeleton argument:

"The Structure Plan does not purport to set green belt boundaries. It describes two 'areas' of green belt and states that the described areas are 'broadly depicted' on the Key Diagram. This is the furthest that the Structure Plan can go and the furthest that it purports to go. As the Key Diagram is required not to be on an OS Base the broad depiction of green belt areas is clearly not intended to define the extent of green belt boundaries by reference to any physical feature. The most favourable interpretation that the Claimants can put on the Structure Plan and its Key Diagram is that the green belt area is to extend to somewhere in the vicinity of the M62 - the detailed boundary being left to the local planning process."

36. I do not accept the submission that, because a Key Diagram is by definition diagrammatic and is not on a map base, it will always be impossible to ascertain the

extent of Green Belt boundaries by reference to any physical feature. Some physical features, whether natural, such as rivers, or man-made, such as motorways, may be so substantial and unambiguous that, even on a diagram giving a broad depiction, it will be possible to say that they clearly were intended to define the general extent of the Green Belt in a particular area. Debating the issue in the abstract, diagram versus Ordnance Survey plan, is not helpful. I am not suggesting that all motorways on all Key Diagrams will necessarily fall into this category. Each case will turn upon its own particular facts, including the characteristics of the physical feature in question, its size, the extent to which it really is an unambiguous boundary on the ground et cetera, the manner in which the Key Diagram depicts both the physical feature and the general extent of the Green Belt, what assistance can be derived from the text of the written policies, and any clarification provided by the Secretary of State's approval letter et cetera. While structure plan policies are of a strategic nature, the nebulous character of the policies should not be exaggerated. After all, the approval of structure plans is intended to "fix" the general extent of Green Belts (see paragraph 2.3 of PPG2). The general extent may be "fixed" with greater or less precision depending on the particular text and the particular key diagram in the structure plan in question.

37. I am very conscious of the fact that matters of planning judgment are for the UDP Inspector to decide. The question of whether a particular alteration to a Green Belt boundary amounts to an alteration to the general extent of the Green Belt as approved in the Structure Plan is very much a question of planning judgment. Nevertheless, in reaching that judgment, the Inspector must correctly address the question: what is the general extent of the Green Belt as approved by the Structure Plan, and he must have regard to all considerations relevant to the question: is this change an alteration to the general extent of the Green Belt, as approved by the Structure Plan, or merely a detailed definition of the boundary of the Green Belt as approved by the Structure Plan?
38. The two key paragraphs in respect of Issue B as identified by the Inspector are paragraph 1.349 and 1.350 of his report (above). The Inspector first considered the written statement of policy in ENV3 and concluded that the UDP proposals did not change that definition of the general extent of the Green Belt. As Mr Lockhart-Mummery pointed out, considering the text of ENV3 alone, without the assistance of the Key Diagram is a meaningless exercise in respect of that part of the Green Belt which is to the north of Warrington, because that extensive area of Green Belt is not mentioned in policy ENV3 as written. Thus the whole of the Green Belt to the north of Warrington could be deleted without there having been an alteration to the general extent of the Green Belt as described in ENV3 if one simply considered the text alone and ignored the Key Diagram. Mr Sauvain submitted that the statement that one of the two areas of Green Belt would be "across the north of the County" was a sufficient indication that there would be an area of Green Belt to the north of Warrington as well as an area of Green Belt "extending south of and between the former new towns of Runcorn and Warrington".
39. I prefer Mr Estall's view that, until the Secretary of State's decision letter approving the Structure Plan, there was no reference to the Green Belt proposed in ENV3 serving the purpose of protecting the open land to the north of Warrington. In his decision letter in 1992, the Secretary of State clarified the position, for the avoidance of doubt, that the

North Cheshire Green Belt continued to link with the Merseyside and Greater Manchester Green Belts. He did so because it was necessary to provide that clarification. This is a case, therefore, where the text of the ENV3 read in isolation is of no practical assistance in establishing the existence, much less the general extent of, the Green Belt to the north of Warrington and in order to see its general extent one has to look at the Key Diagram. There is no other indication of its general extent.

40. I do not attach particular significance to the use of the word "defined" in the Secretary of State's approval letter, but it is clear that the Key Diagram was intended to, and did, "define" the general extent of the Green Belt around Warrington, including that part of the Green Belt linking with the Merseyside and Manchester Green Belts, to the extent that it was appropriate and possible to do so on an indicative diagram. I therefore return to the question of whether this particular Key Diagram, however imprecise it may or may not have been in other respects, did clearly show the M62 as the southern boundary of the Green Belt to the north of Warrington. Until the UDP inquiry, the defendant seems to have had no difficulty in so interpreting the Key Diagram.
41. The Inspector, in paragraph 1.351 of his report, said that, until the publication of the revised Deposit Draft of the UDP, "it had always been accepted that Peel Hall fell outside the Green Belt". Although Mr Sauvain referred me to a proposal in 1984 in a draft local plan which was not pursued to adoption to extend the Green Belt into the New Town Designated Area (it was recognised that the existing Green Belt did not extend into the designated area) and to the County Council's issuing a certificate of conformity with the then applicable Structure Plan, it is not at all clear whether the issue now raised in paragraph 2.6 of PPG2 was addressed by the two planning authorities at that time. The boundary at that time appears to have been accepted as being the New Town Designated Area, with the Green Belt being the designated area. In any event, the defendant's position since the adoption in 1992 of Cheshire 2001, the applicable structure plan, was entirely consistent until October 2002: see, for example, Mr Estall's report to the committee and the context statement he prepared for the public inquiry in 2000.
42. In his skeleton argument, Mr Sauvain submitted that, when Mr Estall stated in that context statement that "the Cheshire Key Diagram can be readily interpreted as excluding the appeal site from the general extent of the Green Belt, which includes the area north of the M62 in this part of the borough", that was merely an interpretation of the Key Diagram, that it dealt solely with the Key Diagram and not the wording of the Structure Plan Policy and that it was an attempt to define the general extent of the Green Belt for the purposes of a particular appeal in a very different policy context. I accept that Mr Estall's views were expressed on behalf of the defendant in 2000 for the purposes of a particular appeal and in a different strategic policy context but the alteration of that strategic policy context could not have altered what he and the defendant considered was or was not shown on the Key Diagram. Mr Estall was in no doubt as to what the Key Diagram showed and it is significant that the defendant was advised not that it was debatable whether the M62 was shown as the southern boundary of the Green Belt to the north of the town on the Key Diagram but that the position was so clear that advancing an argument to the contrary at the forthcoming section 78 appeal would put the defendant at risk as to costs on the ground of unreasonable

conduct. When Mr Estall told the section 78 appeal inspector in 2000 that the Key Diagram "can be readily interpreted as excluding the appeal site from the general extent of the Green Belt", he did not mean that the Key Diagram could also be readily interpreted in some other way. He was telling the section 78 appeal inspector what was the proper interpretation of the key diagram.

43. On that narrow question, he and Mr Manns appear to have maintained the same position at the UDP inquiry, although they argued that the changed approach to regional policy justified a different strategic approach. Mr Stephens' responses to Mr Griffiths' evidence as to what was accepted in cross-examination at the inquiry are significant rather more for the extent to which they agree with Mr Griffiths account than for the extent to which they dispute it. Thus, Mr Stephens says:

"Mr Manns did accept that the M62 as a Green Belt boundary was precise and unambiguous and that the M62 appeared as the boundary in the Key Diagram to the structure plan, but importantly he stated that this was not the only defensible boundary to meet the advice in PPG2."

The latter part of that proposition goes to the merits of whether an alteration to the Green Belt boundary shown on the Key Diagram could properly be made, not to the question of what was shown as the boundary on the Key Diagram. Similar observations apply to Mr Stephens' responses to points 3 and 4 in Mr Griffiths' evidence. It is not clear how far the erroneous belief expressed in paragraph 4.26 if Mr Estall's proof informed the defendant's approach to the question of whether what was being proposed in the Revised Deposit Draft of the UDP was an alteration to the general extent of the Green Belt as approved in the Structure Plan. In any event, the error was corrected by the time that issue came to be considered by the UDP Inspector. However, the reasoning in paragraph 4.35 of Mr Estall's proof was far from clear. He appeared to be relying on the "very loosely-termed indication of the Green Belt" in the Secretary of State's approval notice, but that ignored the Key Diagram. The argument that "since the detailed Green Belt boundaries in this area have not previously been established as part of any adopted development plan, I believe it is unnecessary to refer to any exceptional circumstances" did not address the key question: whether there had been an alteration to the general extent of the Green Belt. It would appear that Mr Estall's response to this argument was contained in the final sentence of his paragraph 4.25:

"The re-drawing of the boundary between the First and Revised Deposit UDP, results from a re-interpretation of the Cheshire 2001 strategic policy rather than an 'alteration' to it, for which, I appreciate exceptional circumstances would have had to be shown."

Whether one describes the substantial strategic policy changes in Part I of the UDP, which were avowedly made in response to the changes in regional policy guidance in RPG13, as resulting from a "re-interpretation" of the Cheshire 2001 strategy or as a "alteration" to it, is, insofar as it is not a question of semantics, beside the point when one is attempting to answer the question: what was the general extent of the Green Belt that was approved in the Structure Plan? Have the changes in strategic policy led to an

alteration to that general extent? As noted above, the UDP "inherently" addressed the issue whether it was appropriate to change the strategic extent of the Green Belt around Warrington but then expressed no concluded view on that issue.

44. In paragraph 1.350 the UDP Inspector began by considering the size of the site in the context of the overall size of the Cheshire Green Belt. The size of the site to be added to, or removed from, the Green Belt is clearly a relevant consideration but it is not suggested that it can be the sole criterion for judging whether or not there has been an alteration to the "general extent of the Green Belt". That is particularly the case if that question is considered in the context of a very large area such as the whole of the North Cheshire Green Belt. It is clear that the Inspector did not treat size as the sole criterion and he was right not to do so. If one looked simply at the size of the area proposed to be removed from or added to the Green Belt, without regard to other circumstances such as the location of the site, the Green Belt function of the site, whether there were "permanent" Green Belt boundaries et cetera, and simply considered the hectarage of the site and compared that with the overall size of the Green Belt in question, then it would be possible to add, or perhaps of greater concern to remove, very large areas to or from the Green Belt as approved without altering "the general extent" of the total area of that Green Belt. I do not believe that that is what was intended by paragraph 2.6 of PPG2. The "general extent" is not synonymous with "the overall hectarage" of the Green Belt approved by the Structure Plan.

45. In addition to looking at the overall size of the Green Belt in question, it is necessary to consider, as the Inspector did in the latter part of paragraph 1.350, the particular circumstances of the Green Belt in the vicinity of the site that is proposed to be added to, or removed from, the Green Belt. In so doing, the Inspector accepted that the Key Diagram did show the M62 as forming the southern boundary of the Green Belt to the north of Warrington. That conclusion was consistent with all of the evidence before him: that that is what this particular Key Diagram did indeed show. The Inspector then stated that the Key Diagram was intended for indicative purposes only and that it was for the UDP to define the detailed boundaries of the Green Belt. He did not believe:

"... that in one area of the County alone it was intended that a detailed boundary be pre-determined in the Structure Plan. As Structure Plan Policy [ENV3] states, detailed boundaries are to be defined in local plans."

46. Mr Lockhart-Mummery submitted that the Inspector was there treating the Green Belt boundary drawing exercise carried out in the UDP as though it was based on the statutory division of responsibilities between a Structure Plan and a Local Plan, with the former dealing with strategic policy and the latter concerning itself simply with the detailed application of those strategic policies. He submitted that the Inspector appeared to have lost sight of the two functions of this UDP. In Part I, the UDP was not simply repeating strategic policies in the Structure Plan, it was setting out new and very different strategic policies, replacing the policies contained in the Structure Plan with policies which reflected the new regional guidance in RPG13. In Part II, the UDP set out the detailed policies and proposals which would give effect to those new strategic policies. The detailed policies were set out in the written text and shown on

the proposals map. The decision to delete all of the safeguarded land sites and to include all of those sites in the Green Belt, thus drawing the Green Belt tightly around Warrington's built up area, to contain further outward growth, was a strategic decision. This had led, at least in the case of the application site, to a decision that the general extent of the Green Belt around Warrington should be altered to reflect the very significant changes in regional policy.

47. Mr Sauvain accepted that the decision to delete the twenty safeguarded land sites in GRN2 was a strategic decision. Although he sought to draw a distinction between the two decisions, to delete the safeguarded land policy on the one hand and the decision then to add all 20 sites to the Green Belt on the other, it is clear from the extracts from Mr Estall's proof (see above) that the latter decision was the direct consequence of the former. I accept that the UDP Inspector, having resolved the strategic issue in favour of the defendant, then considered the site specific objections to the inclusion of each one of the GRN2 sites in the Green Belt. In view of his conclusions on the strategic issue, he concluded that all of the safeguarded sites performed at least the fifth of the Green Belt functions listed in paragraph 1.5 of PPG2 (see paragraph 1.140 of his report above). In the case of some of the GRN2 sites (but not Peel Hall) he concluded that they performed other Green Belt functions as well.
48. I accept Mr Sauvain's submission that it does not necessarily follow that merely because there were significant changes to the strategic policies in Part I of the UDP there was necessarily an alteration to the general extent of the Green Belt around Warrington. It would be possible to draw the Green Belt boundary more tightly around a town without necessarily making an alteration to the general extent of the Green Belt as approved in the Structure Plan. Whether there was such an alteration in any particular case would need to be examined on a site by site basis and the necessary information in respect of the other 19 GRN2 sites is not available, not least because those appearing at the UDP inquiry in respect of those sites did not contend that there had been an alteration to the general extent of the Green Belt around Warrington.
49. However, that issue was raised by the claimant in respect of the Peel Hall site and, in considering whether the addition of the Peel Hall site to the Green Belt was fairly described as an alteration to the general extent of the Green Belt as approved by the Structure Plan, as the claimant contended, or whether it was merely establishing detailed Green Belt boundaries which had not previously been defined, as the defendant contended, it was important to bear in mind the context in which, and the reasons for which, the inclusion of the site in the Green Belt was being proposed. This was not a case where a Local Plan was establishing detailed boundaries within a strategic context that had been set by a Structure Plan. The UDP was establishing a new and significantly different strategic context within which, rather than there being a need to allow for uncertainty as to the extent of Warrington's future growth (see the Secretary of State's letter approving the Structure Plan dated 23rd January 1992) the correct approach to take was now "the tight drawing of Green Belt boundaries around Warrington" (see the Inspector's letter dated 1st March 2005, submitting his report on the UDP inquiry).

50. It is clear from Mr Estall's proof that the defendant's justification for including the Peel Hall site in the Green Belt was not based on an evaluation of detailed factors relating to that particular site. It was squarely based on the change in strategic policy. Thus, while Mr Estall's proof argued that there were alternative Green Belt boundaries to the M62, he did not suggest that those boundaries were preferable to the M62 in terms of the advice in paragraph 2.9 of PPG2. The Green Belt boundary to the south of the M62 proposed in the UDP is the existing urban edge. Although it includes short stretches of highway and woodland edge, it largely comprises the edges of open space or residential curtilages. Mr Estall explained his approach in paragraph 4.78 of his proof:

"Whilst I accept that the M62 provides a strong and well-defined green belt boundary, it is my view that alternative boundaries, based on a variety of features, which are substantially consistent with advice in PPG2 paragraph 2.9 are available. It is, nevertheless, my view that the quality and clarity of boundaries are over-ridden by the strategic importance of including Peel Hall in the green belt."

51. I accept Mr Sauvain's submission that, merely because it was a strategic decision, rather than any concern about the strength or clarity of the M62 as the boundary of the Green Belt to the north of Warrington, that caused the defendant to include the site in the Green Belt, it does not necessarily follow that there was an alteration to the extent of the Green Belt as approved in the Structure Plan. However, the justification for the decision is a factor to be taken into consideration in deciding what it was the defendant was really doing in drawing the Green Belt boundary tightly round the normal edge of the built up area to the south of the M62: was it altering the general extent of the Green Belt as agreed in the Structure Plan as well as defining the detailed boundary for the first time, or was it merely defining the detailed boundary of the general extent of the Green Belt which had been approved by the Structure Plan? The UDP itself, although it raised the issue, did not answer that question.
52. In general terms, the Inspector's statement that the Key Diagram is intended for indicative purposes only is accurate, but it is clear that the general extent of the Green Belt was "fixed through the approval of the structure plan" (see paragraph 2.3 of PPG2). Whatever may be said about the level of precision or imprecision to be attributed to Key Diagrams generally, the only reasonable interpretation of this particular Key Diagram, indeed the interpretation apparently shared by the claimant, the defendant's planning officers, and the UDP Inspector himself, is that to the north of Warrington the Green Belt was shown as extending to the M62 as its southern boundary. That particular boundary was "precise and unambiguous". When the Key Diagram wished to show the Green Belt extending across the M62 to the south, it clearly did so (beyond the M62/M6 junction, well to the east of the Peel Hall site).
53. In these very particular circumstances, I accept the claimant's submission that extending the Green Belt across the M62 to cover the Peel Hall site did amount to an alteration to the general extent of the Green Belt as approved in the Structure Plan which needed to be justified by exceptional circumstances. For whatever reason, the defendant did not argue that the substantial changes in regional policy guidance contained in RPG13 amounted to exceptional circumstances and the UDP Inspector did not therefore

consider that issue. It was not submitted that if I concluded that the Inspector had erred in deciding that there was no need to demonstrate exceptional circumstances (referred to as "very special circumstances" in paragraph 1.350 of his report) it would be appropriate to refuse the claimant relief as a matter of discretion.

54. In these circumstances, I can deal very shortly with Mr Lockhart-Mummery's subsidiary ground of challenge that the Inspector, having set out the correct test in paragraph 1.139 of his report that any Green Belt boundary should "endure for a period that satisfies national guidance..." then selected boundaries at the site which lacked that quality of permanence and did not comply with the guidance in paragraph 2.9 of PPG2. Alternatively, it was submitted that the Inspector's reasoning on this point was inadequate.
55. In my view, the Inspector's reasoning on this issue is clear. He in effect agreed with Mr Estall that, while the proposed boundaries were not as strong and well defined as the M62, they were nevertheless acceptable in terms of the guidance in PPG2, any lack of quality and clarity being overridden by the strategic imperative of including the site in the Green Belt. That was effectively the approach adopted by the Inspector in the last three sentences of paragraph 1.351 of his report. I do not therefore accept the subsidiary ground of challenge but the application succeeds on the principal ground and it follows that the UDP proposals map must be quashed insofar as it includes the claimant's part of the Peel Hall site (shown edged in black on the plan annexed to this judgment) within the Green Belt. That result may appear somewhat anomalous in respect of the remainder of the site, but it flows from the legislative scheme because the owners of that part of the site did not challenge the adoption of the UDP. Whether this decision will have any practical effect, bearing in mind the policy guidance in RPG13 and the Inspector's endorsement of the strategic policies in the UDP, would appear to be an open question but it is not a question for the court to attempt to answer in these proceedings.
56. For these reasons, the application is allowed.
57. MR JUSTICE SULLIVAN: Yes.
58. MR LOCKHART-MUMMERY: My Lord, for the sake of certainty, I am wondering whether it would be appropriate to attach to the order of the court a plan showing the extent of the land to which your Lordship has made reference in the judgment, that is to say the claimant's land within the Peel Hall area.
59. MR JUSTICE SULLIVAN: Yes.
60. MR LOCKHART-MUMMERY: My Lord, may I hand up a plan which the defendant has seen? **(Handed)**
61. MR JUSTICE SULLIVAN: Would that be sensible? I would have thought, Mr Crawford -- I can easily incorporate reference to the plan in the very early stages of my judgment. Where I say this application relates only to the claimant's land, I can just put

in brackets, shown on the plan next to this judgment or something like that. I will do so if you think it is a good idea.

62. MR CRAWFORD: My Lord, I think it is eminently sensible. My only reservation is, while we, during the course of submissions, accepted the basic principle of this, we have not actually checked the precise boundary, so I would not want to say on behalf of the Council that those were absolutely accurate. That is my only reservation. I have no reason to doubt them but --
63. MR JUSTICE SULLIVAN: Clearly, it would be possible to check them and agree something, even if either this one or something slightly different, so the sensible thing to do is for me -- and it will be some time before I get the transcript back and I correct it and send it off -- if the parties get together and agree a plan and send it to my clerk, I will annex it to the approved version of the judgment, so you have some time to do that, at least a week or so. That is a sensible course, is it not?
64. MR LOCKHART-MUMMERY: My Lord, yes. I have to say that this plan, as your Lordship can see from the legend in the bottom left hand corner, was put forward at the UDP inquiry on the basis of, no doubt, documents of title.
65. MR JUSTICE SULLIVAN: Well --
66. MR LOCKHART-MUMMERY: My Lord, if it needs checking, it can be done in the interim.
67. MR JUSTICE SULLIVAN: That can be done. Either confirm that this plan is the one or a different one. Given that it is probably likely to get lost in the interim, it would be sensible to send a copy anyway. Yes.
68. MR LOCKHART-MUMMERY: My Lord, I ask for an order for the payment of the claimant's costs, to be assessed.
69. MR JUSTICE SULLIVAN: Obviously you cannot resist that.
70. MR CRAWFORD: My Lord, I cannot resist.
71. MR JUSTICE SULLIVAN: It goes for detailed assessment, I think, because we went longer than a day.
72. MR CRAWFORD: Yes, my Lord. I do, however, my Lord, seek permission to appeal.
73. MR JUSTICE SULLIVAN: Yes.
74. MR CRAWFORD: My Lord, I do so on two main grounds. The first is, as was stressed on behalf of the claimant during submissions to your Lordship, this is the first case on this point, otherwise, it would have fallen fairly and squarely within the David Wilson principle, the case that was referred to as setting of detailed boundaries.
75. MR JUSTICE SULLIVAN: Yes.

76. MR CRAWFORD: So it is the first case to address in detail the meaning of general extent and the interpretation of a key diagram.
77. MR JUSTICE SULLIVAN: Yes.
78. MR CRAWFORD: My Lord, that in itself might seem rather academic, but that leads to the second point, which is that it is still of practical importance in two ways. The first is more widely: while, of course, most Green Belts have now been fixed, there are still areas of the country where they have not been fixed and I can think, for example, of York, where similar issues will arise about how one interprets the history of previous structure plan documentation when coming to fix detailed boundaries. So, my Lord, the issue is one of importance in those areas where detailed boundaries still have to be fixed and for Warrington, my Lord, I fully appreciate that your Lordship has not addressed the other 19 GRN2 sites, but in reality 18, because one of them has planning permission before the UDP was --
79. MR JUSTICE SULLIVAN: Right.
80. MR CRAWFORD: My Lord, I am sure I do not need to explain to you that these issues will be taken up by the owners of the other sites as to what the general extent actually meant in their circumstances and, given that that is very likely to happen in practice, we say that this should be tested on appeal so that the precise relationship between the key diagram and subsequent setting of detailed boundaries can be tested --
81. MR JUSTICE SULLIVAN: Yes.
82. MR CRAWFORD: -- for the same underlying issue.
83. My Lord, finally, of course, as you can see from that plan, we are left with what would appear to be a very anomalous Green Belt in this area which will, of course, also lead to further practical consequences in terms of applications for removal or indeed applications about consistency on both sides of the M62.
84. MR JUSTICE SULLIVAN: Yes. Thank you.
85. MR CRAWFORD: My Lord, in terms of specific points in your Lordship's judgment, obviously I have not had time to consider that fully.
86. MR JUSTICE SULLIVAN: No.
87. MR CRAWFORD: But one point which does occur to me immediately is the Secretary of State's use of the phrase "avoidance of doubt". We say that actually shows that all that the description, the vagueness, the ambiguity in the description, of ENV3 did was raise the possibility of a misinterpretation of it that read the paragraph as simply being the north of the county being defined as what came afterwards, essentially, rather than the interpretation being that it is across the north of the county, with then some further clarification of the eastern, western and southern boundaries. We say, my Lord, that is exactly what the Secretary of State was doing in that phrase, which seems to have disappeared from statutes now, which is regrettable, that for the avoidance of doubt

there was actually no change. So that was always what ENV3 had intended. It was not a change to that extent and perhaps Mr Estall was wrong in his proof. It was not a change, that was not something which should have been drawn from the Secretary of State's use of the phrase avoidance of doubt.

88. My Lord, that is one point which did occur to me. There may well be some others with time for reflection. So, combining those general points with a specific point, we say that this is a case in which there is a real prospect of success on appeal.
89. MR JUSTICE SULLIVAN: Thank you. Yes, Mr Lockhart-Mummery.
90. MR LOCKHART-MUMMERY: My Lord, I resist that application on three grounds. My Lord, first, your Lordship has been at pains to make clear throughout the substantive parts of the judgment that this case turns on its own particular facts. When you embarked on an analysis of the key diagram issues, you prefaced the body of your remarks by specifying in terms that each case turns on its particular facts and, at the conclusion of the reasoning, you stated that in these very particular circumstances there was here an alteration to the general extent. So, entirely site specific, in my submission.
91. My Lord, second, I respectfully submit that there are no reasonable chances of success on appeal.
92. Third, my Lord, the anomaly of the boundary to which my learned friend made reference may be a result of the judgment but does not bear on whether it is proper for this matter to go to the Court of Appeal.
93. MR JUSTICE SULLIVAN: Thank you. Does that bear on this application?
94. MR LOCKHART-MUMMERY: I am sorry, my Lord? No, that is my response, thank you.
95. MR JUSTICE SULLIVAN: Thank you very much.
96. I am satisfied that permission ought to be granted in this case. There are, I think, two broad grounds. Firstly, this is the first case that deals with the boundary setting exercise that is carried out in the UDP, as opposed to a local plan following a structure plan, and it is therefore the first case that is concerned with how one interprets a key diagram in the structure plan in terms of the extent to which it depicts the general extent of the Green Belt. Secondly, notwithstanding having just devoted about an hour and a half to giving a lengthy judgment, it does seem to me that this is not a case where the outcome was so obvious that it can be said that there is no real prospect of success from the defendant's point of view. So I do give permission to appeal, even though I have done my very best to confine this case to the particular facts and circumstances herein.
97. MR CRAWFORD: I am obliged.
98. MR JUSTICE SULLIVAN: Thank you both very much?