

# Mr Christopher Wedgewood v City of York Council v Christ Church Group

 No Substantial Judicial Treatment

## Court

Queen's Bench Division (Administrative Court)

## Judgment Date

10 March 2020

Case No: CO/3494/2019

Queens Bench Division, Planning Court

**[2020] EWHC 780 (Admin), 2020 WL 02086186**

Before: The Honourable Mr Justice Stuart-Smith

Tuesday, 10th March 2020

## Representation

The Claimant appeared In Person.

Mr Easton appeared on behalf of the Defendant.

The Interested Party did not appear and was not represented.

## Judgment

Mr Justice Stuart-Smith:

1. The claimant challenges the defendant's decision to grant planning permission for two extensions and additional parking facilities to an existing neurological rehabilitation centre operated by the interested party. The planning permission was issued on 26 July 2019. The site is off Thief Lane, to the east of York City centre.

2. On 6 November 2019, the claimant was given permission to pursue three grounds. Permission was refused in respect of the fourth ground, which is no longer pursued. Although variously expressed, the remaining grounds raise, as a central issue, that the site was or should have been treated as being within the Green Belt. It is common ground that if the defendant had treated the application as falling within the Green

Belt, its consideration of the application must necessarily have been different. In particular, the presumption in favour of sustainable development upon which the defendant relied in reaching its decision would not have applied. Mr Easton, for the defendant, realistically conceded that if the site was or should have been treated as being Green Belt the claimant should succeed, as it cannot be said that the outcome would, to a high degree of likelihood, have been the same.

3. For present purposes, the three grounds may be summarised as follows. First, the defendant erred in treating the site as not being in the Green Belt. Second, the claimant is entitled to rely upon a legitimate expectation that the council would treat the site as being within the Green Belt. Third, the defendant failed to give suitable or sufficient reasons for departing from an applicable development plan.

4. The claimant appeared in person to present his appeal, which he did with skill and moderation. The defendant appeared by counsel. I am grateful to both for the assistance they have given in preparing and presenting this appeal.

## **The Legal Framework**

5. It is sufficient to refer to the applicable principles very shortly. The defendant's reasons are to be found in the officer's report, which is not to be read as a statute, that the court should only intervene if the report significantly misleads the decision maker about the relevant matters. The only relevant matter here is whether the site was or should have been treated as being within the Green Belt. That is a planning judgement within the exclusive province of the local planning authority. The principles that apply to a planning judicial review are suitably summarised by Lindblom J, as he then was, in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and Another* [2014] EWHC 754 (Admin) at paragraph 19, which with one exception I adopt without setting them out again here.

6. The exception is the fourth principle, which was as follows:

'Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision maker. But

statements of policy are to be interpreted objectively by the court in accordance with the language used and its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to material consideration, or will amount to having regard to an immaterial consideration...'

7. A legitimate expectation may arise from an express promise given on behalf of a public authority, or implied from the existence of a regular practice which the claimant can reasonably expect to continue. A claim to a legitimate expectation can be based only upon a promise made directly or indirectly to the claimant, which is: 'clear, unambiguous and devoid of relevant qualification.'

8. It is common ground that Green Belt is a creature of planning policy. Typically it is introduced and established through planning policy by Development Plans which may be divided, for present purposes, into high-level strategic plans that will establish the principle of establishing areas of Green Belt, and more low-level plans that will address the detailed boundaries of Green Belt areas, and whether all or only some of the land, or some land within an overall area, shall be designated as Green Belt. The establishment of what land shall and shall not be Green Belt normally depends in this way upon the adoption of policy documents that define the status of specific parcels of land within a given overall area.

9. In accordance with paragraph 48 of the NPPF, as revised in 2019, emerging plan policies can be afforded weight according to:

'a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to [the policies in the previous NPPF, published in March 2012]'

10. Finally, I remind myself that the court's approach in challenges brought by way of judicial review in a planning context are well established: SEE BARWOOD [8]

### **Factual Background**

11. First dealing with the Green Belt around York. The detailed boundaries of the Green Belt in and around York have not been fixed. The primary for this is that York does not have a formally adopted Local Plan. A little history is necessary to explain the present position.

12. In 1980, the North Yorkshire County Structure Plan stated the principle that there should be a North Yorkshire Green Belt that would include: 'a belt whose outer edge is about six miles from York City centre.' The plan did not purport to define or establish actual areas of Green Belt. The plan was superseded in 2008 by the RSS, to which I will refer later, as forming part of the development plan for the area.

13. In or around 1991, North York County Council produced a draft plan which came to be known as the North Yorkshire County Council Post Modifications York Green Belt Local Plan 1995. This draft plan indicated that the Site would be included in the Green Belt; but the draft plan was never adopted as part of the development plan for York, and the boundaries it proposed were never adopted for any purpose. Specifically, the proposed boundaries were never adopted for development control policy purposes.

14. On 1 April 1995, under local government reorganisation, the defendant took over responsibility for most of the area that might have been included as Green Belt if the draft plan had been adopted. According to Mr Glazier, an employee of the defendant, this was one reason why the draft plan was not formally adopted by North Yorkshire County Council. Another reason, according to Mr Glazier, was that in February 1995

the County Council abandoned plans from new settlement in the greater York area. The reason may not matter. What matters is that the County Council decided not to take the draft plan through to adoption.

15. In 2005, the Draft Local Plan Incorporating the 4th Set of Changes was approved by the defendant for development management purposes. Although it was not formally adopted as part of a local Development Plan, the defendant then used the 2005 Draft Local Plan as a basis for decision making. The 2005 Draft Local Plan included a proposals map that identified the boundaries of a Green Belt around York. The Site was not included in the Green Belt, as shown on the proposal's map. In an earlier iteration of the map and proposed plan, the site had been included in the area identified as Green Belt, but that map was superseded for reasons which are not before the court. It would be wrong to give weight to the earlier iteration, given that it had been discarded in favour of the version incorporating the full set of changes, which is the version the defendant decided to use as a basis for decision making.

16. In May 2008, the Yorkshire and Humber Regional Spatial Strategy ["the RSS"] addressed the principle and the 'general extent' of a Green Belt around York. It included two policy statements that are relevant for present purposes. Policy YH9C stated:

'The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in this RSS and must also endure beyond the Plan period.'

Policy Y1C stated:

'Plans, strategies, investment decisions and programmes for the York sub area should...

1. In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green

Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C.

2. Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas...'

17. It is apparent from the terms of these policies that the RSS did not purport to provide the detailed inner and outer boundaries of the Green Belt. That was also clear from a key diagram included in the RSS, which showed a hatched circular area around York which was described in the legend to the diagram as being the 'general extent of Green Belt (Policy YH9).'

18. The policies do not state or imply that every piece of land within the doughnut ring that is bounded by the inner and outer boundaries shall be Green Belt; nor do they say anything about whether all or some pieces of land within the doughnut ring shall not be Green Belt. No doubt, this lack of detail and precision is attributable to the fact that the RSS was and is a high-level strategic document. It leaves matters of practical detail to lower level plans and policies.

19. On 23 February 2013, the [Regional Strategy for Yorkshire and Humber \(Partial Revocation\) Order 2013](#) came into force. In summary, this order revoked most of the RSS, but retained policies YH9 and Y1 and the key diagram. The retained parts of the RSS are and remain the only formally adopted policies or plans for York that relate at all to the Green Belt.

20. There is an emerging local plan for York. It shows the site as being within the urban areas and not within the Green Belt. There is now a publication draft local plan proposals map produced in 2018. Once again, the site is not included in the illustrated Green Belt but is included within the built up area of York. There has recently been consultation on the publication draft local plan. As yet, there has been no suggestion or proposal arising out of or subsequent to the consultation process that the site should be included within the Green Belt.

21. The formal position may thus be summarised as follows:

- 1) as a matter of planning principle, there is a Green Belt area around York.
- 2) The detailed inner boundaries and outer boundaries have not been defined by any formally adopted development plan.
- 3) Policy Y1C states that the detailed boundaries of the outstanding sections of the outer boundary shall be 'about six miles from York City centre,' and that the detailed boundaries of the inner boundary shall be defined in line with Policy YH9C.
- 4) There is no formally adopted Development Plan that identifies the site as being within the Green Belt, as opposed to being within the general extent of the Green Belt. The most that can be said is that the site falls within the area illustrated by the RSS key diagram as being, 'general extent of Green Belt (Policy YH9).'
- 5) In accordance with NPPF paragraph 48, to which I have referred, the draft local plan can be afforded weight according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to it, and the degree of consistency of the relevant policies in the emerging plan to the policies of the NPPF. The draft local plan has been submitted to the inspector, who has raised certain issues. It is now progressing towards phase two of the inspector's involvement as it approaches adoption.
- 6) The 2005 Draft Local Plan has been adopted only to be used as a basis for decision making. It shows the site as not being in the Green Belt.

### **Description of the Site and Its Planning History**

22. I accept as reasonable the description of the site in the officer's report at paragraph 4.5, which said:

'The site is not connected to the open countryside, and is surrounded to all sides by established development, including Hull Road, Newland Park Drive and Thief Lane, David Lloyd York and St John Playing Fields and Sports Pitches, and is considered to form part of the York urban area...'

23. The claimant points out that the features to which the officer's report refers in this passage are not all contiguous to the site. That is true. In general terms, the site

is bounded to the north by a short section of the busy Hull Road, and then by the quieter Thief Lane. On the western side, the northern end of the boundary is formed by the ends of gardens of houses in Thief Lane. Further south, its aspect opens up somewhat towards a sports facility and then onwards to two local landmarks. The southern boundary abuts onto fields which lead to the science park. To the southeast is a substantial David Lloyd tennis centre. The balance of the eastern boundary is formed of playing fields.

24. In my judgement, it would be overstating things to describe the site as forming a natural part of a substantial open area, largely because of its proximity to the roads to the north, the houses to the west and the playing fields and David Lloyd centre to the east.

25. The application in this case was identical to a previous application which had been granted on 17 August 2016, but which had expired on 17 August 2019. The claimant's mother attempted to quash that permission by bringing judicial review proceedings. Her attempt failed because permission was refused. That attempted challenge to the earlier decision did not raise the Green Belt point that is raised in the present proceedings.

26. The defendant's decision in this case was taken under powers delegated to the officer. The reasons are to be found in the officer's report, having reference 19/01041/FUL. As part of the planning process, the defendant undertook internal consultation. Amongst the consultees were the defendant's city development department who advised the reporting officer that in their view the site was not within the Green Belt because of its location, which had not been regarded as Green Belt since 2005.

27. The officer's report covered many issues that are not relevant to this challenge. I identify the relevant passages below.

### **Is the Site Within the Green Belt?**

28. In my judgement, it is plain beyond reasonable argument that the detailed boundaries of the Green Belt around York have not been defined. It is therefore impossible to look at any planning or other document and to identify the boundaries



of the Green Belt around York. RSS policies YH9C and Y1C make plain that the RSS does not define the geographical boundaries of the Green Belt. Their terms and the key diagram do not address the question whether all land less than about six miles from York City centre is within the outer boundary of the Green Belt, and the RSS leaves the inner boundaries equally ill-defined.

29. The defendant has no formal adopted Development Plan which defines the extent of the Green Belt. Such a policy may come into existence if and when the Draft Local Development Plan is adopted, either in its current form or subject to changes before adoption, but that has not yet happened. The claimant submits that the defendant had an 'interim policy' but has failed to identify any document containing or demonstrating the existence of an interim policy establishing the boundaries of the Green Belt around York, or a binding interim policy requiring the defendant to treat certain land as if it were Green Belt land despite it not having been defined as such.

30. How else should the defendant respond when confronted with an application to develop a site that falls within the general area where the York Green Belt may, in principle, be established? The claimant submits that all land within the indicative boundaries created in principle by the RSS are Green Belt unless and until they are removed from it by, for example, a neighbourhood plan. The defendant submits that the position is more nuanced, because it is rare in principle and absurd in practice to treat all land within the indicative doughnut ring as Green Belt, and a) it is not the purpose of a high-level document such as the RSS to provide an exclusive and workable definition that renders all land within the doughnut ring as Green Belt, and b) it is obvious from the evidence that much of the land within the doughnut ring has none of the characteristics associated with Green Belt.

31. The defendant draws attention to the decision of the Secretary of State in relation to land at Brecks Lane in Strensall where, in addition to claiming that the site fell within the general extent of the Green Belt, the Secretary of State endorsed the approach of the inspector who then considered site specific features of the site before concluding that it should be treated as Green Belt. In the course of his decision, the inspector referred to the difficulties of simply overlaying the key diagram onto an Ordnance Survey base, which would be an unsatisfactory approach to identifying the Green Belt, given that the key diagram included in the RSS was a, 'broad principle plan.'

32. This appeal seems to me to raise a question that is novel and difficult for the court, though it is not novel for the city of York. At bottom lies the question whether the adoption of a high-level strategic plan such as the RSS is, of itself, sufficient to constitute and define what is Green Belt land. If one adopts a binary approach, each alternative is unpalatable. If it is held that more is required in order to create the Green Belt than the RSS, then York has no Green Belt land unless and until a further plan, probably a Local Development Plan, defines the detail of its scope. On the other hand, if it is held that a high-level strategic plan such as the RSS converts everything to which it refers into Green Belt, the restrictions which that would impose on developing land that has none of the characteristics normally associated with Green Belt land would be unsatisfactory from a number of different perspectives.

33. In my judgement, the solution to this binary conundrum is to adopt a more nuanced approach, as suggested by the defendant. It must be acknowledged that the RSS, as a high-level strategic document, establishes that, in principle and as a matter of policy, there is a Green Belt within the doughnut ring. That policy must be implemented by the defendant, but the policy does not state that all land that is (as a matter of high-level policy) within the inner and outer boundaries is Green Belt land.

34. In the absence of a defining Local Development Plan that specifies what is and is not Green Belt, the defendant must apply the high-level policy rationally in order to determine what land within the doughnut ring is and is not to be treated as Green Belt land. In doing so, it may have regard to the 2005 draft local plan incorporating the full set of changes, as it has previously taken a policy step by resolving to take it into account for development and management purposes. It may take into account the emerging Local Plan, provided it has due regard to the guidance at paragraph 48 of the NPPF. Furthermore, it may and should take into account site specific features that may tend to treating the site as Green Belt or not.

35. What did the defendant do here? That we find in the OR's report. The first relevant reference, in my judgement, is at paragraphs 3.1 and 3.2, where the report records the advice or information received on an internal consultation from its city development department. At 3.23, the report identifies the publication of the application and that objections were received relating to location in the Green Belt, and whether or not the site had been taken out of the Green Belt in 2005. At paragraphs 4.3, and 4.4 and 4.5 comes the kernel of the reasoning. I therefore set them out in full:

4.3 Section 38(6) of the Planning and Compensation Act 2004 requires determinations to be made in accordance with the development plan, unless material considerations indicate otherwise. There is no development plan for York, other than the retained policies with the key diagram in the Yorkshire and Humber Regional Spatial Strategy (RSS) saved under the [Regional Strategy for Yorkshire and Humber \(Partial Revocation\) Order 2013](#) relating to the general extent of the Green Belt. The saved key diagram identifies the outer boundary about six miles from the city centre.

4.4 The submitted local plan policies map (2018) shows the application site as being within the urban area of York. The site has not been included within the Green Belt historically since 2005 (as depicted on the 2005 proposals map accompanying the draft Local Plan Incorporating the 4th Set of Changes approved for the development control purposes).

4.5 The site is not connected to the open countryside and is surrounded to all sides by established development including Hull Road, Newland Park Drive and Thief Lane, David Lloyd York and St John Playing Fields and Sports Pitches, and is considered to form part of the York urban area. It is not considered, therefore, that the site falls within the general extent of the Green Belt, and the proposal has not been assessed against Green Belt criteria.'

36. At 4.11 the report refers to and correctly summarises the advice of the NPPF on reference to draft plan policies in a manner which is correct. At paragraph 4.12 the report refers to the development local control plan, which had been approved for development management purposes in April 2005. It recognises that the DCLP: 'does not form part of the statutory development plan. Its policies are considered to be capable of being material considerations, and can be afforded very little weight in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF.' That, in my judgement, is a correct summary of the position.

37. Those passages, together with other matters which are not relevant for present purposes, lead to the conclusion at paragraph 5.2, which is: 'The planning application is considered to accord with the guidance contained within the National Planning Policy Framework (NPPF) and the relevant policies of the publication draft local plan 2018 and the development control local plan (2005).'

38. As I have said, the critical passage on which the ultimate planning decision is founded is at paragraphs 4.3 to 4.5. Although short and concise, it appears to me to be a correct approach and to involve the exercise of planning judgement on the basis of the RSS, the emerging local plan and the 2005 proposals, following by site-specific consideration. That was a correct approach in principle, and it has not been shown to be irrational in practice or application. I would therefore conclude, in conformity with the statement of principle from *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and Another* to which I referred earlier, that the decision of the defendant is not susceptible to challenge by the court.

39. I do not consider that this conclusion is subverted by the various decisions and other documents to which I have been taken. I have already referred to the *Brecks Lane* decision, which I see as consistent with and confirmatory of the defendant's approach. A decision of the Secretary of State relating to land at *Avon Drive* in Huntington in 2017 criticised the weight placed upon the emerging plan in that case, and the Secretary of State said that he, 'considers that the lack of a defined boundary is insufficient justification to arbitrarily exclude any site contained within the general extent of the Green Belt.' I respectfully agree, but would not characterise the approach of the defendant in this case as 'arbitrary.' The inspector in the *Avon Drive* case refers to taking a precautionary approach to whether a site is within the general extent of the Green Belt. That is not an issue here, as I am told that the Site is comfortably within the doughnut ring. In any event, the decision does not say or imply that all land within the general extent of the Green Belt is to be treated as Green Belt line.

40. The claimant relied upon an officer's report relating to an application at a former civil service club, and in particular to references to the land falling within the general extent of the Green Belt, as detailed in the RSS. However, it appears that a greater level of specificity may have applied in that case because of the existence of a Local Development Plan which was said to 'retain the Green Belt boundaries used in the DLP 2005.' I am therefore not persuaded that this is an analogous or helpful case. I find no assistance in decisions after the decision in the present case. Equally, I

find no real assistance in the memorandum from an employee of the Council in the Forward Planning Department to another employee in the Development Management Department, in relation to another site on a date after the decision in the present case.

41. For these reasons, I conclude that the approach as evidenced by the Officer's Report was legally correct and involved making a planning judgement about the status of the site that were rational and permissible. It follows that there was no obligation to give reasons for departing from an applicable development plan, as there was no departure.

42. I can deal with legitimate expectation shortly. None of the documents to which the court has been taken can be described either singly or cumulatively as a promise given expressly on behalf of the council, or implied from the existence of a regular practice, which the claimant could reasonably expect to continue. Given my conclusions on the main issue, a claim to a legitimate expectation could only arise if there had been a promise that was, 'clear, unambiguous and devoid of relevant qualification,' that any and all land falling within the general extent of the Green Belt as indicated by the RSS would be treated as Green Belt land for planning purposes. No such promise can be found in the materials before the court.

## **Conclusion**

43. For these reasons, this appeal must fail.

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