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Our Ref: KVJ/WAL801/2
Your Ref:
Date: 29 June 2020

Dear Madam,

Development at Bellman Hangar

Thank you for your instructions on this matter. The PC have framed the questions on which they require advice as the following:

1. Whether you consider that the site concerned is within or without a Settlement as described in para 118 c. of the NPPF when a Court of Appeal ruling appears to put the decision in the hands of the LPA?
2. Whether you consider that para 118 of the NPPF under "Planning Policies & Decisions" takes precedence over "Proposals affecting the Green Belt" para 145 "Previously Developed Land"?
3. Subsequently you asked us to consider the word "…suitable" when there is a dense woodland on one side with restricted light and a working cattle farm on the other with noise and smell nuisance. You provided us with an aerial photograph showing the position of the site

We respond to those questions below.

Question 1

National Planning Policy Framework – Paragraph 118c

This paragraph provides that "*Planning policies and decisions should:*

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;…"

We have previously advised you on the status of the land and the settlement boundary in our email of 22 April. The site is outside the settlement boundary.

The Court of Appeal case you refer to primarily relates to the question of "isolated homes" in the countryside, in particular the Court of Appeal decision in Braintree District Council v Secretary of State & anor [2017] EWHC 2743 (Admin). That decision was made in the context of the then Paragraph 55 (now Paragraph 79) of the National Planning Policy Framework, not Paragraph 118c.

Paragraph 79 of the NPPF provides that:

"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply"

Paragraph 79 then proceeds to provide five circumstances which are an exception to the general guidance at the beginning of Paragraph 79. These exceptions are dwellings of exceptional design quality (rarely successful according to Inspectors Decisions); where there is an essential need for a rural worker; where the development would represent the viable use of a heritage asset; the development would re-use redundant or disused buildings; and the development would involve the sub-division of an existing unit.

We do not consider that any of those exceptions apply to the proposed development of 18 dwellings at the Bellman Hangar Site. That is not an "isolated home" proposal and would not involve the reuse of redundant or disused buildings. The Court's decision in Braintree only deals with Paragraph 79 and not 118 and accordingly the findings in that decision in respect of settlement would **not** apply to the application.

Paragraph 118 is intended to promote the effective use of land and Paragraph 118(c) encourages Councils' to give substantial weight to using suitable brownfield land **within settlements** for homes. The Site is **not** within a defined settlement and accordingly we consider that little to no weight would be given to this paragraph in consideration of the Bellman Hangar application. The paragraph also refers to support for appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land but there is nothing to suggest that it does not remain qualified by the requirement for land to be within settlement boundaries. Consequently the appropriate guidance for the proposal would be that relating to Green Belt.

Question 2

The starting point in determining any application is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which provides that where in making a determination under the Planning Acts, regard is to be had to the development plan, "the determination must be made in accordance with the plan unless material considerations indicate otherwise". Accordingly, in terms of the Bellman Hangar application the legal starting point for the Council remains the adopted Development Plan documents.

The Council can then proceed to consider if there are any material considerations which indicate that a departure from the Development Plan is appropriate. The NPPF is a material consideration. It is an established principle that the weight to be given to material

considerations is a judgment for the decision maker (Tesco Stores Limited v Secretary of State for the Environment [1995] 2 All ER 636).

Paragraph 145 in conjunction with Paragraph 143 and 144 confirm that "inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances" and that substantial weight should be given to any harm to the Green Belt. Paragraph 145 sets out exceptions to where development in the Green Belt should not be considered inappropriate.

"Paragraph 145 - A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
– not have a greater impact on the openness of the Green Belt than the existing development; or
– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."

The paragraphs seek to achieve different things. Paragraph 118 promotes the effective use of land, particularly brownfield/PDL **inside** the settlement boundary whilst Paragraph 145 identifies circumstances where development in the Green Belt will not be inappropriate simply due to location, including limited affordable housing for local community needs under policies set out in the development plan, or the reuse of PDL which would contribute to meeting an identified affordable housing need. We do not consider that the two paragraphs are at odds with one and other or conflict.

Paragraph 118 does **not** apply to land outside of settlements, as is the position for the Bellman Hangar site. Indeed, it is very special circumstances which the developer is attempting to demonstrate in the Planning, Design and Access Statement as opposed to arguing that the development is infill or that it falls within the Paragraph 145(g) exception. A decision to allow inappropriate development in the Green Belt will be a departure from the development plan so that material considerations will have to exist which weigh in favour of granting planning permission. Numerous cases have dealt with the approach to the assessment of very special circumstances against the harm to the Green Belt.

Question 3
You have finally asked us to consider the use of the word "suitable" in paragraph 118c in light of the immediate site context.

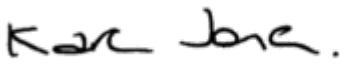
The NPPF does not give any guidance as to what a "suitable" site would be. Ultimately, the decision would be in the hands of the decision maker weighing up the material considerations such as noise impact and the impact of a development in terms of landscape and the natural environment. The Council's own Local Plan policies in respect of design and layout will also be of relevance. Consultees to the process such as the environmental health officer and officer advice on ecology issues would input to the Council during the process. Advice on issues such as potential for nuisance from existing neighbouring uses and the light

levels would be assessed depending on the design and layout of the proposed scheme within the site, which may or may not prove acceptable.

Conclusion

The site is previously developed land within the Green Belt. Any decision on a planning application in respect of it must as a matter of law be determined in accordance with the Development Plan (under s38(6) of the Planning and Compulsory Purchase Act 2004) unless material considerations indicate otherwise. The specific questions you have raised on the application of the NPPF and its application generally will be a material consideration in the planning application decision process. Factors such as amenity, sustainability and design and material intensification of levels of activity at the site will be considerations to be taken into account if the general presumption against inappropriate development can be overcome by demonstrating very special circumstances, to show that the benefits of the development will outweigh the harm to the Green Belt. Those considerations will be matters of planning judgement to be taken into account in the planning process. When attempting to prove very special circumstances the onus is on the applicant to prove that the exceptional nature of the proposal outweighs the harm that it would cause to the Green Belt.

Yours sincerely



Karen Jones
Partner
For and on behalf of Blandy & Blandy LLP