

CD12.1: Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government (2013)

The High Court found at §65 that some level of operational development for mineral extraction, sufficiently significant to require planning permission, must be able to be considered “appropriate” development in the Green Belt. Were it otherwise, that would always negate the appropriateness of any mineral extraction in the Green Belt and render the NPPF policy on minerals being appropriate “pointless”. The Court held that *“Extraction is generally not devoid of structures, engineering works and associated buildings. The policy was not designed to cater for fanciful situations but for those generally encountered in mineral extraction.”*

The High Court’s judgment was upheld in the Court of Appeal.

CD12.2: Turner v Secretary of State for Communities and Local Government (2016)

The Court of Appeal held at §§14-16 that the concept of “openness” in relation to the Green Belt *“is not narrowly limited to the volumetric approach.... The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case”*, including visual impact.

CD12.3: SoS decision on the appeal of RJD Ltd and Gowling WLG Trust Corporation Limited against the decision of Hertfordshire County Council & Report to the Secretary of State for Housing, Communities and Local Government by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI an Inspector appointed by the Secretary of State (2019) (Bengeo Quarry)

Relating to ancillary infrastructure to support mineral extraction and the threshold for appropriate/inappropriate development in the Green Belt. The Secretary of State found that *“plant, equipment, access and activity associated with the mineral extraction here would, to some extent, impair the openness of the area, but not enough to exceed the threshold or tipping point”* for inappropriate development (see DL18).

CD12.4: R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council (2020)

A local planning authority had correctly understood the meaning of the word “openness” as expressed in the National Planning Policy Framework paragraph 90 when granting planning permission for the extension of a quarry in the Green Belt. The visual impact of the proposed development was not a necessary part of the openness assessment.

The openness proviso did not apply to mineral development under PPG2 para 3.8 (§11). The NPPF did not intend to mark a significant change of approach (§12).

The High Court and Court of Appeal judgments in *Europa Oil* were approved: §26-28.

As to the effect of development on the openness of the Green Belt and the definition of openness in this context, it is a matter of judgement, not legal principle: §25.

CD 12.5: SoS decision on the appeal of UK Coal Mining Limited & Report to the Secretary of State for Housing, Communities and Local Government an Inspector appointed by the Secretary of State (2007) (Lodge House)

The Secretary of State expressed his view on the correct interpretation of PPG2 in the context of minerals development, concluding that surface mines are not inappropriate and that there is no openness proviso in national policy (see DL10, IR13.3-13.7).

CD12.6: Wychavon DC v SSCLG (2008) (Court of Appeal; Carnwath LJ, with whom the Master of the Rolls and Wilson LJ agreed)

The Court of Appeal held that it would be wrong to treat the words “very special” as simply the converse of “commonplace”. Rarity may of course contribute to the “special” quality of a particular factor, but it is not essential. The word “special” connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes (see §21).

Furthermore, there is no reason, in terms of policy or common sense, why the factors which make a case “very special” should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are “clearly outweighed” (see §26).

CD12.7: Kemnal Manor Memorial Gardens Limited v First Secretary of State (2005)

A planning inspector had not erred in deciding that a proposed development of a Green Belt site into a cemetery and crematorium was an inappropriate development and that there were no very special circumstances outweighing the presumption that the proposed development was inappropriate. It was sufficient that a part of the development was inappropriate development. See §34.

This case is provided by the Appellant pursuant to its duty to draw the tribunal’s attention to relevant authorities.

CD12.8: Regina (Timmins) and another v Gedling Borough Council (2015)

Under the 2012 NPPF at paragraphs 88-90, only those forms of development specifically identified in the policy could constitute “appropriate” development in the Green Belt (i.e. the list of possible types of “appropriate” developments was a closed list) (see §§144-145).

CD12.9: Compton Parish Council v Guildford Borough Council (2019)

The concept of “exceptional circumstances” for release of Green Belt land is deliberately broad. All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional circumstances” in the context of planning judgment. Indeed, they can be an accumulation or combination of circumstances, of varying natures. General planning needs, such as ordinary housing, are not precluded from the scope of exceptional circumstances (see §§68-72, 87-88).

CD12.10: Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and others (2014)

The NPPF had not intended to change the underlying purpose of Green Belt policy contained in PPG2. All benefits and harms may go into the VSC balance: §§17, 31-37.

CD12.11: Inquiry Procedure Rules

Included in case reference is needed during the Inquiry.

CD12.12: Quarries Regulations 1999

Referred to in the proof of Mr Mutch.

CD12.13: NRS Saredon Aggregates Ltd v Secretary of State for LUHC (2023)

An Inspector erred in reducing the weight given to the biodiversity net gain on the basis that some of the biodiversity net gain would be needed to meet legislative requirements, when there was, and would be, no legislative requirement to provide biodiversity net gain. See §§55-56.

CD12.15: Norfolk Homes Limited v North Norfolk District Council, Norfolk County Council (2020)

Holgate J considered the approach to interpreting planning obligations, concluding that the process does not differ materially from that appropriate for other legal documents and setting out the principles which apply to the process. See §§62-75 and §§104-115.

CD12.16: R (Weston Homes plc) v Secretary of State (2024)

An Inspector erred by reducing the weight attributed to biodiversity net gain produced as a result of development on the basis this was less than the statutory requirement when the statutory requirement did not apply to the development. See §120.