Judgments

Fordent Holdings Ltd v Secretary of State for Communities and Local Government

[2013] EWHC 2844 (Admin)

QBD, ADMINISTRATIVE COURT

Judge Pelling QC (Sitting as a Judge of the High Court)

26 September 2013

Town and country planning - Permission for development - Outline permission - Local authority refusing claimant outline planning permission for change of use from agricultural to caravan and camping site in Green Belt - Inspector for defendant Secretary of State dismissing appeal - Claimant seeking quashing of inspector's order - Whether inspector wrong to conclude change of use not to be permitted absent very special circumstances - Whether inspector wrong to conclude paragraph of National Planning Policy Framework did not apply to changes of use - Whether inspector failing to have regard to economic growth - Whether inspector failing to give any or adequate reasons - Town and Country Planning Act 1990, ss 78, 288.

Judgment

APPROVED JUDGMENT

I DIRECT THAT PURSUANT TO CPR PD 39A PARA 6.1 NO OFFICIAL SHORTHAND NOTE SHALL BE TAKEN OF THIS JUDGMENT AND THAT COPIES OF THIS VERSION AS HANDED DOWN MAY BE TREATED AS AUTHENTIC.

JUDGE PELLING QC:

Introduction

1. This is the hearing of an application by the Claimant ("FHL") under s.288 of the Town and Country Planning Act 1990 ("TCPA") for an order quashing a decision of a planning inspector ("the Inspector") appointed by the Defendant ("SoS") by which the Inspector dismissed an appeal under s.78 TCPA against a refusal of the Interested Party ("the Council") to grant outline planning permission for a change of use for a 9 Hectare site located wholly within the Designated Green Belt known as Rose Manor Farm, Warrington Road, Mickle Trafford, Chester ("the Site") from agricultural use to a caravan and camping site to accommodate up to 120 touring caravans and up to 60 tent pitches on a mixture of grass and hard standing together with the construction of a shop, reception and office building of 303 sq. metres and three separate amenity blocks of 170, 141 and 136 sq. metres respectively ("the Scheme"). The Site comprises several agricultural fields and is located between the A 56 and the Chester to Manchester rail line. Part of Route 5 of the National Cycle Network runs along the southern border of the Site.

2. The hearing took place in Manchester on 13th September 2013. At the end of the hearing, I agreed to determine all post judgment issues in writing providing all parties signified their consent to this course and submitted written submissions or an agreed form of order in accordance with directions that I said I would

include in the draft judgment. Those directions appeared in the final paragraph of the draft of this judgment although I have omitted them from the judgment as has been handed down.

Background

3. There is no dispute as to the material background facts. The application for planning permission was refused by the Council by a decision dated 26 March 2012 because:

> "The Site lies within the designated green belt. The proposal represents inappropriate development as defined by Planning Policy Guidance Note 2, that would cause harm to the Green Belt by reason of inappropriateness, harm to the purposes of including land within the Green Belt by reason of encroachment of development into the countryside, harm to its openness, and harm to its visual amenities. Inadequate information has been submitted to demonstrate that very special circumstances exist to outweigh the harm caused by these impacts. As such the proposals would be contrary to the provisions of PPG2 and policies ENV24, ENV63 and EC18 of the Chester District Local Plan.

4. The decision refusing planning permission was issued on the day before the publication of the National Planning Policy Framework ("NPPF"). It is common ground however that the NPPF applied to the appeal that followed the refusal because the policies contained in the NPPF applied from the date of its publication - see Annex 1, Paragraph 208 - and that PPG2 ceased to apply by reason of it having been replaced by the NPPF - see NPPF, Annex 3, Paragraph 3.

5. The appeal decision was preceded by a pubic inquiry that was held on the 7, 8 and 13 March 2013, and a site visit that took place on 13 March 2013. The decision to dismiss the appeal was taken on, and is contained in, a decision letter ("DL") dated 21 May 2013. In summary the Inspector concluded that the proposed change of use and operational development in connection with the proposed change of use constituted inappropriate development, that therefore very special circumstances were required to be demonstrated before the proposed development could be permitted and that such circumstances did not exist because the harm to the green belt that would be caused by the development was not clearly outweighed by the material considerations in favour of the Scheme.

Policy Framework

6. The key purpose of the NPPF is identified in Paragraph 6 as being " ... *to contribute to the achievement of sustainable development.*" This concept is further defined in Paragraph 7 in these terms:

> "There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
>
> ? **an economic role** - contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
>
> ? **a social role** - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
>
> ? **an environmental role** - contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources

> prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."

The need to focus on all of these requirements rather than one at the expense of another is emphasised by Paragraph 8 and at Paragraph 10 the need to take local circumstances into account is emphasised. The presumption in favour of sustainable development is described as a "*golden thread"* which at Paragraph 14 is said to mean:

> "For decision-taking this means:FN10
>
> ...
>
> where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
>
> any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> specific policies in this Framework indicate development should be restricted.FN9"

Footnotes 9 and 10 state:

> "9. For example, *those policies relating to* sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; *land designated as Green Belt*, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.
>
> [Emphasis supplied]
>
> 10. Unless material considerations indicate otherwise."

In relation to economic growth, Paragraphs 18 and 19 of the NPPF provide:

> "18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
>
> 19. The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system."

7. Chapter 9 of the NPPF sets out the current national policy in relation to the protection of the Green Belt. The aim and purposes of the Green belt are set out in Paragraphs 79 and 80 in these terms:

> "79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
>
> 80. Green Belt serves five purposes:
>
> ? to check the unrestricted sprawl of large built-up areas;

? to prevent neighbouring towns merging into one another;

? to assist in safeguarding the countryside from encroachment;

? to preserve the setting and special character of historic towns; and

? to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

Planning Policy in relation to development in the Green Belt as set out in Paragraph 81 is to " ... *plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.*"

8. As to the Green Belt's relationship with development, Paragraphs 87-90 in so far as they are material to this case provide that:

"87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

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

...

? provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

...

90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

? mineral extraction;

? engineering operations;

? local transport infrastructure which can demonstrate a requirement for a Green Belt location;

? the re-use of buildings provided that the buildings are of permanent and substantial construction; and

? development brought forward under a Community Right to Build Order."

The Decision Letter

9. The Inspector identified at DL Paragraph 2 the main issues on the appeal as being:

> "...
>
> o whether the development would be inappropriate development in the Green Belt for the purposes of the Framework and development plan policy, and linked to that the effect on the openness and the purposes of including land within the Green Belt,
>
> o the effect on the character and appearance of the area, and
>
> o whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development."

At DL Paragraph 4 the Inspector concluded that the proposal would amount to an outdoor sport and recreational use. The SoS does not challenge this conclusion in these proceedings.

10. Having concluded at DL Paragraph 5 that the NPPF outweighed saved policies ENV 63 and ENV 65 the Inspector then concluded at DL Paragraph 6 that the effect of Paragraph 90 of the NPPF was that all material changes of use were by definition "*inappropriate development*" and thus ought not to be permitted in the absence of very special circumstances. His reasoning was that:

> "The Framework sets out in paragraph 90 the forms of development (aside from the construction of new buildings) which are not inappropriate in the Green Belt, provided they do not conflict with the purposes of including land in the designated area. The specific types of development are listed in five bullet points - and these do not include material changes of use. Therefore a material change of use of land is inappropriate development in the Green Belt."

The Inspector rejected a submission by the Claimant that the proposed change of use ought to be treated as not inappropriate development by reason of Paragraphs 81 and 89 of the NPPF on the basis that neither addressed material changes of use. As he put it at DL Paragraph 7:

> "...paragraph 81 states that local planning authorities should plan positively to enhance the beneficial use of the Green Belt to provide opportunities for outdoor sport and recreation, and does not deal with the matter of material change of use. Moreover, paragraph 89 deals with construction of buildings and the reference to "it" in the 1st bullet point is in connection with the provision of appropriate facilities."

The Inspector concluded that in construing the NPPF, it was "*...to be read as it is written. It would be wrong to go behind the policies and infer a meaning as suggested by the appellant*".

11. In relation to the effect of Paragraph 89, and the construction of the various buildings that form part of the Scheme, the Inspector concluded that this too would be inappropriate development because openness within the paragraph meant an absence of visible development and on that basis the proposed buildings could not by definition preserve the openness of the Green Belt and in any event would constitute encroachment. As he put it at DL Paragraph 9:

> " ... paragraph 89 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. The exceptions to this include the provision of appropriate facilities for outdoor sport and recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Openness was referred to at the inquiry as 'an absence of visible development' which is a reasonable definition. While the number of tents and caravans on site would fluctuate with the

> seasons, the proposed permanent buildings, notwithstanding their design, location within the site and the effects of the proposed screening, would have a clear manifestation as man-made impositions on the landscape which would reduce openness. Added to which, they would also fail to safeguard the countryside from encroachment."

12. The Inspector concluded that the Scheme would not harm the visual amenity of the Green Belt (see DL Paragraphs 9 and 10-12), that there would not be any harmful change to the outlook from nearby dwellings (DL Paragraph 13) and at DL Paragraph 17 he concluded that "... *the proposal would deliver economic growth, enhance employment opportunities, improve local hedgerows and ponds (which are key landscape features) and enhance biodiversity."*.

13. In DL Paragraph 16 the Inspector noted a submission that the Scheme would make a positive contribution to sustainable development but rejected that as a relevant consideration because:

> "...paragraph 14 of the Framework states that for decision taking, sustainable development means where relevant policies are out-of-date, granting permission unless policies in the Framework indicate that development should be restricted. That situation exists in this instance so this matter does not weigh in favour of the proposal."

This conclusion is not challenged in these proceedings.

14. In the result the Inspector dismissed the appeal because:

> "18. The proposal would represent inappropriate development in the Green Belt that would reduce openness and conflict with the purposes of designation. Inappropriate development is by definition harmful and should not be approved except in very special circumstances. Openness is seen as an essential characteristic of Green Belts so a reduction in that quality would also be harmful, in Green Belt terms. The Framework is clear that substantial weight should be given to any harm to the Green Belt.
>
> 19. The proposal would have no harmful impact on the character and appearance of the local landscape, living conditions, or subject to conditions cause difficulties in terms of highway safety. However, these are neutral rather than positive considerations. Nevertheless, the proposal would create employment opportunities, generate economic activity, meet an identified tourism need, and improve key landscape features and biodiversity. These considerations weigh in favour of the proposal.
>
> 20. The Framework sets out that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In this case, I have found that despite the benefits of the scheme the particular characteristics of the appeal site mean that the totality of the harm would not be clearly outweighed by other considerations. The very special circumstances necessary to justify the proposal do not therefore exist."

The Challenges

15. FHL challenges the decision of the Inspector on four grounds being:

> i) The Inspector was wrong to conclude that a change of use from agricultural use to outdoor sport and recreation was inevitably inappropriate development and thus not to be permitted in the absence of very special circumstances being demonstrated;

ii) The Inspector was wrong to conclude that Paragraph 89 of the NPPF did not apply to changes of use;

iii) The Inspector failed to have regard to the NPPF policy that significant weight should be given to the need to support economic growth through the planning system or failed to give any or any sufficient reasons for not following that policy; and

iv) The Inspector failed to give any or any adequate reasons for concluding that the Scheme failed to safeguard the countryside from encroachment.

Relevant Legal Principles

16. Not surprisingly the relevant legal principles were not in dispute between the parties. In summary they are that:

i) The NPPF "... *is a material consideration in planning decisions* ..." - see NPPF, Paragraphs 2 and 196;

ii) The interpretation of planning policy is a matter of law and is to be ascertained by interpreting it objectively in accordance with the language used read in its proper context, but the application of planning policy is a matter of planning judgment - see *Tesco Stores v. Dundee* [2012] UKSC 13 at [17] to [21];

iii) A s.288 challenge is an opportunity to correct a failure to take into account material considerations or the taking into account of immaterial considerations or errors of law, not an opportunity to challenge an outcome on the planning merits of an appeal other than on rationality grounds - see *R (Newsmith Stainless Steel) v. SSETR* [2001] EWHC 74 (Admin) at [6];

iv) Where statements indicate the weight to be given to relevant considerations, decision makers must have proper regard to them - see *Gransden & Co Limited v. SoSE* (1987) 54 P&CR 86 at [94]. Even where a policy or statute requires that particular weight be given to an identified consideration, the weight actually given to that factor is likely to be fact sensitive and depend on the other factors against which it is to be weighed - see *Stevens v. SSCLG* [2013] EWHC 792 (Admin) at [62] - [63];

v) In the absence of a rationality challenge, the weight to be given to a material consideration is a matter for the Inspector not the Court - see *Tesco Stores v. SSE* [1995] 1 WLR 759 *per* Lord Hoffmann at 780;

vi) Decision letters are to be read in a straightforward manner - see *South Bucks CC v. Porter (No.2)* [2004] 1 WLR 1953 *per* Lord Brown at [33] to [36] - and thus without excessive legalism. Subject to that qualification, the reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal issues and disclosing how any issue of fact or law was resolved. Before a reasons challenge can succeed, the party challenging the decision must be able to show that he has genuinely been substantially prejudiced by the failure to give adequate reasons; and

vii) The general rule is that if an Inspector fails to take account of a material consideration or makes an error of law then the decision will be quashed unless the point would not have made a difference to the outcome or there was not a real possibility that it would have made a difference - see *Bolton MBC v. SSE* (1991) 61 P & CR 343 and *Europa Oil and Gas Limited v. SSCLG and others* [2013] EWHC 2643 (Admin) at [60] and [63].

Discussion

Ground 1

17. Section 55 of TCPA defines "*development*" as being "*...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*". Thus in principle a change of use is as much development as the various forms of operational development identified in s.55.

18. The meaning of the word "*development*" when used in the NPPF has the same meaning as that identified in s.55. This is the meaning adopted generally in a planning law context. No other meaning is suggested. This construction appears to be consistent with the view expressed by Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [53]. It follows that a material change of use is capable of being inappropriate development within the meaning of Paragraph 87 of the NPPF.

19. Previous national policy in relation to Green Belt development defined material changes of use as inappropriate unless they maintained openness and did not conflict with the purposes of including land within the Green Belt - see PPG2, Paragraph 3.12. That approach has not been carried through into the NPPF however, where the preferred approach is to attempt to define what is capable of being "*not inappropriate*"1 development within the Green Belt with all other development being regarded as inappropriate by necessary implication. It is for this reason that there is no definition within Chapter 9 of the NPPF of what constitutes inappropriate development, or any criteria by which whether a proposed development is or is not appropriate could be ascertained. It is for that reason that Paragraph 89 of the NPPF provides that a particular form of development - the construction of new buildings - in the Green Belt is inappropriate unless one of the exceptions identified in the Paragraph applies. Paragraph 90 defines the "*other forms of development*" there referred to as also at least potentially not inappropriate. The effect of Paragraphs 87, 89 and 90, when read together is that all development in the Green Belt is inappropriate unless it is either development (as that word is defined by s.55 of the TCPA) falling within one or more of the categories set out in Paragraph 90 or is the construction of a new building or buildings that comes or potentially comes within one of the exceptions referred to in Paragraph 89.

20. Paragraph 90 contemplates not merely the construction of buildings but other development as defined by s.55 TCPA falling within the identified categories. Thus a change of use falling within one of the categories identified in Paragraph 90 is in principle capable of being not inappropriate. That being so, I am not able to agree with the Inspector that no material changes of use fall or are capable of falling within Paragraph 90. The concept of development includes a material change of use and therefore a change of use for example to permit mineral extraction is capable of being not inappropriate providing that the change of use preserves openness and does not conflict with the purposes of including land in the Green Belt as those concepts are to be understood in their context - as to which see *Europa Oil and Gas Limited v. SSCLG* (ante) at [64] to [68].

21. The real issue therefore is not the point identified by the Inspector in DL Paragraph 6 but rather whether development in the form of a material change of use outside the categories identified in Paragraph 90 must by definition be inappropriate development or whether such a change of use has to be considered on its merits with a decision to be taken as to whether it is inappropriate or not inappropriate development, as was the position under PPG2.

22. FHL argues that not all changes of use outside the list set out in Paragraph 90 constitute inappropriate development. FHL maintains that the correctness of its submission follows in particular from Paragraph 81 of the NPPF. It is submitted that enhancing the beneficial use of Green Belt land by providing opportunities for outdoor sport and recreation must by definition include the possibility of a change of use to enable such an opportunity to be provided. It is submitted that if that is right then it would mean that any proposed change of

use would have to be assessed by reference to the policy set out in Paragraph 81 and thus such a proposed change of use coming within Paragraph 81 was or could be development that was not inappropriate.

23. Whilst I am satisfied that a change of use is capable of coming within the scope of Paragraph 81, I do not consider that leads to the conclusion that a change of use coming within the scope of Paragraph 81 is by definition not inappropriate development. As to the first of these points, the Inspector rejected FHL's submission at DL Paragraph 7 because Paragraph 81 does not contain an express reference to a change of use. In my judgment the Inspector was wrong to adopt this approach. The Inspector's conclusion would have had more force if the paragraph had referred only to enhancing the existing use of Green Belt land for one of the identified purposes but it is not limited in that way. What is to be enhanced is the use of Green Belt land. That is to be achieved in part by providing opportunities for outdoor sport and recreation. The concept of provision of an opportunity suggests that the opportunity to be provided does not or may not presently exist. This suggests therefore that the policy was intended to include within its scope a proposed material change of use proposed for the purpose of providing that opportunity.

24. However that view of the scope of Paragraph 81 of itself does not meet the point that I have made earlier namely that the structure of the Green Belt policy has changed from that which formerly applied. There is no general exception for changes of use that maintain openness and do not conflict with the purposes of the Green Belt. The current policy is contained in Chapter 9 of the NPPF and as I have said already Paragraphs 87, 89 and 90 have to be read together. Paragraph 90 contains a closed list of classes of development that are capable of being not inappropriate and Paragraph 89 contains a closed list of classes of new building construction not falling within Paragraph 90 that are or are capable of being not inappropriate by way of exception to the general rule that the construction of new buildings is to be regarded as inappropriate in the Green Belt - see *Europa Oil and Gas Limited v. SSCLG* (ante) at [20] - [21].

25. Paragraph 89 is a closed list on its face. This is apparent from a comparison of the first sentence with the second. The first contains a general policy statement to the effect that the construction of new buildings in Green Belt is inappropriate. The second creates a list of exceptions and potential exceptions to that general rule. The opening three lines of Paragraph 90, and in particular the phrase "*[t]hese* are", shows that the list in that paragraph is also a closed list. The paragraph is of no application to development other than the construction of new buildings.

26. Whilst it is true to say that the reference to "*other forms of development"* and the use of the word "*other*" in Paragraph 90 suggest that there are forms of development other than those falling within the Paragraph 90 list that are capable of being not inappropriate, in my judgment those words and phrases refer back to the exceptions listed in Paragraph 89. Paragraph 89 is exclusively concerned with a particular form of operational development being the construction of new buildings. It does not apply and is not expressed to apply to any other form of development. The word and phrase in the opening lines of Paragraph 90 relied on by FHL do not undermine this analysis, and do not lead to the conclusion that other forms of development not listed in Paragraph 90 and not capable of coming within the scope of Paragraph 89 are nonetheless capable of being development that is not inappropriate. If that was so then Paragraph 90 would not have been drafted in the way it has been drafted (as a closed list of classes of development that is not inappropriate). Contending otherwise applies an over legalistic approach to the construction of a policy statement contrary to the principle referred to Paragraph 16(ii) above. When Paragraph 87, 89 and 90 are read together as they should be the meaning is clear. Development in the Green Belt is inappropriate (and thus can be permitted only in very special circumstances) unless is falls within one of the exceptions identified in Paragraphs 89 and 90.

27. The remaining argument that I have to consider is that the construction I favour achieves absurdity because it would mean for example that a proposal to convert a field used for agricultural purposes into an outdoor sports field with no buildings being proposed as part of the scheme would be regarded as inappropriate and thus could not be permitted in the absence of very special circumstances.

28. In my judgment this submission is misplaced. Merely because a proposed development is inappropriate does not mean that there is a prohibition on it. The categories of what constitute very special circumstances are not closed. As I have explained, a material change of use is capable of coming within the scope of the policy set out in paragraph 81. That a proposal accords with the policy set out in Paragraph 81 is in principle capable of being a material consideration relevant to a decision as to whether very special circumstances have been made out. Thus it would be open to the promoter of a proposal to create a sports facility of the hypothetical type I am now considering to argue that any necessary change of use should be permitted because the proposed change of use accorded with the policy set out in Paragraph 81 and for that and other reasons very special circumstances had been established. That factor (if made out on the facts) is not and is not intended to be decisive however. It will have to be weighed with all other inevitably fact sensitive material considerations in order to arrive at a conclusion as to whether whatever potential harm to the Green Belt is identified is clearly outweighed by the other considerations including compliance with the policy set out in paragraph 81. This approach is consistent with that outlined for example in Paragraph 91 in relation to renewable energy projects, where the environmental benefits of such a project do not mean that such a development is not inappropriate but that those benefits are capable of being part of the very special circumstances that might justify permission being granted.

29. In the result Ground 1 fails. FHL has not contended in these proceedings that the decision should be quashed on the basis that the Inspector had fallen into error in failing by take account of Paragraph 81 when considering whether very special circumstances had been established. In those circumstances, whilst it is true to say that the Inspector fell into error by failing to take any account of the effect of Paragraph 81 when reaching his conclusions that very special circumstances had not been made out, and that the error was one that I consider would have merited quashing the decision that very special circumstances had not been made out applying the principles referred to in Paragraph 16(vii) above, that course is not open to me.

Ground 2

30. It is submitted that the Inspector failed correctly to construe Paragraph 89 because he decided that the word "*it*" in the second bullet point was a reference to the facilities element of any proposal when it should have been construed as applying to the relevant use relied on - that is outdoor sport or recreation or cemeteries. I do not agree for the reasons that follow.

31. It was submitted by FHL that there were a number of difficulties about the language that has been used in Paragraph 89 that lie in the way of adopting the construction adopted by the Inspector. The singular "*it*" does not lie easily with that word being intended to refer either to the plural "*new buildings*" in the opening sentence of Paragraph 89 or "*appropriate facilities*" in the opening line of the second bullet point. Furthermore it is submitted that it is very difficult to see how the construction of a new building or new buildings can in any literal sense "preserve" openness or not conflict with at least the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. In my view both these propositions are to be rejected.

32. As to the first point, in my judgment in the context in which it is used, the word "*it*" in Paragraph 89 refers to and can only be referring to the "*facilities"* contemplated by the proposal being considered by the decision maker. Such a proposal could include a proposal for the construction of a building or more than one building or alternative buildings. Thus the use of the singular as referring to something that is or might be plural does not justify departing from what otherwise is clear from the context. To take any other course would be to depart from the principle summarised in Paragraph 16(ii) above.

33. As to the second point, as I have said already, the purpose of the exceptions to the general rule set out in the first sentence of Paragraph 89 is to distinguish between those types of new buildings which would be inappropriate if built in the Green Belt from those that are not or potentially are not. Some types of building are not further qualified. A new building for agriculture or forestry is not inappropriate. The provision of facilities for outdoor sport, outdoor recreation and cemeteries on the other hand is only potentially not inappropri-

ate. Such a facility will only be not inappropriate development if it "... *preserves the openness of the Green Belt and does not conflict with the purposes of including land within it*...". If these further requirements are not made out then the proposed buildings will not fall within the exception and will fall within the general rule. This language it is said means that all such buildings will by definition be inappropriate development. Plainly that cannot have been what was intended since if that was so there would have been no point in including the exception within the list of exceptions. In my judgment the answer lies in the analysis of Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [66], where he says:

> "Secondly, as Green Belt policies NPPF 89 and 90 demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of the building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and the other a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another. The one is harmed by because of its effect on openness, and the other is not harmed by because of its effect on openness. These concepts are to be applied, in the light of the nature of the particular type of development."

Thus in each case it will be for the decision maker to apply this approach in order to decide whether a particular building which is, or buildings which are, claimed to be appropriate facilities for outdoor sport or recreation to decide whether what is proposed preserves openness and does not conflict with the purposes of including land within the Green Belt applying these principles. If it does then what is proposed will come within the potential exception created by the second bullet point in the list in Paragraph 89. If it does not then it will fall within the scope of the first sentence of that paragraph and can be permitted only if very special circumstances are made out.

34. Whilst FHL maintains that this construction is illogical. I am not able to agree. First, as I have said already, I consider that very special circumstances will have to be shown for a change of use to Green Belt land not falling within one of the classes identified in Paragraph 90 of the NPPF. If that is so there is no logic in requiring very special circumstances to be shown for example for a change of use from agricultural land to an open sporting ground (where the impact on openness is likely to be less than the facilities to be constructed in connection with the changed use) but not applying the same constraint to facilities to be constructed at such a site if a change of use is permitted, as long as the requirement in the second bullet point within Paragraph 89 that a facility should preserve the openness of the Green Belt and not conflict with the purposes of including land within it is read in the way referred to by Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [66]. Indeed, I consider this approach is correct even if I am wrong to conclude that a change of use not falling within one of the classes identified in Paragraph 90 of the NPPF is inappropriate development by definition. Merely because Green Belt land is used for outdoor sport or recreation does not justify permitting the construction of a building or buildings that fail to preserve the openness of the Green Belt or conflict with the purposes of including land in the Green Belt applying the approach to these concepts identified by Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [66].

35. There is another obvious reason for adopting this approach. If a promoter of a scheme was able to obtain permission to change the use of agricultural to an open sporting ground he or it might well wish to construct or add to facilities in subsequent years. There would be great danger in not requiring very special circumstances to be demonstrated for future applications for the provision of facilities at existing outdoor recreation or sporting sites in the Green Belt. The construction which I consider is appropriate eliminates that risk as long as the requirements imposed by the second bullet point in Paragraph 89 to preserve the openness of the Green Belt and avoid conflict with the purposes of including land in the Green Belt are read subject to the qualifications referred to by Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [66].

Ground 3

36. This challenge is misplaced. Paragraph 19 of the NPPF requires that significant weight be attributed to the need to support economic growth. It is clear that the Inspector did accord weight to the economic benefits of what was proposed - see Paragraph 17 of the DL where having noted and accepted that the proposal would deliver economic growth and enhance employment opportunities, he then said that these considerations weighed in favour of the proposal. He repeated this point in Paragraph 19 of the DL (reproduced above) before concluding that these factors were not sufficient to lead to a conclusion that very special circumstances had been made out. It is apparent when Paragraphs 18-20 of the DL are considered together that the Inspector carried out the evaluation of the effect of the various material considerations relevant to the appeal that he was required to carry out.

37. The Inspector did not specifically use the word "*significant*" that is used in Paragraph 19 of the NPPF. There was no requirement for him to do so however. The Inspector was required to give substantial weight to the harm that he perceived would be caused to the Green Belt and weigh it against the significant weight attributable to the economic benefits of the proposal as well as the weight to attributed to the other factors that supported the application before deciding whether very special circumstances had been made out. This is what the Inspector did and the absence of an incantation that "*significant*" weight had been given to the economic benefits of the proposal does not amount to an error of law in this case. The Inspector had been referred to and refers to the NPPF in detail in the decision letter and in those circumstances, the absence of the word is not sufficient to persuade me that he failed to carry into effect the policy set out in the NPPF. Any other approach would involve reading the decision letter otherwise than in its context and applying excessive legalism to it contrary to the principles summarised in Paragraph 16(vi) above.

38. I do not accept the alternative basis on which this ground is put either. It is not arguable that the Inspector failed to follow national policy and thus there was no explanation to be given. His explanation for reaching the conclusions he reached are set out adequately in the circumstances in Paragraphs 18-20 of the DL.

39. In reality this challenge is a disguised attempt to challenge the outcome of the evaluation by the Inspector of the weight in fact to be attributed to various material considerations. That is not something the Court will permit. It is contrary to the principle referred to in Paragraph 16(v).

Ground 4

40. The final challenge is to what is said to be a failure on the part of the Inspector to give reasons for his conclusion that the proposed building would fail to safeguard the countryside from encroachment. There is no substance in this point.

41. DL Paragraph 9 makes entirely clear that basis of the Inspector's conclusion concerning encroachment for the purposes of Paragraph 89 of the NPPF. There the Inspector states:

> "Openness was referred to at the inquiry as 'an absence of visible development' which is a reasonable definition. While the number of tents and caravans on site would fluctuate with the seasons, the proposed permanent buildings, notwithstanding their design, location within the site and the effects of the proposed screening, would have a clear manifestation as man-made impositions on the landscape which would reduce openness. Added to which, they would also fail to safeguard the countryside from encroachment."

42. The word "they" clearly refers to the buildings that were proposed and his reason for reaching that conclusion are clear when this paragraph is read as a whole. It may be that the Inspector was wrong because he had failed to approach the issue applying the approach referred to by Ouseley J in *Europa Oil and Gas Limited v. SSCLG* (ante) at [66]. However that is not the basis of the challenge in these proceedings.

Conclusion

43. For the reasons set out above, these proceedings are dismissed.

1 In the course of the submissions before me, I was told that the correct distinction was between inappropriate development and development that was "not inappropriate". I note that this is not the phraseology adopted for example in *Europa Oil and Gas Limited v. SSCLG* (ante) where the antithesis of inappropriate is said to be "appropriate". In this judgment I have maintained the phraseology used by the parties without reaching any judgment as to whether its use is correct.