

Examination of the North Hertfordshire Local Plan 2011 – 2031

Inspector: Mr Simon Berkeley BA MA MRTPI

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Mr John Spiers
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Dear Mr Spiers

Examination of the North Hertfordshire Local Plan 2011 – 2031

Thank you for your letter of 13 March.

You suggest that I have deviated from the Frank's principles of openness, fairness and impartiality. I disagree.

For the avoidance of any doubt, at the hearing session on 26 February the only point on which I prevented further discussion was that relating to the pertinence of the Calverton judgement¹. There are two reasons why I did this.

Firstly, I had already heard your argument concerning the Calverton judgement. It had already been made at a previous hearing session, I well understood the point and there was no need for me to hear it again.

The second reason is that the High Court's decision in the Calverton case has not been appealed and as such remains 'good law'. I note your criticisms of the reasoning and findings of Mr Justice Jay. However, you will appreciate that it is not for me to question or examine his judgement, or to deviate from it. Indeed, I am duty bound to apply the law as it stands.

I fully comprehend your point concerning the Dartford judgement². It says at paragraph 23 "*The public nature of these documents [referring here to national policy] is of critical importance. The public is in principle entitled to rely on the public document as it stands, without having to investigate its provenance and evolution*". You argue, in summary, that in this context, because paragraph 79 of the National Planning Policy Framework ('the NPPF') says that "... *the essential characteristics of Green Belts are their openness and permanence*", that the public are entitled to rely on the permanence of Green Belt boundaries such that they are not capable of being re-drawn.

In relying on the NPPF as it stands, one must read it as a whole. In so doing, one must also be aware that the Courts, in the performance of their function, provide the legally definitive interpretation of it. Paragraph 83 of the NPPF clearly entertains the notion that Green Belt boundaries can be altered

¹ Calverton Parish Council v Nottingham City Council & Others [2015] EWHC 1078 (Admin) (21 April 2015)

² Dartford Borough Council v the Secretary of State for Communities and Local Government & Others [2017] EWCA Civ 141 (14 March 2017)

in exceptional circumstances, through the preparation or review of the Local Plan. Paragraph 51 of the Calverton judgement provides some illumination regarding the planning judgements involved in the ascertainment of such exceptional circumstances. The Dartford judgement does not alter this. This is not a question of having to investigate the provenance and evolution of the NPPF, or to otherwise 'look behind' the NPPF in order to understand it. Rather, it is a question of reading it as a whole along with the relevant legal interpretations of it handed down from the Courts. On the question of exceptional circumstances, the Calverton judgement is clearly instructive.

You refer to paragraph 50 of the Calverton judgement and mention that you wanted to make representations concerning the Council's case for exceptional circumstances "*beyond an assessed need*" for housing. Issue 10.23 of my Matters and Issues document, discussed on 26 February, is aimed at precisely this point. Several people engaged in this debate, including representatives of the Friends of the Forster Country.

I note that you wished to stress that the Forster Country meets the NPPF's paragraph 77 criteria for the Local Green Space designation, but you say you "*were not allowed to do so by shortage of time*". Mr Pollock-Hill did make this argument at the hearing on behalf of the Friends of the Forster Country. I have and understand the point, and rest assured that I will take it into account in reaching my conclusions.

Given the above, I see no reason for holding a further hearing session on the points you have raised in your letter. I have, throughout the hearings, given all participants every opportunity to make their points heard. Indeed, I have gone to considerable lengths to ensure that all have had their "fair crack of the whip". In my view, I have conducted the hearings in a wholly even-handed way, and very much in accordance with the Frank's principles. While I did prevent further discussion concerning the relevance of the Calverton judgement, I have explained the reasons for that.

You say that if your request for a further hearing is not granted, then you may have to consider making a formal complaint to The Planning Inspectorate. That is a matter for you. Should you wish to make such a complaint, the relevant contact details are as follows: Ashley Gray, Customer Quality Team, Room 3b, The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.

I should say that neither the suggestion of a complaint, nor the making of one, will influence my consideration of the issues in this examination one way or the other. I shall continue to undertake the task to which I am appointed in accordance with the Frank's principles.

I trust that you find this letter helpful in understanding my approach. While not the outcome you wished, I have endeavoured to clarify matters as best I am able and I hope to have assisted in this regard.

Yours sincerely

Simon Berkeley

Inspector