

Note on Supreme Court Judgment re. Green Belt

1. The Inspector has requested the Council set out its position concerning the Green Belt evidence informing the Plan following the recent judgment in the Supreme Court in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3.

The Green Belt Evidence

2. Following the Examination hearings in 2017 and 2018, the Council commissioned the Green Belt Review Update 2018 (ED161) (the “Review Update”). The Review Update took explicit account of the effect of proposed development on the visual dimension of openness in addition to the spatial dimension. As is explained in its Introduction¹, the Review Update was prepared as a prudent response to a challenge made by representors to the methodology of the original Green Belt Review and, most pertinently, to the Court of Appeal’s judgment in *Samuel Smith Old Brewery v North Yorkshire County Council* [2018] EWCA Civ 489.

The Court of Appeal’s Judgment in Samuel Smith

3. The Court of Appeal’s judgment emphasised the need for consideration to be made by a decision-maker as to likely visual effects of proposed development, as well as spatial effects, and whether such effects would be harmful or benign when considering the question of whether development would preserve the openness of the Green Belt.²

The Supreme Court’s Judgment in Samuel Smith

4. The Supreme Court overturned the decision of the Court of Appeal. The lead judgment of Lord Carnwath emphasised that paragraph 90 of the 2012 NPPF does not expressly refer to visual impact as a necessary part of the analysis regarding the effect on openness of the Green Belt of proposed development and it is not made a necessary consideration by implication.³ In terms of approach, the Supreme Court found that openness is not a matter of legal principle but of planning judgement with the effect that in some cases the visual qualities of the land may be an aspect of planning judgement

¹ See pp. 3-4.

² See paragraphs 38 and 40 in particular.

³ See paragraph 39.

involved in applying the broad policy concept of openness and with the implication that in other cases, as a matter of planning judgement, it may not.⁴

The Green Belt Evidence in the light of the Supreme Court Judgment

5. The Council does not consider that any amendment is required to the Council's Green Belt evidence, including the Review Update, in the light of the Supreme Court judgment.
6. The Council is of the view that, as a matter of planning judgement, the nature, location and scale of the proposed allocations in the Green Belt mean that it was appropriate to give consideration to the visual quality of the land as an element of the concept of openness in the context of an update to the Green Belt assessment.

⁴ See paragraph 22.