

**SUBMISSIONS ON BEHALF OF SAVE OUR GREEN BELT (“SOGB”) FOR MATTER 7**

1. These submissions set out the legal and policy points that SOGB intended to make at the resumed hearing into Matter 7. One of the points SOGB introduced but was not able to develop (cumulative impact – in particular the failure of the Green Belt Review to assess the cumulative impact of removing more than one parcel in close proximity) was raised by others at the hearing session and is therefore not developed here.
2. These submissions should be read together with the representation put in by Ickleford Parish Council (attached). This sets out detailed criticisms of the methodology used in the Green Belt review, which should be considered as being incorporated into these submissions (subject to the points below) but is not repeated, save for a rebuttal of one point made by North Hertfordshire District Council (“NHDC”) at the hearing session.

**Assessment of “openness” proceeds on an incorrect interpretation of paragraphs 79 and 80 of the National Planning Policy Framework (“NPPF”)**

3. The Green Belt Review assesses the contribution made to the Green Belt by each potential development site in Table 5.3 starting on page 103. The methodology is set out on pages 100 to 101. Up to a maximum of 3 points is given for each “purpose”.
4. “Openness”, part of the “*fundamental aim*” of Green Belts (to “*prevent urban sprawl by keeping land permanently open*”) is only specifically assessed in the Green Belt Review under the first purpose (“*Restricting sprawl of built-up areas*”). The score given is solely on the extent to which the development site is already surrounded by built development.
5. This is a narrow, one-dimensional, assessment of openness which is contrary to the guidance given by the Court of Appeal in Turner v SSCLG [2017] 2 P. & C.R. 1 on how openness should be assessed. This states, with added emphasis:

*“14 ...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. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric*

*matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.*

*15 The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. The preservation of “the setting ... of historic towns” obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in para. 81 to planning positively “to retain and enhance landscapes, visual amenity and biodiversity” in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.*

*16 The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.”*

6. The one-dimensional approach taken to openness in the Green Belt Review is contrary to the “open-textured” approach required by the Court of Appeal in Turner. Most importantly, there is no consideration, at all, of visual matters in assessing the contribution that each potential development site makes to the openness of the Green Belt. This is a plain and obvious error of law in the Green Belt Review, derived from an incorrect interpretation of the word “openness” as it is used in paragraphs 79-80 of the

NPPF. The result is that the approach taken by the Green Belt Review is inconsistent with national planning policy and, as the key document in the evidence base informing the release of individual sites from the Green Belt, the plan is unsound.

7. Timing is important here. The judgment of the Court of Appeal in Turner was handed down on 18<sup>th</sup> May 2016. The Green Belt Review was published in July 2016. Plainly, the evidence that informs the review was prepared prior to 18<sup>th</sup> May 2016. At this time, there was inconsistent authority on the matters that could be taken into account in assessing openness. In particular, in R (Timmins) v Gedling Borough Council [2014] EWHC 654 (Admin) at [67]-[78], Green J held that “*there is a clear conceptual distinction between openness and visual impact*” and “*it is therefore wrong in principle to arrive at a specific conclusion as to openness by reference to visual impact*”: para. [78] (Green J's emphasis). The Court of Appeal in Turner specifically found that Green J had erred in finding this (see paragraph 18). However, at the time that the Green Belt Review was being prepared, Green J's approach remained good law.
8. This does not excuse NHDC's error, nor does it have any impact on whether the plan is sound; but it does help to explain why NHDC has fallen into error.

**Weight given to the five purposes is inconsistent with paragraph 79 of the NPPF**

9. The Green Belt Review has assessed each individual site proposed for allocation against the criteria in paragraph 80 of the NPPF.
10. However, the five purposes need to be read in light of the fundamental aim of including land in the Green Belt, set out in paragraph 79 of the NPPF. This is to “*prevent urban sprawl by keeping land permanently open*”.
11. This fundamental aim is not reflected equally in all five of the “purposes” served by the Green Belt, as set out in paragraph 80 of the NPPF. Instead, the “*fundamental aim*” is reflected to a greater extent in the first “purpose”: “*to check the unrestricted sprawl of large built-up areas*”. Therefore, greater weight should be given to this purpose, in order to properly reflect (and be consistent with) paragraph 79 of the NPPF.

12. It is also important to note that there is nothing in the NPPF which suggests that to be included in the Green Belt, land needs to meet all five purposes.
13. For example, land can be included in the Green Belt simply to prevent neighbouring towns merging into one another – which is part of the fundamental aim. In doing so, it can make a very significant and important contribution to that purpose.
14. In short, under national planning policy, a site does not need to tick all of the five purposes in order to be included in the Green Belt.
15. Neither of those things, which are very clear from national policy, are reflected in the Green Belt Review.
16. Each site can score a maximum score of three for each of the four main purposes. This means that no weighting has been applied to reflect:
  - (1) The fact that preventing urban sprawl is the most fundamental Green Belt purpose – the maximum score there is 3, as with the other purposes;
  - (2) The purpose for including each parcel of land in the Green Belt in the first place. So, for example, even if a parcel of land was originally included in the Green Belt for the sole purpose of safeguarding the countryside – it can only achieve a maximum of 3 points for that purpose; and will be marked down for not contributing towards a purpose which it was never designed to meet.
17. This has had a significant effect on the scoring for individual sites.
18. So to give one example, looking at the table on page 109 of the Green Belt Review: Ref. NS (Site NS1 in the plan) scored 3 for sprawl – which is the maximum achievable; 3 for safeguarding countryside, and 2 for towns merging. However, it was marked down to a “*moderate*” contribution overall, because it did not preserve the setting of historic towns – even though this was never why this land was included in the Green Belt in the first place.

19. This is not consistent with national planning policy because it does not give more weight to the most fundamental purpose of the Green Belt and, contrary to the NPPF, it assumes that sites must meet all five purposes to make a significant contribution to the Green Belt. The effect is that sites, such as this, which make a very significant contribution to the most fundamental aim of the Green Belt have been dragged down to a moderate contribution overall because they do not contribute to all five purposes.

20. Finally, the site assessment criteria scoring system makes it impossible to consistently compare the town and village sites. In the “*Preventing neighbouring towns merging*” category, the maximum score for town sites is 3, but only 2 for village sites: see page 100-101. However, many of the villages in the District sit between urban developments and therefore have a pivotal role in preventing the merger of towns. This inconsistent approach is, again, inconsistent with paragraph 80 of the NPPF.

**Rebuttal on parcel boundaries.**

21. It was said by NHDC at the hearing session that main roads had been used to define the Green Belt parcels assessed in the Green Belt Review. However, this is not uniformly true: see the penultimate paragraph on page 14 of the attached. The size of these parcels (and sub-parcels) is critically important in allowing their contributions to the Green Belt to be assessed, so if the parcel boundaries are arbitrary and sub-optimal, so too will be their assessment.

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