cunnane
town planning

Northern Region, P.O. Box 305
Manchester M21 3BQ Tel: 0161 861 0410
www.cunnanetownplanning.co.uk

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Carmel Edwards
Programme Officer
C/O North Yorkshire County Council Headquarters,
County Hall,
Northallerton,
North Yorkshire,
DL7 8AH

BY EMAIL AND POST
20th March 2018

Dear Ms Edwards

YORKSHIRE MINERALS AND WASTE EIP: MJP23 JACKDAW QUARRY, STUTTON, TADCASTER

I write with the regard the above site and wanted to draw the inspector attention to the attached Court of Appeal judgement. I understand it was released yesterday. The decision quashes the grant of planning permission referenced in the emerging plan (NY/2009/0523/ENV) associate with the above proposed allocation. This intended as an update in relation to factual matters that the North Yorkshire Council appear to have relied upon in determining the principle of quarrying activities on this site specifically.

I would be grateful fi you could draw the decision to the Inspectors attention. Specifically the judgement raised concerns with regard the application of NPPF Green Belt policy to the development management decision. In particular, the impact of the proposal on the openness of the Green Belt, the harm resultant notwithstanding the development would not include new buildings, and the impact on long distance views as a result of earth bunds and planting required to screen the site.

I would be grateful if you could confirm receipt and that the attached will be drawn to the Inspectors attention.

Yours sincerely

Stuart vendy
CUNNANE TOWN PLANNING LLP
Stuart.vendy@cunnanetownplanning.co.uk

Encl.

Neutral Citation Number: [2018] EWCA Civ 489

Case No: C1/2017/0829

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE HICKINBOTTOM
[2017] EWHC 442 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 March 2018

Before:

Lord Justice Lewison
and
Lord Justice Lindblom

- -

Between:

(1) Samuel Smith Old Brewery (Tadcaster)
(2) Oxton Farm **Appellants**

- and -

(1) North Yorkshire County Council
(2) Darrington Quarries Ltd. **Respondents**

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Mr Peter Village Q.C. and Mr Ned Helme (instructed by **Pinsent Masons LLP**) for the **Appellants**
Ms Nathalie Lieven Q.C. and Ms Hannah Gibbs (instructed by **North Yorkshire County Council**) for the **First Respondent**
Mr Jonathan Easton (instructed by **Walker Morris LLP**) for the **Second Respondent**

Hearing date: 19 December 2017

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. Did a mineral planning authority misapply government policy for "mineral extraction" in the Green Belt when determining an application for planning permission for an extension to a limestone quarry in North Yorkshire? That is the basic question in this appeal.

2. The appellants, Samuel Smith Old Brewery (Tadcaster) and Oxton Farm, appeal against the order of Hickinbottom J., as he then was, dated 7 March 2017, dismissing their claim for judicial review of the planning permission granted by the first respondent, North Yorkshire County Council, in September 2016, for an extension to the operational face of Jackdaw Crag Quarry, a magnesian limestone quarry owned and operated by the second respondent, Darrington Quarries Ltd.. The quarry, which extends to about 25 hectares, is in the Green Belt, about 1.5 kilometres to the south-west of Tadcaster. It has been operated by Darrington Quarries for many years, planning permission for the extraction of limestone having first been granted in July 1948 and subsequently renewed.

3. The proposal here was submitted as an application for planning permission in October 2009. Approval was sought for an extension of about six hectares, which was expected to yield about two million tonnes of crushed rock over a period of seven years. Planning permission was granted on 7 January 2013, but later quashed for failings in the environmental impact assessment. The application eventually came back to the county council's Planning and Regulatory Functions Committee on 9 February 2016. In her report to committee the county council's Corporate Director – Business and Environmental Services recommended that planning permission be granted, and the committee accepted that recommendation. After a section 106 agreement was entered into, planning permission was granted on 22 September 2016.

4. Samuel Smith and Oxton Farm challenged the planning permission on the grounds that the officer misdirected the committee on the policy for minerals development in the Green Belt in paragraph 90 of the National Planning Policy Framework ("the NPPF"), so that the committee approached its decision, wrongly, on the basis that the proposal was not for "inappropriate development" in the Green Belt and did not have to be justified by "very special circumstances". Hickinbottom J. rejected that argument. Samuel Smith and Oxton Farm appealed on the basis that he was wrong to do so. Lewison L.J. granted permission to appeal on 17 May 2017.

The issues in the appeal

5. The appeal raises the same four issues as were dealt with in the court below, namely:

    (1) whether, in assessing the likely effect of the proposed development on the "openness" of the Green Belt, the county council's committee erred in failing to consider its visual impact on the Green Belt;
    (2) whether, in particular, the officer misled the committee in confining herself to the absence of "built" development as a relevant criterion of "openness";
    (3) whether the officer's report was inconsistent in its conclusions on the likely impact of the development on "openness"; and

(4) whether the officer misled the committee in advising that because the proposed development would adjoin the existing quarry, it would not be in conflict with the aim of preserving "openness".

NPPF policy for the Green Belt

6. Paragraph 17 of the NPPF includes, as the fifth in the list of 12 "core land-use planning principles", the principle that "planning should", among other things, "take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them …".

7. In section 9 of the NPPF, "Protecting Green Belt land", paragraph 79 declares that "[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". Paragraph 80 refers to the "five purposes" served by the Green Belt: first, "to check the unrestricted sprawl of large built-up areas"; second, "to prevent neighbouring towns merging into one another"; third, "to assist in safeguarding the countryside from encroachment"; fourth, "to preserve the setting and special character of historic towns"; and fifth, "to assist in urban regeneration, by encouraging the recycling of derelict and other urban land". Paragraph 81 says local planning authorities "should plan positively" to do several things in the Green Belt, including "to retain and enhance landscapes [and] visual amenity". Paragraph 85, which indicates the approach to be adopted in defining Green Belt boundaries, says, among other things, that local planning authorities should "not include land which is unnecessary to keep permanently open".

8. The policies for development control in the Green Belt include these (in paragraphs 87 to 90):

> "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:
> - buildings for agriculture and forestry;
> - 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;
> - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
> - the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

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."

Development plan policy

9. When planning permission was granted for Darrington Quarries' proposal, the relevant provisions of the development plan included several policies of the Selby District Core Strategy Local Plan, adopted in 2013. Policy SP3, "Green Belt", replicated the fundamental principle in paragraph 87 of the NPPF – that inappropriate development in the Green Belt will not be approved unless the applicant has demonstrated "very special circumstances". Policy SP13, "Scale and Distribution of Economic Growth", stated, in paragraph D, that "development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area, and seek a good standard of amenity". Policy SP18, "Protecting and Enhancing the Environment", which corresponds broadly to the policy in paragraph 109 of the NPPF, said that "[the] high quality and local distinctiveness of the natural and man-made environment will be sustained by" several specific means. These included "1. Safeguarding and, where possible, enhancing the historic and natural environment including the landscape character and setting of areas of acknowledged importance", and "5. Identifying, protecting and enhancing locally distinctive landscapes, areas of tranquillity, public rights of way and access, open spaces and playing fields through Development Plan Documents".

The officer's report to committee

10. In section 4 of her report, "Consultations", the officer referred to the consultation response of the county council's Principal Landscape Architect on the "Potential Landscape Impacts" (in paragraphs 4.109 to 4.118).

11. As reported by the officer, that response contained a number of observations about the likely visual effects of the development, including these: that "the change in character would be permanent …", and "although the restored landscape may well be of considerable landscape and visual interest in itself, the quality of the Locally Important Landscape Area

as a whole would be compromised" – though there were "other detractors in this locality, particularly the A64 and the overhead power lines" (paragraph 4.109); that "as the site … is an extension to an existing quarry the change in local character is considered to be of less significance than if it was a new site", but "the larger the quarry, the less the capacity of the existing landscape to absorb it without its overall character being changed" (paragraph 4.110); that, as the Principal Landscape Architect had put it, "the quarry extension would still result, as with continuation of quarrying, in an exposed face close to the skyline which is likely to be as visible as it is at present if not more, and which would be closer to Warren House Farm and Cottages where there would be less benefit from restoration of the existing quarry", and that the "proposed bunding and planting could help residents during the operational period but in the long term could cut off the long distance views that are currently obtained" (paragraph 4.111); that "the impact on perception of landscape quality and tranquillity could be greater even though there would be a smaller area of active disturbance at any one time" (paragraph 4.112); that "grade 2 agricultural land … would be replaced by a deep lower level landscape restored to calcareous grassland of mainly nature conservation rather than agricultural value", and "Crag Wood is already partly isolated by quarrying, and would remain as a prominent landscape feature perched unnaturally above the quarry floor but linked to it by new woodland planting" (paragraph 4.113); that "the proposed extension is likely to be visible from parts of the A64 and some areas of the countryside" (paragraph 4.114); and that, again as the Principal Landscape Architect put it, "Mitigation and 'restoration' measures would soften the landscape and visual impacts, and the nature conservation value of the new landscape would be much greater, but landscape character and quality would be permanently changed, so the impact cannot be described as neutral" (paragraph 4.115).

12. Clarifying that response to consultation, the Principal Landscape Architect had confirmed that she was "not objecting in principle to the application to extend the quarry", but that the concerns she had raised about the potential landscape impact made it "particularly important to ensure that mitigation measures are maximised" (paragraph 4.118).

13. In section 7 of the report, "Planning Considerations", under the heading "Landscape Impact", the officer noted (in paragraph 7.41) that the Principal Landscape Architect had "reviewed the proposed development and in a response dated 11th August 2015 states that as the application in question was approved in January 2013 (before being quashed in December 2013 on procedural grounds) it would be difficult to justify an objection in principle unless there have been substantial changes in the landscape context since that date". She then (in paragraphs 7.41 to 7.45) set out the salient points in the Principal Landscape Architect's response, and said this (in paragraph 7.45):

> "7.45 As part of this assessment, it is important to consider that the … Principal Landscape Architect does not object to the proposed development outright. Instead, the County Planning Authority's Principal Landscape Architect recommends the use of the previous draft (2014) [section 106 agreement] as a mechanism to control the development."

She went on to say (in paragraph 7.47):

> "7.47 In terms of policy compliance, it is considered that the proposed screening could protect the environment and residential receptors from potential landscape and visual impacts and it is considered that subject to the mitigation measures (controlled through the provisions of a [section 106 agreement]) that the proposed

development is in accordance with 'saved' policy 4/1 part (d) of the NYMLP; Policy SP18 of the adopted Selby Core Strategy Local Plan; 'saved' policy ENV9 of the Selby District Local Plan; the NPPF and NPPG."

In a passage of her report headed "Cumulative impacts (including the relocation of High Pressure Pipeline)", the officer noted Samuel Smith's concern on this question (in paragraph 7.107), but concluded (in paragraph 7.116) that "[it] is not considered that the realigned pipeline would result in any significant cumulative environmental impacts …". Under the heading "Impacts upon the Green Belt" she began by referring to the relevant national and local policy context (in paragraphs 7.117 to 7.119):

"7.117 The Selby Core Strategy Local Plan identifies the application site within the West Yorkshire Green Belt. The Green Belt serves to prevent neighbouring towns from 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.

7.118 From a national planning perspective, the NPPF reaffirms previous Green Belt policy and states that mineral extraction is not considered to be an inappropriate activity within the Green Belt, provided that developments preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. However, Mineral Planning Authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration, an approach which is mirrored within Policy SP13 of the Selby District Core Strategy Local Plan. Generally, when any large-scale development or redevelopment of land occurs within the Green Belt (including mineral extraction), it should, insofar as possible, contribute to the achievement of the objectives for the use of land in Green Belts. This approach applies to large scale developments irrespective of whether they are appropriate development.

7.119 Policy SP3 of the adopted Selby District Local Plan Core Strategy also advocates the protection of Green Belt land stating that, "*planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted*"."

She then turned to Samuel Smith's objection (in paragraph 7.120):

"7.120 Consultation responses from the objector SSOBT stated that the application site falling within the Green Belt is critical in the determination of the proposal and added that "*mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that the proposal both preserves the openness of the Green Belt and doesn't conflict with the purposes of including land within the Green Belt*". The objector also stated that one of the aims of the Green Belt, in "*assisting in urban regeneration will be materially harmed by the development*". The objector from The Old School also states that "*the area is virtually unspoilt Green Belt and is valued by hundreds every week*"."

Her own conclusions followed (in paragraphs 7.121 to 7.126):

"7.121 When considering applications within the Green Belt, in accordance with the NPPF, it is necessary to consider whether the proposed development will firstly preserve the openness of the Green Belt and secondly ensure that it does not conflict with the purposes of including land within the Green Belt.

7.122 It is considered that the proposed development preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Openness is not defined, but it is commonly taken to be the absence of built development. Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into this area of a scale considered to conflict with the aims of preserving the openness of the Green Belt.

7.123 In terms of whether the proposed development does not conflict with the purposes of including land within the Green Belt, the proposed quarrying operations are not considered to conflict with the purposes of including land within the Green Belt. Equally, it is not considered that the proposed development would undermine the objective of safeguarding the countryside from encroachment as it should be considered that the site is in conjunction with an operational quarry which will be restored. The proposed development is a temporary use of land and would also be restored upon completion of the mining operations through an agreed DRMP.

7.124 The purposes of including land within the Green Belt to prevent the merging of neighbouring towns and impacts upon historic towns are not relevant to this site as it is considered the site is adequately detached from the settlements of Stutton, Towton and Tadcaster. It is also important to note that the A64 road to the north severs the application site from Tadcaster.

7.125 As mentioned in the response from SSOBT, one of the purposes of the Green Belt is assisting in urban regeneration which the objector claims will be undermined by the proposed development. Given the situation of the application site, adjacent to an existing operational quarry and its rural nature, and the fact that minerals can only be worked where they are found, it is considered that the site would not, therefore, undermine this aim of the Green Belt.

7.126 The restoration scheme is to be designed and submitted as part of a Section 106 Agreement, it is considered that there are appropriate controls to ensure adequate restoration of the site. Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt, and would, therefore, comply with Policy SP3 and SP13 of the Selby District Core Strategy Local Plan and NPPF."

14. In section 8 of her report, "Conclusion", the officer said, in paragraphs 8.4 and 8.5:

"8.4 It is considered that the proposed screening could protect the environment and residential receptors from potential landscape and visual impacts.

> 8.5 Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt."

Paragraphs 89 and 90 of the NPPF

15. In several cases the meaning and effect of the policies in paragraphs 89 and 90 of the NPPF have been considered by the court.

16. In *Europa Oil and Gas Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin), a case in which mineral extraction was proposed in the Green Belt, Ouseley J. said (in paragraph 64) that "any correct analysis of the proviso to NPPF 90 … has to start from the different premise that such exploration or extraction can be appropriate", and "[the] premise … for a proper analysis is that there is nothing inherent in the works necessary, generally or commonly found for extraction, which would inevitably take it outside the scope of appropriate development in the Green Belt". He added (in paragraph 65) that "some level of operational development for mineral extraction … has to be appropriate and necessarily in the Green Belt without compromising the two objectives", and "[were] it otherwise, the proviso would always negate the appropriateness of any mineral extraction in the Green Belt and simply make the policy pointless". He observed (in paragraph 66) that, "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 building or structures but include their purpose". These concepts, he said, "are to be applied, in the light of the nature of a particular type of development". He went on to say (in paragraph 67) that "[one] factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects". He recalled the truism that "[minerals] can only be extracted where they are found". The "general thrust" of that reasoning was duly endorsed by this court ([2014] EWCA Civ 825: see the judgment of Richards L.J., at paragraphs 35 to 41, in particular paragraph 37).

17. In *Timmins and another v Gedling Borough Council* [2014] EWHC 654 (Admin), where the proposal was for the development of a crematorium and cemetery in the Green Belt, Green J. said (in paragraph 74 of his judgment) that "[any] construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities". But he went further. He stated (in paragraph 78), apparently as general propositions, that "there is a clear conceptual distinction between openness and visual impact", and that "it is … wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact". In the appeal to this court ([2015] EWCA Civ 10), which was unsuccessful, those propositions were not contentious, and the court said nothing about them.

18. In his judgment on the appeal in that case, Richards L.J. said (at paragraph 31) that paragraphs 89 and 90 of the NPPF are "properly to be read as closed lists". Paragraph 89, he said, "states the general rule that the construction of new buildings is inappropriate development and sets out the only exceptions to that general rule", while paragraph 90 "sets out other forms of development (mineral extraction, engineering operations, etc) that are appropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt". There was "no general test that development

is appropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt".

19. In *R. (on the application of Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404, when referring specifically to the broad and basic statement of national Green Belt policy in paragraph 79 of the NPPF, with its emphasis on the "essential characteristics of Green Belts" as "their openness and their permanence", I said that "[the] concept of "openness" here means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact" (paragraph 7 of my judgment). This reflects the essential and enduring function of government policy for the Green Belt in keeping land free from development inimical to its continued protection as Green Belt, even where the visual impact of such development on the openness of the Green Belt may not be unacceptable. It recognizes that Green Belt policy regards most forms of development as, in principle, "inappropriate" in the Green Belt simply because it would be there. But it does not mean that the expression "the openness of the Green Belt", when used in various specific contexts within the development control policies in paragraphs 87 to 90, is to be understood as excluding the visual effects of a particular development on the openness of the Green Belt. That is not so – as this court subsequently explained in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466.

20. In *Lee Valley Regional Park Authority* (at paragraph 18), in the light of previous authority, I set out this understanding of the distinction between development that is, in principle, "inappropriate", and that which is not:

> "18. A fundamental principle in national policy for the Green Belt, unchanged from PPG2 to the NPPF, is that the construction of new buildings in the Green Belt is "inappropriate" development and should not be approved except in "very special circumstances", unless the proposal is within one of the specified categories of exception in the "closed lists" in paragraphs 89 and 90. … The distinction between development that is "inappropriate" in the Green Belt and development that is not "inappropriate" (i.e. appropriate) governs the approach a decision-maker must take in determining an application for planning permission. "Inappropriate development" in the Green Belt is development "by definition, harmful" to the Green Belt – harmful because it is there – whereas development in the excepted categories in paragraphs 89 and 90 of the NPPF is not. …".

21. Later (in paragraph 26), I said:

> "26. That is not to say … that proposals for the erection of agricultural buildings in the Green Belt will escape other policies in the NPPF, and in the development plan, including policies directed to the visual effects of development and the protection of the countryside or the character of the landscape. Policies of this kind will bear not only on proposals for development that is inappropriate in the Green Belt but also on proposals for development that is appropriate. When such policies are applied, the size and bulk of the building, and its "siting, materials [and] design" …, are likely to be important considerations. Establishing the status of a proposed development – inappropriate in the Green Belt or appropriate – remains only the first step for the decision-maker … . As paragraph 88 of the NPPF makes plain, inappropriate development can prove to be acceptable if "very special circumstances" are shown to exist … . And development that is not inappropriate,

because it is within one of the exceptional categories in paragraphs 89 and 90 and thus not potentially harmful to the Green Belt "by reason of inappropriateness", may still be unacceptable for other planning reasons."

22. In *Turner* Sales L.J. said (in paragraphs 14, 15 and 16 of his judgment):

> "14. The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by [counsel]. 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 … 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. … 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."

Sales L.J. referred to the first instance judgment in *Timmins*, and said (in paragraph 18) that Green J. had gone too far in stating the two propositions I have mentioned. He went on to say (in paragraphs 23 and 25):

> "23. At [paragraph 22 of his judgment in *R. (on the application of Heath and Hampstead Society) v Camden London Borough Council* [2007] EWHC 977 (Admin)] Sullivan J said, "The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective". Since the concept of the openness of the Green Belt has a spatial or physical aspect as well as a visual aspect, that statement is true in the context of the NPPF as well, provided it is not taken to mean that openness is *only* concerned with the spatial issue. Such an interpretation accords with the guidance on

> interpretation of the NPPF given by this court in [*Timmins*] and [*Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386], to the effect that the NPPF is to be interpreted as providing no less protection for the Green Belt than PPG 2. …
>
> …
>
> 25. This [i.e. paragraph 37 of Sullivan J.'s judgment in *Heath and Hampstead Society*] remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from [paragraph 87] of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension.
>
> 26. … At any rate, Sullivan J does not say that the openness of the Green Belt has no visual dimension. Hence I think that Green J erred in *Timmins* in taking the *Heath and Hampstead Society* case to provide authority for the two propositions he sets out at [paragraph 78] of his judgment, to which I have referred above."

Sales L.J. said that the inspector in *Turner* had been "entitled to take into account the difference in the visual intrusion on the openness of the Green Belt as he did …" (paragraph 27).

Issue (1) – the impact of the development on the visual openness of the Green Belt

23. For Samuel Smith and Oxton Farm, Mr Peter Village Q.C. submitted that although the officer had referred in her report to the likely effects of the development on the landscape and to its visual impacts more generally, she had not done so in considering the visual effect of the development on the "openness of the Green Belt" as such, and that this failure was fatal to the county council's grant of planning permission.

24. The judge had rejected the challenge on this ground on the basis that the county council was not required in law to take into account those impacts in considering the openness of the Green Belt (paragraphs 50 to 66 of his judgment), and that, in any event, the officer's conclusion, and the members', would have been no different if she had (paragraphs 67 and 68). When referring to the Court of Appeal's decision in *Turner*, the judge said that the court had held "not that [the inspector] was *obliged* to take visual impact into account, but only that, in the circumstances of the particular case, he was *entitled* to do so", and "nowhere does Sales LJ suggest that a decision-maker is required to take into account visual impact in every Green Belt case in which openness is an issue" (paragraph 51). He did not suggest that, on a fair reading of the officer's report, she did take visual impact into account when considering the "openness of the Green Belt". He concluded that the officer "did not err in not taking into consideration any potential visual impact from the development" on the openness of the Green Belt (paragraph 65).

25. Mr Village submitted that the judge's analysis was incorrect. The county council had to confront the question of whether the proposed development would, in visual as well as spatial terms, preserve the "openness of the Green Belt" and thus satisfy the general proviso

in paragraph 90 of the NPPF. It failed to do that. Guided by the officer's advice, the members had assumed that the effect of the development on the visual openness of the Green Belt was not, and could not be, a relevant consideration in establishing whether the proposal was for "inappropriate" development in the Green Belt. But in this case it plainly was. This would be an extension of six hectares to an existing quarry of some 25 hectares. As one would expect for a development of this nature and this scale, and as the officer had accepted, there would be considerable landscape and visual impacts. From the Principal Landscape Architect's comments it was clear that those impacts could not be fully mitigated. But they were not brought into account in the officer's consideration of the effect of the development on the "openness of the Green Belt". They should have been. Under the policy in paragraph 90, they were an "obviously material" consideration (see *CREEDNZ Inc. v Governor General* [1981] 1 N.Z.L.R. 172). Had they been considered, the only reasonable conclusion for the committee would have been that the development would not preserve the openness of the Green Belt, and that this was therefore "inappropriate development", which would have had to be justified by "very special circumstances". Samuel Smith's planning consultant had made this point in letters of objection to the county council dated 23 October 2014 and 19 August 2015. But, submitted Mr Village, even if this were a case in which the effect of the development on the visual openness of the Green Belt could be disregarded in applying the policy in paragraph 90, the officer would have had to explain why. And she did not. This, in itself, was a fatal flaw. The judge was also wrong to conclude that the decision would have been no different if the effects of the development on visual openness had been considered.

26. Those submissions were countered by Ms Nathalie Lieven Q.C. for the county council, and Mr Jonathan Easton for Darrington Quarries.

27. Ms Lieven stressed the fundamental principle that matters of planning judgment are for the decision-maker, not the court. Mr Village's argument was, she submitted, an attack on the officer's planning judgment. The committee report should be read fairly, and as a whole. The officer did not take visual impact into account when considering the likely effect of the development on the "openness of the Green Belt". But at that stage she did not have to repeat the advice she had already given on landscape and visual impact. As she explained in paragraphs 7.37 to 7.47 of her report, in her planning judgment – which the members obviously accepted – there would be no material harm to the landscape and no other unacceptable visual impacts. When she came to consider the "openness of the Green Belt" she was concerned only with the likely effects on physical openness.

28. The advice in paragraphs 7.117 to 7.126 of the officer's report was, Ms Lieven submitted, legally impeccable. The officer did not misconstrue the policy in paragraph 90 of the NPPF. In paragraph 7.118 she identified "precisely the correct test", and in paragraph 7.122 she applied it properly – just as Ouseley J. had indicated in *Europa Oil*, with the endorsement of this court. Whether the effects of a development on the openness of the Green Belt were significant enough to disqualify the proposal from the status of "not inappropriate" development was a matter for the planning judgment of the decision-maker – which did not have to include, in every case, a consideration of the effects of the development on the visual openness of the Green Belt. This understanding of the policy was consistent with what Sales L.J. said in paragraph 15 of his judgment in *Turner*. Applying relevant local planning policy – in particular Policy SP3 and Policy SP13 – the officer had concluded that there was no basis for rejecting the proposal on the grounds of landscape or visual impact. That conclusion formed the backdrop to her conclusion, in paragraph 7.126 of her report, that the development "would not materially harm the character and openness of the Green

Belt, and would, therefore, comply with Policy SP3 and SP13 of the [local plan] and NPPF" – a conclusion she repeated in paragraph 8.5.

29. Ms Lieven also submitted, however, that the court should not hesitate to exercise its discretion, under section 31(2A) of the Senior Courts Act 1981, to uphold the county council's decision. As the judge concluded (in paragraph 67 of his judgment), the decision would have been the same if the alleged error had not been made.

30. Mr Easton adopted Ms Lieven's submissions. Under the policy in paragraph 90 of the NPPF, he submitted, development for minerals extraction was, in principle, "not inappropriate" in the Green Belt. So long as the test in the preamble in paragraph 90 was properly understood by the decision-maker, as it was here, its application was "quintessentially a matter of planning judgment". It did not inevitably require a consideration of the effect of a development on the visual openness of the Green Belt in every such case. But anyway, in the light of what Sales L.J. said in paragraph 15 of his judgment in *Turner*, "visual openness" was inherent in the purposes of the Green Belt, and it followed that if the purposes of the Green Belt were properly considered by the decision-maker, there must have been a proper consideration of "visual openness" in that exercise.

31. On discretion, Mr Easton submitted that, in conclusions not the subject of any criticism in these proceedings, the officer had found that the proposal complied with policies SP13 and SP18 of the local plan. Policy SP13 is concerned with, among other things, the avoidance of "harm [to] the character of the area", Policy SP18 with, among other things, the protection of the landscape. It would have been a complete answer to Mr Village's argument, Mr Easton submitted, if those conclusions, and the assessment on which they were based, had simply been replicated in the part of the report where she dealt with the effect of the development on the openness of the Green Belt. At worst, therefore, if the court had to exercise its discretion, the only sensible conclusion would be that the committee's decision would have been the same.

32. In my view there is force in Mr Village's argument here. On a fair reading of the officer's report as a whole, one is left, I think, with the troubling impression that the policy in paragraph 90 of the NPPF was misunderstood and misapplied, and the conclusion, therefore, that the county council's decision was unlawful and cannot be allowed to stand.

33. Ms Lieven was, of course, right to emphasize that the court must not intrude on the decision-maker's exercise of planning judgment, except where the principles of public law compel it to do so. That is a point repeatedly stressed by this court (see, for example, my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraphs 9 to 14). Ms Lieven was also right to remind us of this court's recent warnings against excessive legalism infecting the planning system (see my judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraph 7). And she was right to submit that an officer's report to committee must be read with reasonable benevolence (see my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 42). However, none of those familiar principles detracts from the need for the court to intervene where a planning decision has been made by a local planning authority on the basis of a misunderstanding and misapplication of national planning policy.

34. The approach to be taken to the interpretation of NPPF policy is well established and needs no elaboration here. Such statements of policy should be interpreted objectively in

accordance with the language used, read always in its proper context, and not as if they were statutory or contractual provisions (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 18 and 19). It is necessary to distinguish between issues of interpretation, appropriate for judicial analysis, and issues of planning judgment in applying that policy; and not to elide the two (see Lord Carnwath's judgment in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26).

35. Here, in my view, the crucial question is whether the officer, with whom it may be assumed the committee agreed, grasped the true meaning of the preamble in paragraph 90 of the NPPF. I do not think she did.

36. As the judge recognized (in paragraphs 14 and 15 of his judgment), the policies in paragraphs 89 and 90 of the NPPF are differently framed. The policy in paragraph 89, which is concerned with "new buildings" in the Green Belt, and defines six categories of such development that are not to be regarded, in principle, as "inappropriate in the Green Belt", does not contain a generic qualification or proviso applicable to all six categories. The first category, "buildings for agriculture and forestry", is unqualified. The other five are all subject to some qualification or proviso, two of them – the second and the sixth – by reference, in part, to "the openness of the Green Belt". By contrast, the policy in paragraph 90, which is concerned with "[certain] other forms of development" that "are also not inappropriate in Green Belt" contains, in its preamble, a proviso that applies to all five categories of development to which it relates. There are two separate elements to that proviso. The first is the preservation of "the openness of the Green Belt"; the second is the avoidance of conflict with "the purposes of including land in Green Belt". The focus in this case is on the first of those two elements.

37. The concept of "the openness of the Green Belt" is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.'s observations in *Turner* to the effect that the concept of "openness" as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs. Different factors are capable of being relevant to the concept when it is applied to the particular facts of a case. Visual impact, as well as spatial impact, is, as Sales L.J. said, "implicitly part" of it. In a particular case there may or may not be other harmful visual effects apart from harm in visual terms to the openness of the Green Belt. And the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt.

38. As a general proposition, however, it seems to me that the policy in paragraph 90 makes it necessary to consider whether the effect of a particular development on the openness of the Green Belt can properly be gauged merely by its two-dimensional or three-dimensional presence on the site in question – the very fact of its being there – without taking into account the effects it will have on the openness of the Green Belt in the eyes of the viewer. To exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic. The policy in paragraph 90 does not do that. A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as the spatial effects. Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects on the openness of the Green Belt, and, if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.

39. The first part of the question posed by the preamble in paragraph 90 – whether the development would "preserve" the openness of the Green Belt – cannot mean that a proposal can only be regarded as "not inappropriate in Green Belt" if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful – understanding the verb "preserve" in the sense of "keep … safe from harm" – rather than "maintain (a state of things)" (Shorter Oxford English Dictionary, 4th edn.). There may be cases in which a proposed development in the Green Belt will have no harmful visual effects on the openness of the Green Belt. Indeed, there may be cases in which development will have no, or no additional, effect on the openness of the Green Belt, either visual or spatial. A good example might be development of the kind envisaged in the fourth category of development referred to in paragraph 90 of the NPPF – "the re-use of buildings provided that the buildings are of permanent and substantial construction". But development for "mineral extraction" in the Green Belt, the category of development with which we are concerned, will often have long-lasting visual effects on the openness of the Green Belt, which may be partly or wholly repaired in the restoration phase – or may not. Whether the visual effects of a particular project of mineral working would be such as to harm the openness of the Green Belt is, classically, a matter of planning judgment.

40. In my view, therefore, when the development under consideration is within one of the five categories in paragraph 90 and is likely to have visual effects within the Green Belt, the policy implicitly requires the decision-maker to consider how those visual effects bear on the question of whether the development would "preserve the openness of the Green Belt". Where that planning judgment is not exercised by the decision-maker, effect will not be given to the policy. This will amount to a misunderstanding of the policy, and thus its misapplication, which is a failure to have regard to a material consideration, and an error of law.

41. That such an error occurred in this case is, I think, clear.

42. The proposed development was a substantial extension to a large existing quarry, with a lengthy period of working and restoration. As the Principal Landscape Architect recognized in her response to consultation, and the officer acknowledged without dissent in her report, there would be permanent change to the character of the landscape (paragraphs 4.109 and 4.115 of the report). The "quality of the Locally Important Landscape Area as a whole would be compromised" (paragraph 7.41). The exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so (paragraphs 4.111 and 7.42). Long distance views could be cut off by the proposed bunding and planting. Agricultural land would ultimately be replaced by a "deep lower level landscape" of grassland (paragraph 4.113). The "character and quality" of the landscape would be "permanently changed" and the "impact cannot be described as neutral" (paragraphs 4.115 and 7.44). Concluding her assessment of "Landscape Impact", the officer was satisfied that the "proposed screening could protect the environment and residential receptors from potential landscape and visual impacts", and that with the proposed mitigation measures the development would comply with national and local policy (paragraphs 7.47 and 8.4).

43. That assessment did not deal with the likely effects of the development on the openness of the Green Belt as such, either spatial or visual. It does show, however, that there would likely be – or at least could be – effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working

(paragraph 4.111 of the officer's report). The officer's conclusion overall (in paragraph 7.47) was, in effect, that the proposed screening would be effective mitigation, without which the development would not be acceptable. But this was not followed with any discussion of the harmful effects that the screening measures themselves might have on the openness of the Green Belt.

44. The officer's assessment of the development's likely effects on the openness of the Green Belt is to be found in the section of her report headed "Impacts upon the Green Belt". It is clear from paragraph 7.121 that she understood the need, under the policy in paragraph 90 of the NPPF, to consider both the likely effects of the proposed development on the openness of the Green Belt and also whether it would conflict with the purposes of including land in the Green Belt. The first of those two questions she considered in paragraph 7.122, the second in paragraphs 7.123 to 7.125, her conclusion following in paragraph 7.126. She did not say, in so many words, that the development was "not inappropriate" in the Green Belt, but that is plainly what she did conclude. There was no consideration of "very special circumstances" to justify development that was "inappropriate".

45. So it is to paragraph 7.122 that one must look, at least in the first place, to see whether the officer considered the relevance of visual impact to the effect of this development on the openness of the Green Belt. Did she confront this question, and bring the committee's attention to it? I do not think she did. She neither considered, in substance, the likely visual impact of the development on the openness of the Green Belt nor, it seems, did she ask herself whether this was a case in which an assessment of visual impact was, or might be, relevant to the question of whether the openness of the Green Belt would be preserved. Indeed, her observation that openness is "commonly taken to be the absence of built development" seems deliberately to draw the assessment away from visual impact, and narrow it down to a consideration of spatial impact alone. And the burden of the assessment, as I read it, is that because the further extraction of limestone would take place next to the existing quarry, the "scale" of the development would not fail to preserve the openness of the Green Belt. This seems a somewhat surprising conclusion. But what matters here is that it is a consideration only of spatial impact. Of the visual impact of the quarry extension on the openness of the Green Belt, nothing is said at all. That was, it seems to me, a significant omission, which betrays a misunderstanding of the policy in paragraph 90 of the NPPF.

46. One must not divorce paragraph 7.122 from its context. The report must be read fairly as a whole. The question arises, therefore: did the officer address the visual impact of the development on the openness of the Green Belt in the remaining paragraphs of this part of her report, or elsewhere? I do not think she did. Her consideration of the effects of the development on the "purposes of including land in the Green Belt", in paragraphs 7.123 to 7.125, is unexceptionable in itself. However, she did not, in these three paragraphs, revisit the question of harm to the openness of the Green Belt, either in spatial or in visual terms. The conclusion to this part of the report, in paragraph 7.126, is that the "character and openness of the Green Belt" would not be materially harmed by the development – a conclusion repeated in paragraph 8.5 – and that the proposal would therefore comply with Policy SP3 and Policy SP13 of the local plan and the NPPF. But I cannot accept that this conclusion overcomes the lack of consideration of visual impacts on "openness" in the preceding paragraphs. It seems to treat "character" as a concept distinct from "openness". Even if these two concepts can be seen as related to each other, and however wide the concept of "character" may be, there is no suggestion here that the officer was now providing a conclusion different from that in paragraph 7.122, or additional to it.

47. The same may also be said of the officer's earlier discussion of "Landscape Impact" in paragraphs 7.41 to 7.47. Her assessment and conclusions in that part of her report are not imported into paragraph 7.122, or cross-referred to as lending support to her conclusion there. As the judge said (in paragraph 26 of his judgment), the officer's conclusion in paragraph 7.47 was that "with the proposed mitigation, the potential adverse landscape and visual impact … would be acceptable in the sense that it was outweighed by other factors such as the social and economic benefits of continued mineral extraction on site: a point expressly minuted as having been made by the Head of Planning [Services] at the 9 February 2016 Committee meeting". This point might have been relevant to an argument on "very special circumstances" justifying "inappropriate development" in the Green Belt, but this is not how it was presented to the committee. Nor was it carried into the officer's discussion of the effect of the development on the openness of the Green Belt, and the question of whether it was or was not "inappropriate" development, requiring such justification.

48. The officer's final "Conclusion" in section 8 takes one no further. No other passage of the report has been relied on as providing advice to the members on this point.

49. I can only conclude, therefore, that the advice given to the committee by the officer was defective. It was defective, at least, in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in paragraph 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the "openness of the Green Belt", and hence to the important question of whether the proposal before them was for "inappropriate" development in the Green Belt – and, indeed, in implying that the opposite was so. She ought to have advised the members that they were entitled to take visual impact into account when determining that issue. One can go further. On the officer's own assessment of the likely effects of the development on the landscape, visual impact was quite obviously relevant to its effect on the openness of the Green Belt. So the consideration of this question could not reasonably be confined to spatial impact alone.

50. Even the first of those two defects, on its own, shows a failure to understand national planning policy properly and to apply it lawfully. The officer's approach was inconsistent with Sales L.J.'s analysis in *Turner* (in particular, in paragraphs 14, 15, 16, 23, 25 and 26). She adopted an overly narrow conception of the "openness of the Green Belt", and, in consequence, failed to exercise the planning judgments required by paragraph 90 of the NPPF. In my view, therefore, the advice in her report was significantly misleading (see paragraph 42(3) of my judgment in *Mansell*).

51. It may be that the officer was herself led into error by the approach taken at first instance in *Timmins*, especially the two propositions later disapproved by this court in *Turner* – that "there is a clear conceptual distinction between openness and visual impact", and that "it is … wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact". When the application for planning permission went before the committee on 9 February 2016, judgment had yet to be given by this court in *Lee Valley Regional Park Authority* (on 22 April 2016) and *Turner* (on 18 May 2016). It is understandable, therefore, that the officer may have relied, mistakenly, on the misapprehension of NPPF policy in *Timmins*. We need not speculate about that. Whatever the reason may be, the officer's approach was at fault, and her error was not corrected with any further advice to the committee before planning permission was eventually granted on 22 September 2016.

52. As for discretion, I cannot accept the submissions made by Ms Lieven and Mr Easton. The question on which the county council erred in law was pivotal in its decision. I do not think one can be confident at all that if the effect of the development on the "openness of the Green Belt" had been properly considered in the officer's report, the committee's decision would likely have been the same as it was. It might very well have been different. If the conclusion had been that, because of its visual impact, the development would damage the "openness of the Green Belt", and that this was, therefore, "inappropriate" development in the Green Belt, planning permission for it could not have been granted unless "very special circumstances" had been demonstrated. The officer's report contained no alternative assessment on the basis that, contrary to her view, the proposal was "inappropriate" development, and no advice to the members on the question of "very special circumstances" if this were so. In these circumstances, as Mr Village submitted, it would be wrong for the court to exercise its discretion to save the planning permission.

53. In the light of those conclusions, I can take the remaining issues more shortly.

Issue (2) – the absence of "built" development as a criterion of "openness"

54. Mr Village submitted that the officer misled the members with her advice, in paragraph 7.122 of her report, that the term "openness" was commonly taken to mean the absence of "built" development, thus leading them to think that, under national policy for the Green Belt, quarrying was, in principle, less harmful to the openness of the Green Belt than the erection of buildings.

55. Ms Lieven and Mr Easton submitted that this complaint was unreal. The officer did not ignore the likely effect of the development on the openness of the Green Belt. She quite plainly accepted that this was an issue the committee had to address. Had she thought that the extraction of minerals was exempt from such assessment because it was not "built" development, she would not have done that.

56. It seems to me that Mr Village's argument here probably goes too far. It is true that the way in which the officer put her advice in paragraph 7.122 – as well as narrowing the concept of openness to a consideration purely of spatial impact, which is enough to vitiate her assessment and the committee's decision – can also be read as confining that concept to the effects of "built" development alone. This too was in error, at least in the sense that it was, on its face, inaccurate and potentially misleading advice. And it is certainly of a piece with the officer's mistaken concentration on the spatial aspect of openness to the exclusion of the visual.

57. But I think one might take a more generous view, which is also perhaps more realistic. The intended emphasis here may have been simply on the absence of development, rather than on the absence of "built" development as such. Although the officer did not refer explicitly to the policy in paragraph 90 of the NPPF, it seems clear from paragraphs 7.121 to 7.126 of her report that she was purporting to apply that policy. She did not suggest that the proposed development of mineral extraction fell beyond the reach of the policy, so that its effect on the "openness of the Green Belt" could be put entirely to one side. Read together with paragraph 7.121 of the report, paragraph 7.122 cannot be said to steer the committee away from considering the effect of the development on the "openness of the Green Belt" altogether, or necessarily to treat "mineral extraction" in the Green Belt as subject to a less

stringent policy than "built" development. Nor can it be said that the officer neglected the effects of the development on the purposes of including land in the Green Belt.

58. In my view, therefore, this mistake in the officer's advice would not have been enough on its own to warrant the quashing of the planning permission. If anything, it merely compounds the error that was fatal to the decision – which was to limit the consideration of the effects of the proposed development on the "openness of the Green Belt" to spatial impact and nothing more.

Issue (3) – inconsistency in paragraphs 7.122 and 7.126 of the officer's report

59. Mr Village submitted that the officer's conclusion in paragraph 7.122 of her report, that the "proposed development preserves the "openness" of the Green Belt", was irreconcilable with her conclusion in paragraph 7.126, repeated in paragraph 8.5, that "the proposed development would not materially harm the character and openness of the Green Belt" (my emphasis). The former conclusion, said Mr Village, implies a finding of no harm to "openness", the latter a finding of some, though not material, harm. This was a significant inconsistency. A finding of any harm to "openness" must lead to the conclusion that the proviso in paragraph 90 of the NPPF was not met.

60. I cannot accept this argument. As Ms Lieven and Mr Easton submitted, it subjects the officer's report to an overly semantic analysis (see paragraph 42(2) of my judgment in *Mansell*). There was nothing inconsistent between the two conclusions. Assume for the moment that she did understand the concept of the "openness of the Green Belt" in paragraph 90 – which, as I have explained, I do not think she did. It might then have been open to her, in theory, to find that the effect of the development on openness, whilst appreciable, would nevertheless "preserve" it. As I have said, the concept of preserving "the openness of the Green Belt" in paragraph 90 is not, and cannot be, synonymous with the concept of no physical change. Otherwise, as the court recognized in *Europa Oil*, the policy would be unworkable. Once this is grasped, it is not hard to see why the officer should have expressed her conclusions in paragraphs 7.122 and 7.126 as she did. There is no real ambiguity in the advice she was giving in those two paragraphs. In both places she was effectively saying that in her view, despite the reduction in the "openness of the Green Belt", the development would not fail to "preserve" it. In this respect, therefore, the development was not "inappropriate" under the policy in paragraph 90. This might have been, in itself, a surprising conclusion, even untenable. But it did not involve a contradiction in the officer's advice, or a misunderstanding of the verb "preserve" as it is used in the policy.

Issue (4) – development adjoining the existing quarry

61. Mr Village submitted that the officer's advice suffered from the same defect as was found by Sullivan J. in *Heath and Hampstead Society* (at paragraph 37) – that "[the] approach adopted … runs the risk that Green Belt … will suffer the death of a thousand cuts", and that "[while] it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual – possibly very modest – proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt …". That phenomenon, Mr Village contended, was overlooked in this case. In concluding, in paragraph 7.122 of her report, that "because the

application site immediately abuts the existing operational quarry", the development would not "conflict with the aims of preserving the openness of the Green Belt", the officer took into account an immaterial consideration.

62. I am unable to accept that submission. As Ms Lieven and Mr Easton submitted, the officer was entitled to take into account the fact that the proposed working of limestone would not be a new quarry, but the extension of an existing one, which had been operating for a long time. This was not an immaterial consideration. It was relevant to the development's effect on the "openness of the Green Belt". I do not think the officer was ignoring the cumulative effect of the quarry and the extension now proposed, or sanctioning an incremental erosion of openness – the mischief of "death [by] a thousand cuts" to which Sullivan J. referred in *Heath and Hampstead Society*. I think she was simply saying that, in the circumstances, the "scale" of the proposed development would not constitute an unacceptable reduction of openness. As I have said, this seems a somewhat surprising conclusion – to say nothing more. How it could be said that mineral extraction on this "scale" would "preserve" the openness of the Green Belt, whether or not as an extension to an existing quarry, is by no means clear – though it might conceivably be so. But leaving that aside, it can fairly be said that, in basing her conclusion solely on the "scale" of the development, the officer was restricting herself to its spatial impact on openness, which was to misapply NPPF policy. Whether her conclusion was also unreasonable, even as it stood, we do not have to decide.

Conclusion

63. For the reasons I have given, I would allow this appeal, and order that the county council's grant of planning permission be quashed.

Lord Justice Lewison

64. I agree.