

Exceptional living in the green belt in extraordinary times

We should judge low impact development in the Green Belt as a wholly exceptional case rather than rely on attempting to prove that "very special circumstances" exist for its justification argues Mark Child



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Many months do not seem to pass without a significant national or international event. Firstly, the UN Intergovernmental Panel on Climate Change has stated that global net human-caused emissions of carbon dioxide would need to fall by about 45 per cent from 2010 levels by 2030 for global warming to be kept to a maximum of 1.5C, beyond which irreversible change will be caused. In order to achieve such reductions "rapid and far reaching" transitions in land, energy, industry, buildings, transport and cities will be required.¹ Secondly, the UK is no longer a member of the European Union and its transition period will end on 31 December 2020. This exit will transform the UK agricultural sector and most likely affect the country's food supply, including its cost. And thirdly, the international community is now facing an unprecedented health and economic crisis from COVID-19 that is challenging our ability to continue everyday life and amongst many other things has exposed our reliance on and vulnerability to distant supply chains.

These international disruptions provide an opportunity to revisit English assumptions regarding land-use planning and "business as usual", and to recognise that 'land use management issues at different scales need different answers'² In this article, I will demonstrate in particular how the Green Belt can be used to promote small-scale low impact development as an exemplar model of sustainable living that can combine available technologies to significantly reduce carbon emissions on the domestic level, whilst also realising social, economic and environmental benefits.

For the purpose of this article I will be supplementing Simon Fairlie's definition of low impact development meaning "development which, by virtue of its low or benign environmental impact, may be allowed in locations where conventional development is not permitted"³ to also incorporate the principles of ecological farming, which "relies on and protects nature by taking advantage of natural goods and services, such as biodiversity, nutrient cycling, soil regeneration and natural enemies of pests, and integrating these natural goods into agro-ecological systems that ensure food for all today and tomorrow"⁴.

Green Belt Policy and its inevitable review

The main aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open (para. 133 National Planning Policy Framework) ("NPPF"), and any alterations should only occur in exceptional circumstances that are fully evidenced and justified (para.136 NPPF). However, the recent Inspectors' Report on the draft London Plan recommended that the Mayor of London lead a strategic and comprehensive

review of the Green Belt as part of the next plan's review.⁵ In addition, there is a long awaited 'Planning Reform White Paper' from the government, and briefings have hinted at an overhaul of the current planning system. Speculation has also suggested that the White Paper will contain fundamental reform including a Green Belt review.⁶

Whilst numerous signs therefore point to a renewed focus on the Green Belt, and not only around London (there are 14 separate English Green Belts covering 13 per cent of England)⁷, it does not necessarily mean that this will be at the cost of the environment. Any review of Green Belt policy is going to be controversial, especially as many rural communities aggressively oppose such development and have the means to support their opposition. It is understandable that rural communities wish to protect the openness of such land for a myriad of reasons, particularly so against large-scale development that has the potential to undermine the objective of the Green Belt in preventing urban sprawl. But this entrenched position can also undermine progressive and environmentally inspiring proposals that need to be embraced at a time of climate change, food insecurity and significant barriers to new rural housing.

The limited options for new buildings in the Green Belt

Current government policy, guidance and planning legislation on the whole arguably exacerbate inaccessibility to rural housing due to restrictions on supply thereby also creating barriers to entry for low impact development small-holders.

1. National Planning Policy Framework and case law on development in the Green Belt

Paragraph 134 of the NPPF confirms that the Green Belt serves the following purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Where Green Belts exist there is a duty on local planning authorities to "plan positively to enhance their beneficial use, such as looking for opportunities to provide access... to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land" (para. 141).

Inappropriate development is determined as being harmful to the Green Belt, and such planning applications should not be approved except in very special circumstances (para.143). Whilst



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the construction of new buildings in the Green Belt will often be considered "inappropriate" there is an exception for agricultural buildings (para. 145(a)). The case of *R. (on the application of Lee Valley Regional Park Authority) v Epping Forest DC*⁹ confirmed that if buildings amounted to appropriate development within the NPPF (in this case for agricultural purposes) they were not to be deemed harmful to the Green Belt and its principal characteristic of openness. However, buildings for an agricultural purpose are clearly distinct from a residential dwelling that will be required for the farm's inhabitants, and therefore will be outside of this exception.

When considering planning applications, local planning authorities are required to give substantial weight to any Green Belt harm. For "very special circumstances" to exist the potential harm by reason of inappropriateness together with any other harm (see *Secretary of State for Communities and Local Government, Reigate and Banstead Borough Council, Tandridge District Council v Redhill Aerodrome Limited*⁹) must be clearly outweighed by other considerations (para.144), which will be determined according to the decision maker's planning judgment.

One of the many traveller site appeals, *Connors v Secretary of State for Communities and Local Government*¹⁰, demonstrates that even limited harm from a temporary grant of permission can be treated as outweighing all other factors such as the unlikelihood of alternative non-Green Belt traveller sites being available, the lack of a 5 year land supply for traveller sites, and

the engagement of Article 8 rights of both children and families.

Furthermore, as was held by the Court of Appeal in *Turner v Secretary of State for Communities and Local Government*¹¹, when considering the impact of a proposal on "openness", the decision maker is rightly entitled to separately evaluate issues of volume and visual impact. *Turner* involved a proposal to replace a static caravan and yard from which he ran his commercial vehicle business with a three bedroom bungalow. The Inspector found, which the court accepted as a proper approach, that although the volume of the bungalow might be the same as that of the caravan and yard lorries, the impact of the two developments could not be judged simply by measured volume; there was a difference between a permanent physical structure in the form of a bungalow and a shifting body of lorries. It was therefore decided that the bungalow would have a greater visual impact on the openness of the Green Belt than did the existing development. The court held that when assessing "openness", it was not limited to measuring the volume of the existing and proposed structures on the site; rather visual impact was implicitly part of the concept of openness.

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2. National Planning Policy Framework and legal duty relating to the environment

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>>> The Climate Change Act 2008 establishes a legally binding target to reduce the UK's greenhouse gas emissions by at least 80 per cent in 2050 from 1990 levels. As part of that effort, local planning authorities are under a statutory duty to include in their Local Plans "policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change".¹²

National policy support for low impact development can be found in section 14 of the NPPF, which encourages the planning system to support the transition to a low carbon future, helping reduce greenhouse gas emissions, and improving resilience (para.148), and it is recognised that even small-scale projects can provide a valuable contribution to cutting emissions (para.154(a)). Nevertheless, when located in the Green Belt, paragraph 147 states that elements of renewable energy projects will comprise inappropriate development, and so very special circumstances will still be required, such as the wider environmental benefits associated with increased production of energy from renewable sources.

And finally, Section 15 of the NPPF promotes the conservation and enhancement of the natural environment in terms of biodiversity, soil health and improving degraded land, with habitats and biodiversity benefiting from its own subsection (para.174-177). This is reinforced in the Green Belt by paragraph 141 that places a duty on local planning authorities to positively plan for its beneficial use including the enhancement of biodiversity or to improve damaged land. However, for all the environmental improvements and climate change mitigation and adaption these are still insufficient achievements if a new building that is of low impact design can essentially be seen from a public vantage point and the Green Belt's openness is diminished.

A worthy exception to new buildings in the Green Belt

There is understandably a fear of releasing significant parts of the Green Belt for development, but it is also clear that if we continue living in the same manner as the first two decades of this new century, we will not have made any meaningful contribution to creating a sustainable future. Therefore at a time when there are few affordable rural properties, and even fewer small-holdings that encourage environmental stewardship, the government should as part of its Green Belt review introduce

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a further exception to new buildings in the Green Belt, namely low impact development.

The Welsh example

Inspiration can be taken from the Welsh government that has been promoting the principles of low impact development in the open countryside for nearly ten years as part of its "One Wales: One Planet" Sustainable Development Scheme. Wales adopted this bold planning policy for One Planet Developments ("OPD"), and through Technical Advice Note 6 "Planning for Sustainable Rural Communities" ("TAN 6") sets out the rules for an OPD.

OPD is an exemplar of sustainable development on a small-scale, at a time when the term is often over-used and devoid of any true meaning. OPDs can be located within or adjacent to existing settlements or situated in the open countryside, but where they are located in the open countryside they should over a reasonable length of time (no more than 5 years) provide for the minimum needs of the inhabitants in terms of income, food, energy and waste assimilation. Where this cannot be demonstrated, they should be considered contrary to policy, which seeks to control development in the open countryside. The Ecological Land Co-operative (ELC) has advanced this approach within England with a temporary planning permission in Mid-Devon (granted on appeal) that has recently been made permanent¹³, however this is notably outside of the Green Belt and ELC retains the freehold.

Facilitating low impact developments in England

Local planning authorities in England generally have much more acute problems of rural housing affordability than Wales, with house prices less affordable in predominantly rural areas than in predominantly urban areas (excluding London). However, some low impact development housing prototypes are being put forward at a maximum price of £75,000,¹⁴ which when combined with average agricultural land prices in the UK of £6,162k (pasture) to £8,245k (arable)

per acre, creates the possibility for its inhabitants, without overriding financial debt, to produce for themselves and supply their surplus to the local community without damaging the land.

London has a particular problem when it comes to food-growing spaces as it is heavily constrained by the density of development, competing land use interests and the cost of land. Whilst a

high proportion of the Green Belt is classified as being in agricultural production, farming in the Green Belt is often seen as a marginal economic activity that faces social problems of fly tipping, vandalism and trespassing; this is supported by the number of farm holdings within the Green Belt declining. Thus there is a special case to be made for rejuvenating London's Green Belt through inspirational low impact developments that supply local communities with surplus produce, whilst offering public access and education to visitors, increase biodiversity and act as environmental stewards against anti-social behaviour.

Legislative and policy support for recognising low impact developments as an additional exception to new buildings in the Green Belt can be found in the government's climate change duty and section 14 of the NPPF. Planning applications for low impact developments would showcase an alternative style of living that would assist in the transition to a low carbon future through decentralised renewable energy generation, reduced consumption and waste and a reduction in greenhouse gases. Paragraph 145 of the NPPF should recognise low impact development as a valid exception to new buildings in the Green Belt and that as a result is appropriate development on the basis that a new dwelling:

1. could be limited to a certain size, which in itself could reduce its carbon footprint and the impact it has on openness;
2. achieves increased biodiversity and remediates land degradation;
3. offers a minimum number of access days to the general public (thereby increasing access to the rural areas);
4. makes a positive contribution to the community, for example strengthening local economies, selling surplus produce to local customers, and offering educational visits for school children;
5. reduces the inhabitants' carbon footprint to a certain level either by utilising ecological footprint analysis or another objective method;
6. meets a minimum amount of the inhabitants' food, energy, income and waste requirements; and
7. meets the objectives set out in its transport plan.

Planning applications would need to be supported by a robust and evidence-based management plan produced by a competent person in order to measure the outcome-related objectives numbered above and linked through a planning agreement. In order to provide any meaningful enforcement consequence and sufficient motivation to protect against an abuse of this exception to new buildings in the Green Belt, planning permission would only be granted on a temporary basis for five years and within that time the plan's minimum objectives would need to have been met otherwise the building(s) would need to be removed.



On this basis low impact developments would still contribute to the purposes of the Green Belt as it would not encourage urban sprawl or the merging of nearby towns, and by cultivating farm land it would as a consequence prevent the countryside from being encroached upon by other land uses (para.134 NPPF). That would leave the one compromise of accepting that a limited sized farmhouse and ancillary farm buildings would be an acceptable impact on the openness of the Green Belt; an issue that CPRE and Natural England's joint Green Belt report¹⁵ fails to tackle despite identifying many of the opportunities discussed here. However, we now live in precarious times with potential climate collapse and a fragile and increasingly insecure food supply and limited rural livelihoods. We should therefore judge low impact development in the Green Belt as a wholly exceptional case and provide applicants with sufficient certainty of being an excepted use within the NPPF if they are able to meet their management plan's objectives rather than rely on the seemingly futile route of attempting to prove that "very special circumstances" exist for justifying any impact on the openness of the Green Belt. ■

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Photograph Anna and Pete
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