Green Belts and Green Wedges

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Responsibility of	**Subject Lead for Green Belts & Green Wedges**
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Key legislation and policy

Legislation	• Town and Country Planning Act 1990 • Planning and Compulsory Act 2004 • Town and Country Planning (Control of Advertisements) Regulations 1992
National policy and guidance	• Future Wales (FW) policies 22, 30 and 34 • Planning Policy Wales (PPW) paras 3.64 to 3.78 • TAN 6: Planning for Sustainable Rural Communities • Practice Guidance: Rural Enterprise Dwellings (TAN 6)
Judgments	• Fordent Holdings Limited v SSCLG & Cheshire West and Chester Council EWHC 2844 (Admin) • Brentwood BC v SSE [1996] • David and Edith Lloyd v SSCLG & Dacorum Borough Council [2013] • Summers Poultry Products Ltd v SSCLG & Stratford-upon-Avon [2009] • Sevenoaks District Council v SSE and Dawe [1997] • Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466 • Europa Oil and Gas Limited v SSCLG, Surrey County Council, Leath Hill Action Group [2013] • R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

1. The approach to Green Belts and green wedges in PPW is largely unchanged since its original publication in 2002. Consequently, Green Belt and green wedge policies in adopted development plans should generally align with it. Although some development plans may use different terminology (e.g. ‘green barriers’), for the purposes of national policy all such designations are encompassed by the term ‘green wedge’.

2. Following its publication in February 2021, Future Wales (FW) forms part of each LPA's statutory development plan. FW includes three policies on Green Belts and indicates 'Areas of Consideration' for Green Belts around Wrexham/Deeside and Newport/Cardiff. Although FW is clear that Green Belts in these locations or around Swansea/Llanelli should be designated via Strategic Development Plans, in advance of the adoption of these, policy 22 (for Wrexham/Deeside) and policy 34 (for Cardiff/Newport) state that "decisions should not permit major development in the areas shown for consideration for green belts, except in very exceptional circumstances". Where applicable, if this has not been raised by any party you may need to bring it to their attention and seek their views (see *'Is the development in the Green Belt/green wedge?'*).

The decision-making process

3. The decision-making process is summarised in the Annex.

4. Paragraph 3.73 of PPW says that there is a presumption against 'inappropriate development' in Green Belts or green wedges ('GB/gw'). Para 3.74 of PPW says that permission for 'inappropriate development' should not be granted except in 'very exceptional circumstances' where other considerations clearly outweigh the harm which such development would do to the GB/gw. 'Other' (i.e. non-GB/gw) harm, for example to highway safety, does not form part of the assessment of whether 'very exceptional circumstances' exist. 'Other' harm will, however, form part of the final balancing exercise in deciding whether to allow or dismiss the appeal.

5. You should approach your reasoning in a structured manner as summarised in Annex 1 and described below. This includes where a site falls within a 'Green Belt Area of Consideration' identified in FW and meets the definition of 'major development' set out at Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

Step 1: Is the development inappropriate?

6. Paras 3.75 to 3.76 and PPW identify circumstances under which buildings in a GB/gw may be 'not inappropriate'[1]. Para 3.77 specifies four 'certain other forms of development' which may be appropriate provided they preserve openness etc. Para 3.78 deals with 'other forms of development'.

7. You will first need to decide what type of development you are dealing with (see 'Definitions'). It should be noted that you should interpret 'building' as it is defined in section 336 of the 1990 Act, i.e.: *"any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building."*

8. This definition encompasses walls, fences, telecoms equipment, wind turbines, floodlights and structures attached to buildings; all of which should be regarded as 'buildings' for the purposes of PPW.

[1] Try to avoid using the term 'appropriate'. Instead use 'not inappropriate'.

9. The type of development should be assessed against **relevant development plan policies** (including of FW), plus SPG[2] and PPW.

10. PPW para 3.75 (2nd bullet) infers that outdoor sport and outdoor recreation and cemeteries, and other **uses of land** that maintain the openness of the GB/gw and which do not conflict with the purpose of including land within it, are not inappropriate. Therefore, use of land for cemeteries and outdoor sport and recreation per se would not be inappropriate. Similarly, any other use of land would not be inappropriate providing it maintains openness etc (para 3.78). This would include caravans, which are not buildings but a use of land.

11. **If the development is 'inappropriate'** PPW is clear that a presumption against inappropriate development will apply (para 3.73) and that planning permission should not be granted except in very exceptional circumstances (para 3.74). It may also be necessary to consider whether the proposal would impact on openness (see 'Definitions') or conflict with the purposes of including the land in a GB/gw. In other cases, there is no need to refer to openness or GB/gw purposes unless the parties have made that argument or unless the effect on openness or any of the purposes would be significant.

12. Para 3.73 of PPW confirms that **substantial weight** should be attached to **any harmful impact** on the **purposes** of a GB/gw (as identified at para 3.67 of PPW). Consequently, if you find that there would be harm to a GB or gw purpose, it will carry at least substantial weight. If you decide to quantify the degree of any *harmful impact* to openness, ensure that you avoid attributing *weight* individually to these factors – instead your finding about *weight* should relate to the totality of any GB/gw harm. A finding of 'no harmful impact' or 'no effect' would be a neutral factor.

13. **If the development is 'not inappropriate'**, you should go on to deal with other non-GB/gw issues in the usual way (e.g. highway safety, etc.). Where the effect on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement to assess the impact of the development on openness. In such circumstances, there is also no need to assess the effect on GB/gw 'purposes'.

Step 2: If the development is inappropriate, are there are any 'other considerations' which would clearly outweigh the harm to the GB/gw?

14. There is no restriction on what might be considered as an 'other consideration'[3]. Arguments which you might encounter include:

- Personal circumstances, economic benefits, or meeting a specific need
- Visual improvements, including in relation to a historic asset or the perception of openness (see 'Definitions')

[2] Check if any SPG accords with PPW. If not, explain what weight you attach to it.
[3] Para 68 of Brentwood BC v SSE [1996] 72 P&CR 61

- Enhancing the beneficial use of a GB/gw, e.g. by improving access or providing opportunities for sport/recreation etc[4]
- The existence of a fall-back position – for example, PD rights or an extant planning permission[5] (see 'Definitions'), and
- The lack of a suitable site for the development outside the GB/gw (if so, has it been demonstrated that the proposal needs to be located in the GB/gw or that it would not be feasible to find a suitable site elsewhere?).

15. These factors may not have been referred to as considerations which might amount to 'very exceptional circumstances'. Nevertheless, you should always consider whether they constitute 'other considerations'. You may need to seek the LPA's view on whether individually or cumulatively they could amount to very exceptional circumstances.

16. If benefits have been advanced you might need to consider whether the scale of the proposed development is the minimum necessary to achieve the benefit. This might affect the weight you can attach to a benefit.

17. In the balancing exercise, explain what weight you attach to these 'other considerations'; e.g. 'neutral', 'minimal', 'limited', 'significant' or 'considerable'. But for accuracy and clarity, at this stage in the process do not describe any 'other consideration' as a 'very exceptional circumstance' or a 'material consideration'.

18. Carry out the GB/gw balancing exercise, weighing up of the merits of the proposal as necessary, having regard to s38(6) of the PCPA. Balance the combined weight of any 'other considerations' against the harm to the GB/gw, using your judgement.

Step 3: Do 'very exceptional circumstances' exist?

19. If the 'other considerations' do not clearly outweigh the GB/gw harm, 'very exceptional circumstances' cannot exist and you should dismiss the appeal.

20. If the 'other considerations' clearly outweigh the harm to GB/gw, it is likely that very exceptional circumstances exist. But before reaching this conclusion, stand back and consider whether the circumstances of the case can reasonably be described as 'very exceptional'. Further reasoning may be necessary to justify your conclusion. Remember that PPW states that 'substantial weight' should be given to any harmful impact on the purposes of a GB or gw. Do the other considerations *clearly* outweigh this harm? Do your reasons logically lead you to your conclusion?

21. 'Other considerations' do not have to be uncommon to be 'very exceptional'. Nor do the circumstances have to be unique. That said, the possibility of similar circumstances arising elsewhere must have a bearing on whether it can be very

[4] Para 28 of Fordent Holdings Ltd v SSCLG & Cheshire West & Chester Council [2013]
[5] Whilst applying to policy in England, Para 17 of David and Edith Lloyd v SSCLG & Dacorum Borough Council [2013] indicates how a fallback position should be evaluated in relation to 'very special circumstances'.

exceptional, especially where an appellant presents an argument that it could be repeated many times.

22. The term ‘very exceptional circumstances’ is a conclusion you reach after the balancing exercise. Therefore it should only feature towards the end of your reasoning on GB/gw.

Step 4: Conclusions on GB/gw reasoning

23. Make your conclusion clear – for example:

I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very exceptional circumstances necessary to justify the development do not exist.

I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very exceptional circumstances exist which justify the development.

Step 5: Consider non-GB/gw matters

24. If necessary, you will need to separately evaluate any non-GB/gw harm (e.g. on character and appearance). If you find significant harm in relation to one of these matters it should constitute a ‘main issue’. Your findings on such matters will not have any bearing on your findings on GB/gw harm.

25. Do not return to any ‘other considerations’ or ‘other matters’ – all of these should have been dealt with in the GB/gw reasoning and balancing exercise.

Step 6: Final balancing exercise / conclusions

26. Carry out a final balancing exercise before concluding whether to dismiss or allow the appeal.

Identifying the main issues

27. Frame your main issues in a similar manner to the above structure; e.g.:

- *Whether the proposal would be inappropriate development in the GB/gw*
- *Whether any harm by reason of inappropriateness would be clearly outweighed by other considerations; and if so, whether very exceptional circumstances exist to justify the harm to the GB/gw, and*
- *The effect of the proposal on non- GB/gw concerns.*

Definitions

Openness

28. Para 3.65 of PPW states that "the essential characteristics of Green Belts are their openness and their permanence[6]". Although 'openness' is not specifically defined, it can be inferred to include the absence of urban sprawl and encroachment or intrusion on the countryside.

29. The Courts[7] have confirmed that openness can have a **visual** aspect as well as a **spatial** one; albeit this is a matter of planning judgement rather than one of legal principle[8]. Visual impact can therefore form part of the concept of openness, and the visual dimension may have influenced designating land as GB or gw. However, as openness is primarily about the absence of development, and thus a subset of broader visual effects, you should clearly separate your assessment of effects on 'openness' from 'character and appearance'.

30. The impact of a development on openness may relate to its purpose as well as its size (e.g. an agricultural building versus a sports pavilion, the scale of which would not preserve openness)[9]. Effects on openness are also not confined to permanent structures. Parked vehicles, moored boats, garden paraphernalia, screening bunds or foliage might all have some effect on openness, regardless of their permanence. It is, however, possible that such effects could be mitigated by conditions.

Rural enterprise needs

31. PPW does not set out any limiting criteria for buildings constructed for rural enterprises (para 3.75, 1st bullet). Consequently, if the proposed building meets a justified need for a rural enterprise it would not be inappropriate development.

32. If raised by the parties, you will need to consider whether the proposed building would be for a 'rural enterprise' as defined at para 4.3.2 of TAN 6. However, a proposal should generally be determined as applied for, unless the evidence firmly indicates that it would not be a building for a rural enterprise.

33. A rural enterprise dwelling should be regarded as a building which meets a rural enterprise need. However, it can only be 'not inappropriate' if it is to meet a *justified* need (see TAN 6 section 4.7 and TAN 6 Practice Guidance).

34. GB/gw issues may arise in appeals concerning the removal of an occupancy condition in relation to a rural enterprise dwelling. However, the dwelling will already exist and there will be no material change of use. Accordingly, such a

[6] Note that green wedges are not permanent.
[7] Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466
[8] R (on the application of Samuel Smith Old Brewery (Tadcaster) & others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3
[9] Fordent Holdings Limited v SSCLG & Cheshire West and Chester Council [2013]

change of use would not need to be assessed for inappropriateness and would have no effect on openness.

Essential facilities for outdoor sport and recreation, cemeteries, and other uses

35. PPW para 3.75 says that **new buildings** for the following uses may be 'not inappropriate' in a GB or gw:

- Essential facilities for outdoor sport and outdoor recreation,
- Cemeteries, or
- Any other uses of land which maintain the openness of the Green Belt or green wedge (for example, a field used for keeping horses).

36. For such a building to be confirmed as 'not inappropriate', the use/facility must not conflict with the purpose of including land in the GB/gw (PPW para 3.67).

37. For sport/recreation buildings, you will need to establish whether the facility meets an **essential** need.

38. Para 3.75 of PPW relates solely to buildings. Therefore, proposals for vehicular access, car parking areas, artificial pitches, embankments, etc., would need to be considered under para 3.78.

Limited extension, alteration or replacement of existing dwellings

39. To be found 'not inappropriate', the proposal would have to represent a **limited** addition over and above the size of the **existing** dwelling (as it is found when the decision is made). Both the existing building and the extension/alteration/replacement must be for residential use.

40. Development plans or SPGs may include a specific definition for what may constitute 'limited' extension, alteration or replacement (e.g. in terms of floorspace and/or volume). This can be useful in quantifying spatial impacts but ensure that you also give consideration as to whether there would be any visual effects on openness.

41. Many buildings will have PD rights for some extensions/alterations. Your assessment should be against the existing dwelling, rather than the 'existing dwelling plus additions potentially allowed under PD rights'. If the existence of PD rights is argued in favour of a development, you should consider this as an 'other consideration'.

Curtilage buildings

42. PPW does not make any specific reference to ancillary outbuildings within the curtilage of a dwelling or other building. However, the 3rd bullet of para 3.75

could logically apply to any proposal relating to a domestic outbuilding[10]; and the 2nd bullet of para 3.76 for any change of use (to either the main or ancillary building, or both).

43. If a new curtilage building is proposed you will need to decide if it would fall within any of the exceptions listed in PPW. In assessing whether a proposed outbuilding could be regarded as an extension to the existing dwelling you should take account of their separation and visual relationship. You must also be mindful that any policy statements should be interpreted objectively in accordance with the language used, read in their proper context.

Demolition of existing buildings

44. It may be argued that the demolition of existing buildings would increase openness or would balance any loss of openness caused. It will be for you to judge whether such arguments are most appropriately considered under Step 1 (in relation to openness) or Step 2 (other considerations). Which route to take will depend on the circumstances, but in most cases it will be preferable to consider the consequences for openness at Step 1. If it is also argued that the removal of existing buildings could lead to a broader visual improvement, this should be considered as an 'other consideration'.

45. If you accept that the demolition of existing buildings is necessary to grant permission, you must impose a condition requiring demolition. When doing so, impose a time constraint (e.g. "before occupation of the new building").

Other forms of development

46. Para 3.77 of PPW identifies four other forms of development which 'may be appropriate' in the GB/gw provided they preserve its openness and do not conflict with the purposes of including land in it. The wording used is similar to the NPPF, in relation to which the Courts[11] have confirmed that the specified exceptions are a 'closed list'; i.e. other, unspecified forms of development would automatically be inappropriate in the GB/gw.

Other issues

Is the development in the Green Belt/green wedge?

47. Where GB/gw is a main issue but the parties do not agree about whether all, or part, of the proposal is in the GB/gw, you may need to reach a finding on this early on in your decision. Ideally you would do this by establishing the precise location of the boundary designated on the LDP Proposals Map, but if the site falls within a 'Green Belt Area of Consideration' identified in FW this will not be possible, as the 'Regional strategic diagrams' are ambiguous, geographically

[10] Para 26 of Sevenoaks District Council v SSE and Dawe [1997] found that an extension to a detached domestic garage *could* be regarded as an extension to the dwelling; but this would depend on the circumstances of the case (e.g. separation between the two).
[11] Fordent Holdings Ltd v SSCLG & Cheshire West & Chester Council [2013]

imprecise and wash over settlements. Where the evidence is inconclusive, you will need to make a judgement based on the balance of probabilities, including the outcomes sought by relevant FW policies, the general location of the site in relation to key settlements identified on the FW diagram, and the visual/physical qualities of the site and its immediate context.

48. Where GB has not been raised by either main party, but the proposal in question represents major development that may fall within a 'Green Belt Area of Consideration' identified in FW, you should revert to the parties as follows:

"The Inspector seeks your views on whether or not the site lies in a 'Green Belt Area of Consideration' as identified in FW. Without prejudice to your case or to the Inspector's finding in this regard, if the site is considered to be in a 'Green Belt Area of Consideration', what are the implications of this for the proposed development?"

49. Depending on the responses received and your own assessment (see para 47), you may then need to consider the effect on the GB as a main issue. If you are satisfied that the site lies outside the areas identified by FW, you should confirm this, and the approach taken, as a preliminary matter.

What if the parties have agreed that the proposed development would be inappropriate?

50. Sometimes the main parties will agree that a proposal would be inappropriate development. If you reach the same conclusion, you will not need to deal with this as a main issue. However, you will should briefly explain this prior to defining the main issues; e.g.:

The proposed development does not fall into any of the categories of development deemed not to be inappropriate in the Green Belt/wedge in PPW [and LDP]. The main parties agree that the proposal would represent inappropriate development in the Green Belt/green wedge.

What if the question of inappropriateness has not been raised?

51. You should address the question of inappropriateness, particularly if you are minded to allow the appeal. In such cases you would need to seek the views of the parties.

How are advertisements controlled in the GB/gw?

52. As advertisements are controlled only in the interests of amenity and public safety[12], GB/gw issues do not apply. If raised you will need to explain this.

[12] Regulation 4 of The Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended)

How should temporary permissions be assessed?

53. In some cases permission will be sought for a temporary period after which the development would cease. Europa Oil (Surrey)[13] confirmed that whether development is temporary or permanent is irrelevant to determining whether it is inappropriate. However, it might be an 'other consideration'.

[13] Para 56 of Europa Oil and Gas Limited v Secretary of State for Communities and Local Government, Surrey County Council, Leath Hill Action Group [2013]

Annex: Reasoning flowchart

