5 February 2020

PRESS SUMMARY

R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)

[2020] UKSC 3

On appeal from: The Court of Appeal (Civil Division) [2018] EWCA Civ 489

JUSTICES: Lady Hale, Lord Carnwath, Lord Hodge, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

This issue in this appeal is whether the Appellant, as local planning authority, properly understood the meaning of the word "openness" in the national planning policies applying to mineral working in the Green Belt, as expressed in the National Planning Policy Framework (NPPF). Paragraph 90 of the NPPF (in its original 2012 form) provides:

> *"Certain other forms of development are not inappropriate in the Green Belt provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These are:*
> *- mineral extraction;"*

The application in issue in this case was for the extension of the operational face of Jackdaw Crag Quarry. This is a magnesian limestone quarry 1.5 kilometres to the south-west of Tadcaster, North Yorkshire, owned and operated by the Third Respondent, Darrington Quarries. The Appellant's Planning and Regulatory Functions Committee on 9 February 2016 accepted their officer's recommendation that planning permission be granted.

The officer's report detailed a wide range of planning considerations. Under the heading "Landscape impact" the report summarised the views of the Appellant's Principal Landscape Architect, who did not object in principle to the proposal, but drew attention to the potential landscape impacts and the consequent need to ensure that mitigation measures were maximised. In a section headed "Impacts of the Green Belt" the report referred to the consultation response from the First Respondent, including comments addressing the openness of the Green Belt.

The First and Second Respondent brought judicial review proceedings of the decision to grant planning permission. They said, among other things, that the officer's report erred in its analysis of "openness" in paragraph 90 of the NPPF in that it did not consider visual impact.

The High Court (Hickinbottom J) found no error as the officer's report was not required to take into account visual impact from the development. Disagreeing, the Court of Appeal

(Lindblom and Lewison LJJ) held that the officer's report was defective at least in failing to make clear that, under para 90 of the NPPF, visual impact was potentially relevant; and, further, that on the officer's findings visual impact was quite obviously relevant and therefore a necessary part of the assessment. The planning permission was quashed.

JUDGMENT

The Supreme Court unanimously allows the Appellant and Third Respondent's appeal. Lord Carnwath gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

On a proper reading of the NPPF in its proper historic context visual quality of landscape is not in itself an essential part of openness for which the Green Belt is protected **[5]**. While the text of paragraph 90 of the NPPF has changed from that in Planning Policy Guidance 2: Green Belts (published 1995, amended in 2001), there has been no significant change of approach **[12]**. The concept of "openness" in paragraph 90 of the NPPF is a broad policy concept which is the counterpart of urban sprawl and is linked to the purposes to be served by the Green Belt. Openness is not necessarily a statement about the visual qualities of the land, nor does it imply freedom from all forms of development **[22]**. The question is, therefore, whether visual impact was a consideration which, as a matter of law or policy, was necessary to be taken into account, or was so obviously material as to require such direct consideration **[32]**.

Whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including land within the Green Belt was specifically identified and addressed in the officer's report. Paragraph 90 of the NPPF does not expressly or impliedly mandate the consideration of visual impact as part of such an analysis **[39]**. The officer's report does not suggest that visual impact can never be relevant to openness **[40]**. The relevant paragraphs of the officer's report addressing openness must be read together. Some visual effects were given weight in the consideration of the restoration of the site. The relatively limited visual impact fell far short of being so obviously material that failure to address it expressly was an error of law, as did the fact that the proposed development was an extension to the quarry. These were matters of planning judgement and not law **[41]**.

References in square brackets are to paragraphs in the judgment