Neutral Citation Number: [2014] EWHC 2476 (Admin)

Case No: CO/1361/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2014

Before :

MRS JUSTICE PATTERSON

- -

Between :

REDHILL AERODROME LIMITED	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2) TANDRIDGE DISTRICT COUNCIL (3) REIGATE AND BANSTEAD BOROUGH COUNCIL	**Defendants**

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Christopher Katkowski QC and Alistair Mills (instructed by **Wragge Lawrence Graham & Co**) for the **Claimant**
Richard Kimblin (instructed by **The Treasury Solicitor**) for the **1st Defendant**
Stephen Whale (instructed by **Tandridge District Council and Reigate and Banstead Borough Council**) for the **2nd and 3rd Defendants**

Hearing date: 27th June 2014

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Approved Judgment

Mrs Justice Patterson :

Introduction

1. This is a claim under s 288 of the Town and Country Planning Act 1990 to quash a decision of an Inspector dated the 18th February 2014. She dismissed appeals by the Claimant against refusals of planning permission by the second and third defendants to construct a hard runway to replace the existing grass runways and associated works at Redhill Aerodrome.

2. The application site is located within the Metropolitan Green Belt.

3. The Claimant is the operator of Redhill Aerodrome. The second and third defendants are the relevant local planning authorities for the application site.

4. The appeal raises a single, but not entirely straightforward, point about the correct interpretation of "any other harm" when considering inappropriate development in the Green Belt under the National Planning Policy Framework (NPPF).

Factual background

5. The application site is some two-thirds within the administrative boundary of the second defendant and one-third within the boundary of the third defendant. As a result planning applications for the redevelopment of the Aerodrome were submitted to each of the local planning authorities. They refused the applications: the second defendant on the 31st May 2013, and the 3rd defendant on the 10th June 2013.

6. In the lead up to the public inquiry held into the refusal of planning permission the second defendant amalgamated its objections into a single reason for refusal. That was that the development was inappropriate development in the Green Belt and insufficient very special circumstances had not been demonstrated. As its Development Plan policies were not up to date the second defendant relied upon the NPPF. The third defendant relied upon the NPPF and its local plan policies.

7. The development was locally controversial. At the public inquiry some of the local parish councils and a local action group were made rule 6 parties and were represented.

The decision letter

8. The Inspector set out the main issues in her decision letter in paragraphs 16-19. They read:

> "**Main Issues**
>
> 16. The main issues, derived from planning policy to protect the Green Belt, are:
>
> - Whether the proposal constitutes inappropriate development, taking account of the effect of the proposed engineering operations on the openness of the

Green Belt and the purposes of including land within the Green Belt, and

- If so, whether the potential harm to the Green Belt by reason of the inappropriateness, and any other harm, is clearly outweighed by other considerations in order that the very special circumstances, necessary to justify the proposal, exist.

17. The main possible sources of other harm that require to be considered are:

- The effects of the proposed hard runway and realigned taxiways, drainage improvements, runway and approach lighting on the appearance and landscape character of the Aerodrome and surrounding area.
- The effect of the proposal on the quality of life for local communities in the surrounding area and on the learning environment at Salfords Primary School, taking particular account of noise and disturbance.
- The effect of the proposal on highway capacity and safety.
- The effect of the location of the Aerodrome on the mode of travel to the proposed transport facility.
- The effect of the proposal on airspace safety.

18. The other considerations that may weigh in favour of the proposal concerns its effect on:

- The continuing existence, role and growth of the Aerodrome and the employment based there;
- Employment and the economy in the wider area;
- The use of existing infrastructure at the Aerodrome;
- The local environment having regard to ecological enhancements, the management of flooding and control on operations at the Aerodrome to improve amenity.

19. Submissions were made as to whether the Green Belt balancing exercise should follow the approach set out in the *River Club* judgment. Even though the judgment was made on the policy set out in Planning Policy Guidance 2, the wording in the Framework is very similar and I intend to follow the interpretation in the judgment. Furthermore, this approach is

> reflected in decisions by the Secretary of State since the publication of the Framework."

9. The Inspector proceeded to set out her reasons. Under the heading 'Green Belt' she said,

> "26. The provision of a hard runway would be carried out as a single development and comprise a series of engineering operations. The associated earthworks, installation of lighting and drainage works would be integral to its provision. The hard paved area, by reason of the dimensions required, would be over a kilometre long and over twice the width of a taxiway. The runway would change the physical nature and character of land, replacing an existing grassed area. The hard runway would introduce a permanent engineered piece of infrastructure, which when in use would be illuminated by the new lighting system. The open, undeveloped appearance would be eroded. For similar reasons the operational development would not assist in safeguarding the countryside from encroachment. The nearest surrounding development is not in the form of large built-up areas or historic towns. In view of the principal change to the land, the siting of the proposed development would be sufficiently distant from the towns of Redhill and Horley to have no effect on their separation.
>
> 27. Therefore the proposal would not preserve the openness of the Green Belt and would conflict with a purpose of including land within it. In accordance with the Framework, the proposal is inappropriate development and by definition would be harmful to the Green Belt. The engineering operations are not within a category of development permitted by Policy Co 1. Under Policy RE2 the inappropriate development may be justified if very special circumstances exist. However, the wording of this policy is not consistent with the Framework and it has limited weight.
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> 28. Evaluating the degree of harm, this part of the Aerodrome is currently relatively undeveloped and open compared to the area of hangars and buildings near King's Mill Lane, which is well lit. As a result, the loss of openness would be emphasised by the area covered by the hard runway itself, and to a much lesser degree the lighting installations and poles. The projected increase in aircraft movements to 85,000 facilitated by the proposal would increase the frequency of use of the runway and hence the activity and light pollution. The probability is that there would be more aircraft parked in the open and more parked cars. For similar reasons the encroachment into the countryside would be evident.
>
> 29. However, the proposal would not involve any new buildings and the physical changes would be primarily to the

> land surface. Unlike the Appellant, I do not single out the limited earthworks as affecting openness. This engineering work, and the resulting minor change in the topography, is a means to providing a runway to the required standard. The undulating nature of the land would be maintained. The resultant hard runway is the feature that harms openness. The effect of the new taxiways (390m in length) would be balanced by the restoration to grass of some existing taxiways (370m). The lighting poles would be small in number and lighting exists for the grass runways. The purpose of the lighting is to indicate the outline position of the runway, not to illuminate it and the intention is that lights would be kept at the lowest intensity possible. On this basis the lighting scheme is the minimum necessary for working purposes in accordance with Policy EV9 of the Tandridge District Local Plan. The drainage works when complete would have a negligible effect on openness. The habitat management area probably would have a neutral or slight effect, subject to any fencing details. In the context of the Aerodrome, the loss of openness would be limited and the encroachment contained.
>
> 30. In total, the harm to the Green Belt has substantial weight."

10. She went on to evaluate other material considerations. Firstly, landscape character and visual amenity. She concluded, at paragraph 36, on landscape character,

> "36. Drawing all these considerations together, the proposal would adversely affect the appearance and character of the Aerodrome within its landscape setting. Landscape character would not be conserved, contrary to Policy CSP 21. Referring to the Framework, local distinctiveness would not be reinforced. I attach moderate weight to the harm."

11. On visual impact she concluded that the proposal would result in a slight adverse visual impact to which she attached a small amount of weight (paragraph 40.)

12. On noise and disturbance she concluded, in paragraph 59, as follows,

> "59. In conclusion, the position is not one where planning permission should be refused on grounds of noise alone, nevertheless, the proposal would erode the quality of life and detract from the learning environment by reason of noise disturbance. Policy objectives would not be fully met. I attach some weight to the effects of noise and disturbance on the local communities."

13. On highway network and sustainable transport she concluded,

> "76. The submission of a Transport Assessment confirms that the development is of a type that would be expected to generate a significant amount of movements. The development would

> not be located where there is the ability to minimise the need to travel and maximise the use of sustainable travel modes, even allowing for the solutions to vary between rural and urban areas. The site is not a sustainable location supported by the Framework. However, the residual cumulative impacts of the development would not be severe. The Framework does not advocate preventing the development in such circumstances.
>
> 77. There is no clear overall policy direction. The failure to satisfactorily resolve the capacity and mode of travel issues and the difficult local conditions along King's Mill Lane lead me to conclude that the associated harm provides some weight against the proposal."

14. The Inspector considered then those factors positively supporting the proposal. She concluded, firstly, on employment and the economy,

> "112. Taking account of the timescale and the area's employment characteristics, the proposal would bring economic benefits to the Aerodrome and the businesses based. The job security and growth in jobs would bring considerable benefit to individuals, widen opportunities and support the local economy. The Aerodrome would be able to develop its role in serving the business community and contribute to the economic initiatives in the surrounding area. In these respects the proposal complies with a core principle of the Framework, is consistent with objectives of the APF and the Tandridge Core Strategy. These considerations have significant weight.
>
> 113. Closure of the Aerodrome would result in a significant loss of jobs, a loss of a facility within the network of aerodromes and harm to the local economy. However, examination of the evidence indicates the risk may not be as real as the Appellant contends. The possibility adds limited weight in favour of the scheme."

15. On the use of existing infrastructure she said,

> "116. The proposal indirectly would lead to greater use of existing infrastructure but the development itself is new infrastructure to enable additional capacity to be created. Its acceptability is dependent on a range of factors linked to the achievement of sustainable development. I attach little weight to the best use of infrastructure argument."

16. On local environment the Inspector recorded,

> "119. The principles of the scheme designs have been demonstrated to be acceptable. The details of the proposals are capable of being resolved through planning conditions. I conclude that the proposals on flood alleviation and habitat

> enhancement are to ensure compliance with policy requirements and the avoidance of harm. Therefore, they do not merit positive weight in the Green Belt balance."

17. In her final conclusions the Inspector said,

> "123. The harm to the Green Belt by reason of the inappropriate development, the loss of openness and the encroachment into the countryside has substantial weight. The harm to landscape character has moderate weight and the slight adverse visual impact a small amount of weight. The limited harm to the quality of life and learning environment through noise disturbance and the failure to satisfactorily resolve the capacity and mode of travel issues provide additional weight against the proposal. The overall weight against the proposal is very strong. This conclusion takes account of the mitigation afforded by the use of planning conditions and planning obligations.
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> 124. On the positive side, safeguarding employment and the prospect of an additional 140 FTE jobs and a net GVA impact of £12.4m per annum by 2030 are realistic outcomes. The expansion of business aviation and support to business initiatives in the area would be beneficial. These contributions to the local economy have significant weight. The risk of Aerodrome closure, with all the associated effects, is a consideration that provides a limited amount of additional weight. The use of infrastructure and improvements to the local environment as a result of the development provide little weight to support the proposal
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> 125. The other considerations, when taken together, do not clearly outweigh the potential harm to the Green Belt and the other identified harm. Very special circumstances to justify the development do not exist. The proposed hard runway development fails to comply with national policy to protect the Green Belt set out in the Framework. In addition there is conflict with Policy Co 1 and Policy RE2 of the development plan.
>
> 126. The environmental harm to an area that has a high degree of protection and is valued to the surrounding communities would significantly and demonstrably outweigh the economic benefits. The proposal would not deliver a sustainable development.

<u>The Legal Framework</u>

18. The correct interpretation of planning policy is a matter of law for the court to determine: *Tesco Stores v Dundee City Council [2012] UK SC 13*. The relevant paragraphs are 18 and 19 where Lord Reed said:

"18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority was required to proceed on the basis of what Lord Clyde described as "a proper interpretation" of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a "proper interpretation" of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department [2008] QB 836*), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v*

> *Secretary of State for the Environment [1995] 1 WLR 759, 780* per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

19. The same applies to the interpretation of national planning policies set out in the NPPF: *R (on the application of Hunston Properties Limited) v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610. Further, the NPPF should be construed as a whole: *Bayliss v Secretary of State for Communities and Local Government [2013] EWHC 1612* at [18].

Claimant's submissions

20. The claimant submits that with the publication of the NPPF in March 2012 the planning policy context is very different.

21. As an illustration of that the claimant relies on the case of *Fordent Holdings v Secretary of State for Communities and Local Government [2013] EWHC 2844* at [19],

> "19. Previous national policy in relation to Green Belt development defined material changes of use as inappropriate unless they maintained openness and did not conflict with the purposes of including land within the Green Belt – see PPG2, paragraph 3.12. That approach has not been carried through into the NPPF however, where the preferred approach is to attempt to define what is capable of being "not inappropriate" development within the Green Belt with all other development being regarded as inappropriate by necessary implication. It is for this reason that there is no definition within Chapter 9 of the NPPF of what constitutes inappropriate development, or any criteria by which whether a proposed development is or is not appropriate could be ascertained. It is for that reason that paragraph 89 of the NPPF provides that a particular form of development - the construction of new buildings - in the Green Belt is inappropriate unless one of the exceptions identified in the paragraph applies. Paragraph 90 defines the "other forms of development" there referred to as also at least potentially not inappropriate. The effect of paragraphs 87, 89 and 90, when read together, is that all development in the Green Belt is inappropriate unless it is either development (as that word is defined by s.55 of the TCPA) falling within one or more of the categories set out in paragraph 90 or is the construction of a new building or buildings that comes or potentially comes within one of the exceptions referred to in paragraph 89."

22. That was relied upon in *Timmins v Gedling Borough Council [2014] EWHC 654* at [31] where Green J said,

> "It is relevant that the NPPF does not in all respects; mirror its predecessor guidance in relation to the Green Belt."

23. One of the differences of policy in the NPPF is in its advice to decision makers as to how much weight needs to be attributed to certain impacts if a development is to be refused. Paragraph 32 is one example. It deals with transport. Developments that generate significant amounts of movement will be accompanied by a transport assessment or transport statements but developments should only be prevented or refused on transport grounds where the residual cumulative impact of the development is severe. Other examples are found elsewhere in the NPPF-

    i) for biodiversity, the threshold for refusal is one of significant harm (paragraph 118)

    ii) for noise, planning decisions should aim to avoid giving rise to significant adverse impacts (paragraph 123)

    iii) for heritage considerations, the threshold for refusal is whether the development would lead to substantial harm (paragraph 133)

24. The policies, therefore, that were described as wrapping around the Green Belt policy were very different from previous national policy.

25. Therefore, if the approach in the *River Club v Secretary of State for Communities and Local Government [2009] EWHC 2674* was to be followed so that "any other harm" applied to harm other than the Green Belt an applicant was cheated of policy that was current in the NPPF which directed how non Green Belt harm was to be dealt with.

26. Here, the Inspector had considered both transport and noise issues and determined in relation to transport that the residual cumulative impact would not be severe. On noise, she determined that the development should not be refused on noise grounds alone but, nevertheless, because the proposal would erode the quality of life and detract from the learning environment by reason of noise disturbance some weight should be attached to its effects.

27. The Inspector found, therefore, that impacts in those areas were not sufficient to warrant refusal applying the NPPF standards. That should dispense with those objections. However, applying the *River Club*_approach the Inspector had allowed those issues back into the decision making process under the aegis of "any other harm". That was a fatal flaw.

28. The case of the *River Club* considered the wording of PPG2 on Green Belts and, in particular, the wording of paragraph 3.2. That read,

    > "… Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify the inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations…"

29. The key paragraphs of the judgment are 26 and 27. They read,

> "26. Paragraph 3.2 of PPG2 is within the section of the PPG entitled "Control over development" and within that part, sub headed "Presumption against inappropriate development". In my judgement, para.3.2 is dealing with what is required to make inappropriate development acceptable in the Green Belt. That means considering the development as a whole to evaluate the harm that flows from it being inappropriate, together with any other harm that the development may cause, to enable a clear identification of harm against which the benefits of the development can be weighed so as to be able to conclude whether very special circumstances exist so as to warrant grant of planning permission.
>
> 27. It is of note that there are no qualifying words within para.3.2 in relation to the phrase "and any harm". Inappropriate development, by definition, causes harm to the purposes of the Green Belt and may cause harm to the objectives of the Green Belt also. "Any other harm" must therefore refer to some other harm than that which is caused through the development being inappropriate. It can refer to harm in the Green Belt context, therefore, but need not necessarily do so. Accordingly, I hold that "any other harm" in para.3.2 is to be given its plain and ordinary meaning and refers to harm which is identified and which is additional to harm caused through the development being inappropriate. It follows that I reject the argument that the phrase is constrained and applies to harm to the Green Belt only."

30. The claimant submits

    i) that the *River Club* case was wrongly decided; or

    ii) alternatively, that the policy context now is so different that it requires a different approach.

31. As to the first submission the claimant relies on the judgement in the case of *Doncaster MBC v SSETR [2002] JPL 1509* at paragraph 67. That reads,

> "67. Thus applying the policy set out in paragraph 3.2 of PPG2, the proper question for the Inspector in the present case was whether the harm, by reason of inappropriateness, and the further (albeit limited) harm caused to the openness and purpose of the Green Belt were clearly outweighed by other considerations. Those other considerations were confined to "the benefit to the appellant's family, and particularly the children, of allowing the appeals". But it was only if those benefits not merely outweighed "the limited harm caused to the opens and purpose of the Green Belt", but if they *clearly* outweighed the harm by reason of inappropriateness and, the *further*, albeit limited, harm caused to the openness and purpose of the Green Belt, that very special circumstances

> could be found in terms of paragraph 3.2 of PPG2. It will be noted that in paragraph 19 of the *North Benfleet* decision the Secretary of State said in terms that very special circumstances did exist on the facts of that case."

32. There are no other authorities which deal expressly with "any other harm".

33. Part 9 of the NPPF is entitled "Protecting Green Belt Land". Paragraphs 87 and 88 provide the framework for the claimant's proposals. They read,

> "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"

34. "Any other harm" in the immediate context can only mean harm to the Green Belt. The correct approach is, therefore, to go through the harm which is caused when a development is inappropriate in the Green Belt ('definitional harm') and add to that actual harm to the Green Belt. That combination amounts to substantial weight against a development proposal. Against that have to be placed the positive factors in favour of the development before reaching a conclusion as to whether very special circumstances have been demonstrated to clearly outweigh the harm to the Green Belt.

35. As to the argument that the defendants run which is that the Inspector would have reached the same decision applying the more constrained approach that is advocated by the claimant one does not know that that is inevitably the position. The other harm identified evaluated against the NPPF did not constitute a reason for refusal so that the Inspector's ultimate decision following the correct approach is unknown.

<u>The first defendant's submissions</u>

36. The Secretary of State makes six submissions. Firstly, that the decision in the *River Club* should be followed. The principle of *stare decisis* is applicable. Unless clearly of the view that the decision is wrong, one should be slow to depart from paragraphs 26 and 27 of the *River Club* for reasons set out in *R v Manchester Coroner Ex Parte Taj [1985] 1 QB 67.*

37. Second, the defendant expressly adopts reasoning of paragraphs 26 and 27 of the *River Club*. There has been no change to Green Belt policy so far as the current case is concerned through the NPPF. That is evident from the impact assessment carried out by the government for the NPPF which shows that it is no part of the government's approach to make any significant change to the Green Belt policies.

38. Third, the claimant's submissions would make the words "any other harm" otiose. The effect of the claimant's submissions would be to adjourn off any other harm to a later stage in the decision making process. Where the harm identified was non Green Belt and because the identified harms were below the policy threshold set out in the NPPF for refusal of planning permission the decision maker could not take them into account. That speaks as to why such a submission is wrong.

39. Fourth, previous authority is of limited relevance. *Doncaster* did not consider the phrase "and any other harm": the only harms for consideration were harms to the Green Belt. *Fordent* and *Timmins* (which is under appeal) do not deal with the issue here.

40. Fifth, the balancing exercise required following the claimant's approach results in a confusing and unworkable exercise. A decision maker would have to consider whether the substantial weight given to the harm to the Green Belt was clearly outweighed by the benefits of the proposal. If that was answered, yes, there needed to be a further evaluation of whether very special circumstances existed to justify the decision. If that was answered in the affirmative the decision maker then had to consider a separate balancing exercise on other aspects of the identified harm against identified benefits. That led to an overall conclusion.

41. Sixth, alternatively, the outcome of the appeals would have been no different. The Inspector's finding at [126] that,

> "The environmental harm to an area which has high protection and is valued by the surrounding communities would significant and demonstrably outweigh the economic benefits."

was a finding which was independent of the claimant's complaint. It was fatal to the claimant's appeal. The inspector there considered environmental harm in its totality against the benefits of the proposal; it was a broader planning judgment. The cumulative effects of more limited harm were still to be taken into account.

<u>Submissions of the second and third defendants</u>

42. The Inspector found that the development was inappropriate development in the Green Belt. Her findings on harm to the landscape, character and visual impact were Green Belt harms whereas the remaining factors on noise and disturbance and mode of travel were not. There were no qualifying words in paragraph 88 of the NPPF, which was deliberate. 'Any other harm' must, therefore, mean what it says, 'any other harm', and not just Green Belt harm.

43. The Inspector decided, firstly, whether the development was inappropriate. Having found that it was substantial weight applied against the development. Secondly, the Inspector found that there was impact on Green Belt purposes as a result of the development proposed encroaching on the countryside. Thirdly, the Inspector found other Green Belt impacts - landscape character and visual impact and, fourthly, that there were other non Green Belt harms. When the balancing act was done it was plain that the development proposed came nowhere near to establishing very special circumstances. So evident was that conclusion that the Inspector would have come to the same decision anyway.

44. As with the first defendant, the second and third defendants contend that the flaw in the claimant's approach is that the other impacts are put to one side for later consideration where, even though an impact has been found, it plays no part in the decision making process because it does not meet the threshold required for refusal.

45. To that, the claimant responds that there is no provision within the NPPF for a finding of residual cumulative harm. Paragraph 14 of the NPPF makes it clear that the development proposal has to be considered against the NPPF taken as a whole. In the Green Belt the presumption in favour of sustainable development is disapplied but all non Green Belt impacts should be dealt with in the normal way, by consideration against the rest of the NPPF.

Discussion and conclusions

46. When published in March 2012 the NPPF replaced all of the documents listed in Annex 3 to the Framework, including PPG 2. Paragraph 1 in the introduction to the NPPF makes it clear that the Framework sets out government planning policy and how it is expected to be applied.

47. At the heart of the NPPF is a presumption in favour of sustainable development. It is described as having three dimensions, economic, social and environmental which should be seen as a golden thread running through both plan making and decision taking. Paragraph 14 sets out that for decision taking where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless:

> "– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> - specific policies in this Framework indicate that development should be restricted."

Footnote 9 makes it clear that one of those policies relates to land within the Green Belt.

48. In this case the starting point is what the relevant extant NPPF policies mean. As part of that determination the policies must be construed in context and, in relation to the NPPF, that is a consideration of the document as a whole. Construed as a whole it is clear that the NPPF is seeking to simplify the previous plethora of planning policy; to make the planning system more accessible and encourage sustainable patterns of growth. One of its objectives is to provide a clear and comprehensive framework for decision taking. The approach to the Green Belt remains one of preservation and of maintenance of its spatial function unless there are very special circumstances to permit development to proceed within it.

49. Paragraph 88 is set out above. A decision taker, whether the Secretary of State through his Inspector, or a local planning authority, has to ensure that substantial weight is given to any harm to the Green Belt. The role of the Green Belt is of vital importance to the planning system. Here, that importance was recognised by the Inspector finding that substantial weight should be attached to harm occasioned by the

proposed development in the Green Belt (paragraph 30). That conclusion was derived from her finding that

i) the development of the hard runway and associated structures was inappropriate development in the Green Belt, and that

ii) there was a conflict with the Green Belt purpose of safeguarding the countryside from encroachment.

50. The question then is whether the Inspector was entitled to take into account other possible sources of harm? The Inspector itemised those possible sources at paragraph 17 of her decision letter. In summary, they are landscape character and visual impact, noise and disturbance, highway capacity and safety, mode of travel, and the effect on airspace safety.

51. The second and third defendants submit that the first and second of those are harms to the Green Belt. I disagree. The Green Belt is not a landscape designation. It is a policy which has a spatial function. It is delivered through Green Belt land fulfilling the five purposes set out at paragraph 80 of the NPPF. It is right that, under paragraph 81 of the NPPF, local planning authorities are advised to plan positively to enhance the beneficial use of the Green Belt by, amongst other things, retaining and enhancing landscapes, visual amenity and bio-diversity but those matters are to be delivered by way of positive realisation of the purposes of the Green Belt and are not a separate iteration of potential harm if the positive aspect to Green Belt policy is unable to be fulfilled. The effect upon the landscape character and the visual impact of a development proposal are clearly material considerations but are different from a consideration of harm to a Green Belt. If a development proposal contributed to the enhancement of the landscape, visual amenity and biodiversity within the Green Belt those could well be factors in its favour as part of the very special circumstances balancing exercise. That is very different to the situation here.

52. The Inspector treated the factor of landscape character as one to be judged against the NPPF. She found that the development did not reinforce local distinctiveness so that it was appropriate to attach moderate weight to the harm to the landscape character. On visual amenity she found that there was a slight adverse impact. On noise and disturbance she found as set out above. She was right, in my judgment, to treat those impacts separately from Green Belt considerations.

53. The next question is whether the non Green Belt harm including landscape character and visual impact should be taken into account as part of the overall harm caused by the development? I considered the extent of any other harm in the *River Club* case. At that time I concluded that non Green Belt harm could be included because of the language used within PPG2 and its structure.

54. Now, as Mr Katkowski QC submits, the policy matrix is different in that all of planning policy is contained within the NPPF which is to be read and interpreted as a whole. That includes when, for individual considerations in a planning application, it is appropriate to refuse planning permission. For each of the individual considerations a threshold is set which, when it is reached or exceeded, warrants refusal. It is for the decision maker to determine whether the individual impact attains the threshold that

warrants refusal as set out in the NPPF. That is a matter of planning judgement and will clearly vary on a case by case basis.

55. Here, the individual non Green Belt harms did not reach the individual threshold for refusal as defined by the NPPF. Was it right then to take them into account either individually or as part of the cumulative Green Belt harm assessments?

56. On an individual basis given the clear guidance given in the NPPF I have no difficulty in concluding that, in this case, it was not right to take the identified non Green Belt harms into account. The revised policy framework is considerably more directive to decision makers than the previous advice in the PPGs and PPSs. There has, in that regard, been a considerable policy shift. Where an individual material consideration is harmful but the degree of harm has not reached the level prescribed in the NPPF as to warrant refusal, in my judgment, it would be wrong to include that consideration as "any other harm".

57. That leaves the question of whether individual considerations can be considered together as part of a cumulative consideration of harm even though individually the evaluation of harm is set at a lower level than prescribed for refusal in the NPPF. In my judgement it would not be right to do so. That is because the Framework is precisely as it says: a framework for clear decision making. It is a re-writing of planning policy to enable that objective to be delivered. It has no words that permit of a residual cumulative approach in the Green Belt when each of the harms identified against a proposal is at a lesser level than would be required for refusal on an individual basis. Without such wording, to permit a combination of cumulative adverse impacts at a lesser level than prescribed for individual impacts to go into the evaluation of harm of a Green Belt proposal seems to me to be the antithesis of the current policy. It would re-introduce a possibility of cumulative harm which the NPPF does not provide for. It is clear that the NPPF does contemplate findings of residual cumulative harm in certain circumstances, as is evident in paragraph 32, where it deals with the residual cumulative impact of transport considerations. Such phraseology does not appear in the Green Belt part of the NPPF.

58. The defendants argue that such an approach is adjourning off those harms to a later stage in the decision making process which makes it more confusing. I accept the first part of that submission. The effect is to adjourn off the scrutiny of other non Green Belt harms to a later stage in the decision making process, but it is the same decision making process. All that is required is a structured decision process consistent with the approach of the NPPF which does not seem to me to be confusing.

59. It is submitted also by the defendants that such an approach would render the words "any other harm" otiose. I do not accept that submission. Once a development has been found to be inappropriate in the Green Belt it is by definition harmful. To that harm has to be added additional harm to the Green Belt. In the context of the NPPF that is what "any other harm" means. A more narrow approach to the words is predicated through the setting of planning policy within the NPPF and interpreting that document as a whole. It is of note that there is no provision within the Framework to put residual harm at a lesser level together so as to constitute an unacceptable cumulative impact. If that appears to be a departure from the previous approach then that is the effect of the NPPF as a whole.

60. In those circumstances I do not need to hold that my previous decision in *River Club* was wrong. It was taken in a different policy context where there was greater scope for flexible interpretation. That is not to say that I am ignoring or disregarding the jurisprudence in *Ex Parte Taj*. The fact is that the instant decision had to be determined in a NPPF policy context. If the consequence of that means that non Green Belt harms of a lesser effect than those which would warrant refusal on an individual basis cannot be considered as part of a cumulative impact of a development proposal, as set out, that is due to the effect of the wording of the NPPF.

61. I turn, lastly, to consider whether the Inspector would have reached the same decision anyway.

62. The Inspector's wording in paragraphs 125 and 126 was based on her earlier approach in the decision letter. Her ultimate conclusion was to describe "the environmental harm to an area" as such that "would significantly and demonstrably outweigh the economic benefits". It may well be that she would reach the same decision but her generic description of environmental harm appears to have encapsulated all of the harms which she had associated with the development. Her ultimate conclusion is thus tainted by what I have found to be an impermissible approach to paragraph 88 of the NPPF. One does not know what her decision would have been if she had followed what, in my judgment, is the correct approach. Accordingly, it cannot be said that her decision would inevitably have been the same.

63. In those circumstances, I allow this appeal. I invite submissions on the final order and costs.