CARPETS OF WORTH LTD. v. WYRE FOREST DISTRICT COUNCIL

COURT OF APPEAL (Purchas, Taylor and Beldam L.JJ.): March 12, 1991

Town and country planning—Development plan identified green belt—Applicant's land not included—Subsequently included in green belt by local plan—Whether boundaries of green belt to be changed only in exceptional circumstances

The applicant owned some 20 acres of land in the Stour Valley, Kidderminster, the southern part of which (seven acres) was occupied by a factory and the northern part of which (13 acres) was open land. Originally the northern land was not included in the green belt in the existing development plan prepared by the county council under the pre-1971 legislation and subsequently amended. In 1985 the Secretary of State approved the Hereford and Worcester structure plan showing the general position of the green belt. This plan was prepared by the local planning authority in accordance with the provisions of the Town and Country Planning Act 1971. However, in 1986 the applicant's northern land was included in the green belt by the respondent in its local plan proposals at the request of the county council. The boundaries to the green belt as defined in an earlier approved development plan were thus altered. An objection to this change lodged by the applicants at the local plan inquiry was rejected by the inspector and the plan was subsequently adopted. The application challenging the adoption of this part of the local plan, on the ground that it was not within the powers conferred by the Town and Country Planning Act 1971, was dismissed by Otton J.[1] The applicants appealed on the ground that ministerial policy on green belts in planning policy guidelines and circulars and particularly the policy set out in Circular 14/84, para. 3(a), that green belt boundaries should only be altered in exceptional circumstances, had not been adequately considered and applied. The respondent contended that alterations to the boundary of a green belt which had the effect of extending, as opposed to reducing it, did not require justification by exceptional circumstances.

Held, allowing the appeal, that although ministerial circulars and planning policy guidelines had no formal statutory force the local planning authority was under a statutory obligation to have regard to them under the Town and Country Planning Act 1971, s.11(9), when formulating its proposals in a local plan and if the authority wished to depart from such policies it had to give clear reasons for doing so. The extension of a green belt prejudiced landowners in the otherwise proper development of their land, just as a reduction in it would prejudice the purposes of the green belt, and must equally be justified by exceptional circumstances as required by para. 3(a) of Circular 14/84. Neither the inspector nor the local planning authority had had regard to this paragraph and so the relevant part of the local plan must be quashed. It was conceded that there were no exceptional circumstances.

Per Purchas L.J.: There are two obvious qualifications to the principle that green belts should only be altered in exceptional circumstances. First, if as a result of the supervening structure plan green belt boundaries shown in an earlier development plan become meaningless or anomalous; secondly if the structure plan for the area concerned has not been approved, then none of the provisions of paragraph 3(a) apply.

[1] (1991) 61 P. & C.R. 57.

Case cited:
Gransden & Co. Ltd. v. *Secretary of State for the Environment* (1987) 54 P. & C.R. 361, C.A.; affirming 54 P. & C.R. 86.

Legislation construed:
Town and Country Planning Act 1971 (c. 78) s.11(9). This provision is set out *infra*.

Appeal by the applicant Carpets of Worth Ltd. against a decision of Otton J. on March 7, 1990 ((1991) 61 P. & C.R. 57) in which he dismissed their application under section 244 of the Town and Country Planning Act 1971, challenging the validity of part of the local area plan of Wyre Forest District Council, which altered the green belt boundary as approved in the existing development plan so as to incorporate land at Puxton Lane, Kidderminster, owned by the applicant into the green belt. The applicant contended that regard had not been given to ministerial policy relating to the treatment of green belt proposals in local plans as disclosed particularly in Circular 14/84, para. 3(a) which provided that once approved, boundaries should not be altered, except in exceptional circumstances.

Brian Ash, Q.C. and *Joseph Harper* for the appellant (applicant).
Christopher Wilson-Smith, Q.C. and *Philip Mott* for the respondent.

PURCHAS L.J. This is an appeal by Carpets of Worth Ltd. ("Worth") from an order of Otton J.[2] made on March 7, 1990, dismissing their application under section 244 of the Town and Country Planning Act 1971 ("the 1971 Act"). Worth seek to challenge part of the local plan made by the Wyre Forest District Council ("the council") which affected their land at Puxton Lane, Kidderminster. The appeal raises a single issue of importance touching upon the effect to be given to a provision of Circular 14/84 entitled "Green Belts" issued by the Secretary of State for the Environment, to whom and to whose predecessors in office I shall refer as "the minister." It is common ground between Mr. Wilson-Smith, Q.C. who appeared for the council and Mr. Ash who appeared for Worth that if the construction to be given to paragraph 3(a) of that circular is that for which Mr. Ash contends, this appeal succeeds but if the construction for which Mr. Wilson-Smith contends succeeds, then the appeal must fail.

The position as thus agreed by counsel would appear happily to restrict the area for consideration by the court. It is accepted by both parties that in the exercise of their function as a local planning authority the council must "have regard to 'the provisions of circulars and similar documents called planning policy guidance (P.P.G.s) issued by the Minister.' " These documents announced the policy of the minister on the particular topics to which the circulars or P.P.G.s were directed. The statutory basis for the proposition that these documents must be considered is to be found in section 11(9) of the 1971 Act:

> 11(9) In formulating their proposals in a Local Plan the Local Planning authority shall secure that the proposals conform generally to the Structure Plan as it stands for the time being (whether or not it has been approved by the Secretary of State) and shall have regard to any information and any other consideration which appear to them to be

[2] (1991) 61 P. & C.R. 57.

relevant, or which may be prescribed, or which the Secretary of State may in any particular case direct them to take into account.

"Prescribed" means prescribed by regulations made by the Secretary of State under the Act (see s.290(1)). The expression "Directions in any particular case" has not been defined either statutorily or by authority and there must be some doubt as to whether it can embrace circulars or P.P.G.s. For the purpose of this judgment I shall assume that it does not. The current views of the minister as expressed in the circulars and the P.P.G.s can only be material to the duties upon the council under section 11(9) as being "any information and any other consideration which appear to them to be relevant."

Prior to the coming into effect of the code provided by the 1971 Act, planning authorities in the counties (*i.e.* the county councils) had the responsibility of preparing development plans for their respective areas. These descended to detail only as to boundaries and areas; but were supplemented by local town plans where appropriate. The development plans, *inter alia*, defined where the boundaries should be drawn between the green belt areas and areas zoned for other types of development. The green belt policy and the related development control policies were introduced in 1955.

Under provisions of Part II of the 1971 Act it was the duty of the local planning authority, which in the present case was the Worcester and Hereford County Council ("the county council"), to prepare a structure plan. The statutory provisions requiring the appropriate survey, consultation, etc., leading to the submission of the draft structure plan by the county council to the minister for approval or rejection are to be found in sections 6 to 9 of the 1971 Act. Section 10 dealt with the subsequent alteration of structure plans once approved. The provisions relating to the preparation of local plans are contained in sections 11 to 15 of the 1971 Act. The preparation of a local plan was generally speaking a voluntary matter depending upon the decision of a local planning authority which could be either the county council or a district council within the county. See section 3 of the 1971 Act.

Worth's land at Puxton Lane, Kidderminster, was effectively divided into two sections. The southern part of about seven acres was at all material times occupied by their factory and warehouse premises. The northern part, consisting of some 13 acres or thereabouts, was open land lying immediately to the west of the River Stour. This appeal is concerned solely with the northern part. On the east side of the River Stour, speaking in very rough terms, lay further open ground between the river and the Staffordshire and Worcestershire Canal, and further to the east was urban open development such as playing fields, etc., before the residential development of Kidderminster even further to the east was reached. There was also to the west of the site residential development of Kidderminster. Again speaking in very general terms the open type development, the river, canal and other land formed an "inlet" of undeveloped land between the eastern and western residential developments. This has been described as a "wedge" and I shall refer to it as such hereafter in this judgment. The word "wedge" although used in planning parlance is not a term of art and has no statutory significance.

The development plan had been prepared by the Worcestershire County

Council under the pre-1971 legislation. It showed a green belt area running generally north of Kidderminster. It was subject to a number of amendments. The relevant amendment for this appeal was Amendment No. 22 which was approved in 1977. This showed the southern boundary for the green belt to the north of Kidderminster as running east to west in a general line tangential to the northern limits of the existing residential developments in the western and eastern parts, but it did not include the wedge. It ran across the northern base of the wedge. Worth's land was therefore excluded from the green belt.

In November, 1982, the county council published draft proposals for a green belt local plan covering the whole county. This included a map ("Map 35") showing an alteration locally to the pre-existing green belt boundary to the north of Kidderminster which had been approved in Amendment No. 22. Generally speaking it extended the green belt to include the wedge. It was described as "Proposal 24" which read:

> Location: The Stour Valley between the Franche area and Broadwaters area. It is proposed that the open land on either side of the River Stour, with the exception of the areas already laid out as urban open spaces, should be included in the Green Belt. To protect this potentially attractive open area, it is considered that the areas already laid out for urban open space purposes are adequately protected from building development.

Nothing seems to have come of this proposal. Perhaps it was overtaken in the general process of preparing and submitting the draft structure plan for approval by the Secretary of State. This was finally approved in September 1985.

In accordance with their duties under the 1971 Act the county council prepared a structure plan. This was published in October, 1985 as approved by the Secretary of State. A key diagram which accompanied the plan when submitted for approval showed only the general position of the green belt and is referred to in paragraph 9.6 of the Secretary of State's letter:

> 9.6 On the key diagram which accompanied the submitted structure plan, the County Council had shown the general area of the Green Belt between Droitwich and Worcester, as extending as far west as the River Severn. In the approved Worcestershire Structure Plan the extent of the Green Belt lay generally between the M5 Motorway to the east and the Birmingham to Worcester railway line to the west. The Secretary of State proposes to confine the Green Belt generally to the area in the approved Structure Plan. The Secretary of State is committed to the preservation of the Green Belt and considers that for Green Belts to maintain their credibility, once their general extent has been approved as part of the Structure Plan for the area, they should be altered only in exceptional circumstances. He is aware that precise Green Belt boundaries remain to be determined in this area and that this exercise, which should be done through the Local Plan process, may involve some adjustment at the margins of the Green Belt as shown in the Structure Plan. However, he considers that the proposed alteration of the extent of the Green Belt in the plan as submitted goes further than a marginal adjustment. He does not consider that the

basic principle of Green Belt (preventing the coalescence of settlements) is at risk for the whole of the area.

On May 28, 1986, the council published a draft of its proposed local plan. This did not follow the proposals in the draft county council plan so as to include the applicant's land in the proposed green belt. This prompted representations from the county council. In the light of these and other objections the council published a further draft plan which became part of the statutory consultative procedure. On this plan the green belt was projected southwards to include undeveloped land in the wedge itself. This proposal known as "Proposal No. 3" formed part of a schedule of proposed changes to the green belt boundary published together with the draft local plan. The comment against the change which was described as change from "Part Public Open Space, Part White land, Part Residential to Green Belt" was explained in the following manner: "To safeguard the open valley and provide an area for informal recreation." This contrasted with the description in the draft local green belt plan proposed by the county council in "Proposal No. 24" which I have already recited. The reasons for the proposal were:

(2) Reasons.
To protect this potentially attractive open area. It is considered that the areas already laid out for urban open space purposes are adequately protected from building development.

Paragraph 2.5 of the approved county structure plan defined the policy for the green belt in the county of Hereford and Worcester:

(a) To prevent further growth of the conurbation into the countryside;
(b) to limit the expansion of built-up areas in the Green Belt area in order that neighbouring towns and villages will not merge with one another; and
(c) to safeguard the area of open countryside in order to take account of the interests of agriculture and to provide a source of informal recreation and enjoyment for the inhabitants of the area and neighbouring built-up areas. The rural character of the Green Belt will therefore be retained, protected and when the opportunity arises, enhanced.

Worth objected to Proposal No. 3 on the basis that the proposed extension of the green belt to include the wedge did not serve to prevent further growth of the conurbation into the countryside or to prevent neighbouring towns and villages merging into one another. Therefore purposes (a) and (b) were not valid reasons for this alteration. Furthermore Worth did not accept that purpose (c) could stand on its own as a reason for a new incursion into other planning purposes by the green belt. A local public inquiry was accordingly held under the provisions of section 13 to the 1971 Act.

At the public inquiry Worth through their advisors proposed that so far as the land to the north of their factory area was concerned there should be three different types of development. These included residential development, some public open space and amenities. Having set out in his report the principal objections and the council's proposals the inspector at paragraph 297 under the heading "*Green Belt Boundary Proposals*" said:

> 300. I have already indicated that objections relating to the proposed Green Belt boundary but which concern specific sites have been covered elsewhere in this report. In this section I consider the Council's Schedule of proposed principal changes to the boundary as set out in Plans 5 to 11 and in Appendix 3 to the Written Statement.
> *Change Three*: Stour Valley. Puxton.
> This proposal will take in part of objection Sites Nos. 5 and 7 and part of Site No. 8. These areas have been recommended for inclusion in the Green Belt. This change is therefore accepted.

The report and recommendations of the local plans working party on the report into objections to the local plan came before the planning and highways committee of the council on September 28, 1988, when paragraph 300 of the report which has just been cited was accepted without change from the inspector's recommendations.

Worth now challenges the adoption of this part of the inspector's report and its inclusion in the local plan on the grounds that neither the inspector in approving his recommendations without more nor the council had regard to ministerial policy relating to the treatment of green belt proposals in local plans, as disclosed particularly in Circular 14/84, para. 3(a). It is true that the inspector's report was considered at a meeting of the planning and highways committee on September 28, 1988—but there is no record of any consideration of exceptional circumstances justifying the alteration of the boundary of the green belt. Indeed Mr. Wilson-Smith does not suggest that such exceptional circumstances existed in any event.

It is necessary at this stage to refer to some of the circulars and P.P.G.s. Before doing so, however, notwithstanding the accord reached between Mr. Wilson-Smith and Mr. Ash, I must consider the status of these documents. They are not issued under statutory authority. "Prescribed" considerations involve regulations made by the Secretary of State under section 287 of the 1971 Act and are therefore subject to resolution of each House of Parliament. Ministerial circulars as published or as summarised in P.P.G.s have therefore no formal statutory force and should therefore not be treated as such for any purpose. This includes in my judgment the manner in which they should be construed and/or applied. They constitute announcements of the current ministerial planning policy. The only statutory obligation upon the local planning authority is "to have regard to them." They are in no way bound by them. This appeal can only be based on the ground that the council did not have regard to a relevant circular or P.P.G.

The concept of green belts was first introduced in 1955 consequent upon a statement by the minister in the House of Commons on April 26 of that year:

1. *Circular 42/55* dated August 3, 1955, after referring to the statement in the House, stated:

> I. (1) . . . I am directed by the Minister of Housing and Local Government to draw your attention to the importance of checking the unrestricted sprawl of the built-up areas, and of safeguarding the surrounding countryside against further encroachment.
> (2) He is satisfied that the only really effective way to achieve this object is by the formal designation of clearly defined Green Belts around the areas concerned.

(3) The Minister accordingly recommends planning authorities to consider establishing a green belt wherever this is desirable in order:
(a) to check the further growth of a large built-up area;
(b) to prevent neighbouring towns from merging into one another; or
(c) to preserve the special character of a town.
(4) Wherever practicable, a green belt should be several miles wide, so as to ensure an appreciable rural zone all round the built-up area concerned.
(5) Inside a green belt, approval should not be given, except in very special circumstances, for the construction of new buildings or for the use of existing buildings for purposes other than agriculture, sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area. . . .
(8) In due course, a detailed survey will be needed to define precisely the inner and outer boundaries of the green belt, as well as the boundaries of towns and villages within it. Thereafter these particulars will have to be incorporated as amendments in the Development Plan.

No. 9 is not relevant.

2. *Circular 50/57* dated September 19, 1957:

5. The definition of a long-term boundary for development may involve detailed adjustments (either inwards or outwards) in the boundary of the area already allocated on a Town Map. Where land allocations are to be deleted or additional land allocated for development within the plan period, the adjustments can be included in the same submission as the green belt proposals.
6. There may be some pockets of land, between the town and the green belt, which are not to be developed within the present plan period but which could be developed later without prejudice to the green belt. It would be misleading to allocate such areas now, but to include them in the green belt for the time being might give rise to difficulties and undermine public confidence in the green belt at a later date if it were then decided to allocate the land for development. Such areas may well be left as pockets of "white" land. They are then bound to be especially attractive to developers and it will be desirable to set out in the Written Statement the authority's policy for such areas in order to make it clear that they are not available for development at the present time.

3. *Circular 14/84* dated July 4, 1984:

1. The Government continues to attach great importance to green belts, which have a broad and positive role in checking the unrestricted sprawl of built-up areas, safeguarding the surrounding countryside from further encroachment and assisting in urban regeneration. There must continue to be a general presumption against inappropriate development within green belts. The Government reaffirms the objectives of green belt policy and the related development control policies set out in Ministry of Housing and Local Government Circular 42/55.
2. Structure plans have now been approved for most parts of the country and these identify the broad areas of the green belt. Detailed

green belt boundaries are now being defined in local plans and in many cases these are based on green belt areas defined in earlier development plans approved prior to the introduction of structure and local plans. This process of local plan preparation is continuing and this Circular includes advice on the definition of detailed green belt boundaries in Local Plans.

3. The essential characteristics of green belts is their permanence and their protection must be maintained as far as can be seen ahead. It follows from this that:

(a) Once the general extent of a green belt has been approved as part of the structure plan for an area it should be altered only in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the authority has considered opportunities for development within the urban areas contained by and beyond the green belt. *Similarly, detailed green belt boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally.* [Emphasis provided]. . . .

Paragraph (b) is not relevant.

It remains only to refer to the relevant "P.P.G." There were a series of these published in draft form towards the end of 1987 and formally published in January and February 1988. There were in fact 10 in number; but at this stage I need only refer to one of them:

1. Planning Policy Guidance (2) was headed "Green Belts" and provided so far as relevant as follows:

Purposes of Green Belts

4. Green Belts have five purposes:

— to check the unrestricted sprawl of large built-up areas;
— to safeguard the surrounding countryside from further encroachment;
— to prevent neighbouring towns from merging into one another;
— to preserve the special character of historic towns; and
— to assist in urban regeneration.

5. Green belts also have a positive role in providing access to open countryside for the urban population. Such access may be for active outdoor sports or for passive recreation. Outdoor leisure pursuits are likely to occupy an increasing proportion of the Green Belts if, as currently expected, the land needed for food production decreases. . . .

Designation of Green Belts

7. The essential characteristic of green belts is their permanence and their protection must be maintained as far as can be seen ahead.

8. Green belts are established through development plans. Their general extent has now been fixed through the approval of structure plans and many detailed boundaries have been set in local plans and in old development plans.

9. Once the general extent of a green belt has been approved it should be altered only in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the Authority has considered opportunities for development within urban areas contained by and beyond the green belt. Similarly, detailed green belt

> boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally. Detailed boundaries should not be amended or development allowed merely because the land has become derelict. On the outer edge of a green belt, readily recognisable features such as roads, streams or belts of trees should be used to define the boundaries.
> 10. Where detailed green belt boundaries have not yet been defined, local planning authorities are urged to complete this task. *It is necessary to establish boundaries that will endure and they should be carefully drawn so as not to include land which it is unnecessary to keep permanently open. Otherwise there is a risk that encroachment on the green belt will have to be allowed in order to accommodate future development.*
> 11. When local planning authorities prepare new or revised structure and local plans, *any proposals affecting green belts should be related to a time scale which is longer than that normally adopted for other aspects of the plan. They should satisfy themselves that green belt boundaries will not need to be altered at the end of the plan period. In some cases this will mean safeguarding land between the urban area and the green belt which may be required to meet longer term development needs.* [Emphasis provided].

This appeal therefore depends upon whether or not paragraph 3(a) of Circular 14/84 applies to the decision of the council to adopt the inspector's recommendation that the wedge should be included within the boundaries of the green belt shown on their local plan. It is common ground that neither the inspector nor the planning and highways committee of the council "had regard to this circular." It is also common ground that they had a statutory obligation to do this under section 11(9) of the 1971 Act. Although the local authority is not bound by the policy circulars, it should observe them and depart from them only if there are clear reasons, which should be stated, for so doing. *See Gransden and Co. Ltd.* v. *Secretary of State for the Environment.*

There was an "earlier approved development plan" which excluded the wedge from the green belt (Amendment No. 22 to the development plan prepared by the Worcestershire County Council already mentioned). The extension of the southern boundary of the green belt to include the wedge was therefore an alteration to the boundaries defined in an earlier approved development plan. The central issue was whether "exceptionally" related to any alteration or only to alterations to the boundary the effect of which was to diminish the area of the green belt in the immediate area of the variation.

Otton J. considered this question[3]:

> Thus when one turns to para. 3 (of Circular 14/84), one sees that the Secretary of State reiterates the essential characteristics of green belts and then states:
>
> > Once the general extent of a Green Belt has been approved as part of the Structure Plan for an area, it should be altered only in exceptional circumstances.
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> This passage is not strictly relevant to this case, but it nonetheless indi-

[3] (1991) 61 P. & C.R. 57 at pp. 62–63.

> cates that the general extent is determined and settled in the Structure Plan and once it has been so determined it shall then (*i.e.* in the future) be altered only in exceptional circumstances. In short, the Secretary of State contemplates a prospective and not a retrospective approach. Thus, when one reaches the next relevant sentence:
>
> Similarly, detailed Green Belt boundaries defined in adopted Local Plans . . . should be altered only exceptionally,
>
> the meaning is clear. Once the detailed boundaries have been defined and adopted in a local plan, then (*i.e.* after adoption) they should be altered only in exceptional circumstances.
>
> I have of course omitted the words "or earlier approved Development Plans." The re-insertion of those words into that sentence does not in my judgment alter the construction I have placed upon the sentence as a whole. These words, as I read them, refer to the rare situations where there is no local plan for the area or, if there is a local plan, it expressly adopted the boundaries defined in an earlier approved plan.

With respect to Otton J., I find it difficult to see how the exercise of omitting the words "or earlier approved development plans" assists in the construction of the passage as a whole. "Adopted Local Plans" are local plans which have been prepared under sections 11 to 14 of the 1971 Act. These can be altered subsequently under the provisions of section 15 of that Act. "Earlier approved Development Plans" clearly relates to development plans prepared and approved under section 55 of the 1947 Act including amendments under section 56 of that Act. The two types of plans to which para. 3(a) refers are quite different classes of document and are prepared under different statutes. Of course the plan with which this appeal is concerned falls within the latter rather than the former category. In construing para. 3(a) one must look at it as a whole.

The first sentence of para. 2 of Circular 14/84 recorded that structure plans had by then been approved for most parts of the country and that these identified the broad areas of green belt. The remaining part of para. 2 addressed itself to the question of local plans in which detailed boundaries of green belts had already been shown, or were about to be shown, stating that in many cases these were based on green belt areas defined in earlier relevant plans approved prior to the introduction of structure and local plans. Here again the relevant plans referred to would include development plans. Returning to para. 3(a) the first point that the paragraph makes is that once the "general extent" of a green belt had been approved this should only be "altered" in exceptional circumstances. It is to be noticed that the paragraph does not say that it should only be "reduced" in exceptional circumstances. The word "altered" is quite unqualified. What then is the significance of the word "similarly" with which the last sentence opens? It must refer to two categories of cases, namely where local plans had already been adopted or where earlier approved development plans were in place. I see no mandate for treating the two alternative positions differently. The boundaries of existing green belts in structure plans should not be altered either way except in exceptional circumstances nor should adopted local plans be treated any differently. Mr. Wilson-Smith argued that the word "alteration" as used in para. 3 of the circular means "alteration which results in diminishing the area of the green belt." He justified the implication of these words by

pointing to the policy of Circular 14/84, which refers only to the necessity of "preserving" the green belt from encroachment, usually by buildings residential and industrial, both within the green belt or by erosion along the boundaries—he referred by way of example to "safeguarding the surrounding countryside from further encroachment . . . "(para. 1):

> There must continue to be a general presumption against inappropriate developments within green belts

and

> The essential characteristics of green belts is their permanence and their protection must be maintained.

These statements merely repeat and reinforce Circular 42/55, to which I have already referred. The context in which the statement in the House was made and the circular issued was a purely negative one, *i.e.* to prevent urban sprawl. It is not surprising therefore that the emphasis is on the restriction of alterations, the effect of which would be to erode or diminish the extent of green belts. Mr. Wilson-Smith submitted that there was no need to give protection against extensions of the green belt. I must return to consider this proposition in a little more detail later. It was not the basis upon which Otton J. formed his judgment[4]:

> In short I reject the construction advanced by Mr. Harper. Para. 3(a), read in the context of Circular 14/84 as a whole, does not mean that once a boundary had been defined and settled under an earlier development plan it could only be changed in a later local plan in exceptional circumstances.
>
> In reaching this decision, I take into account part of paragraph 9.6 from the Hereford and Worcester County Structure Plan, Written statement, which states:
>
> > The Secretary of State is committed to the preservation of the green belt and considers that for green belts to maintain their credibility, once their general extent has been approved as part of the structure plan for the area, they should be altered only in exceptional circumstances.
>
> I interpolate that the words "once . . . " through to "exceptional circumstances" reiterate word for word the first sentence of paragraph 3(a) of Circular 14/84. The next sentence appears to confirm my construction:
>
> > He is aware that precise green boundaries remain to be determined in this area and that this exercise, which should be done through the local plan process, may involve some adjustment at the margins of the green belt as shown in the structure plan.
>
> In my judgment the alteration of the applicants' boundary as a result of the representation by the county council amounted to no more than an adjustment at the margin of the green belt.

I hope that it does not do an injustice if I say that Mr. Wilson-Smith did not embrace the suggestion that the inclusion of the wedge within the green belt could be described as an adjustment at the margin with any degree of enthusiasm. The main plank of his argument was that alterations to the

[4] (1991) 61 P. & C.R. 57 at p. 63.

boundary of the green belt which had the effect of extending the green belt did not require justification by exceptional circumstances. To support this argument the respondents had served a notice under R.S.C., Ord. 59, r. 6(1)(b) to the following effect:

> 1. That exceptional circumstances were not required under Circular 14/84 or Planning Policy Guidance (P.P.G.) (2) issued by the Department of the Environment where the alteration to the green belt was by way of extension rather than relaxation.
> 2. That the process of producing a new Local Plan was itself an exceptional circumstance.

Para. 2 of the notice was not relied upon by Mr. Wilson-Smith, rightly in my judgment. It could not be substantiated on any basis.

Mr. Ash submitted that para. 3(a) of Circular 14/84 was in plain terms and that proper planning required consideration of the interests of all parties involved, not the least those interested in development. The effect of the green belt was to sterilise the area for development, other than the limited number of specified purposes and would inhibit proper and orderly development. Therefore once the boundaries of the green belt in a particular area had been defined developers and others interested were entitled to protection against change to the limited degree that the boundaries would only be altered in exceptional circumstances. Besides what must be assumed to be the deliberate use of the word "alter" in para. 3(a) as I have already observed in my judgment, Mr. Ash has support for his submissions to be drawn from a consideration of planning concepts as a whole.

The circulars and P.P.G.s having no statutory authority can only be viewed as indicatory of current planning policy. Although the P.P.G.s were issued over a matter of months, the circulars were published over a period of years. One can detect over the passage of time shifts in emphasis disclosed in the latter as between "development" on the one hand and "conservation" on the other. In the circumstances, I think that Mr. Wilson-Smith was justified in submitting that these documents should not be treated as statutes in the process of construing what they mean. In my judgment it is legitimate to look to the purpose of planning policy as a whole and take into account the particular contemporaneous context in which a particular document was published. I consider that the key may well lie in the underlying concept of P.P.G. (1), namely that where possible planning policies should encourage development:

> *The presumption in favour of development*
> 15. The planning system fails in its function whenever it prevents, inhibits or delays development which can reasonably be permitted. There is always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance. Except in the case of inappropriate development in the green belt the developer is not required to prove the case for the development he proposes to carry out; if the planning authority consider it necessary to refuse permission, the onus is on them to demonstrate clearly why the development cannot be permitted.

The zoning of any particular area as a green belt sterilises that area except for the limited category of purposes listed in para. 5 of Circular 42/

55. It therefore provides a kind of planning blight and must be an exception to P.P.G. (1) para. 15, the area of which should not be extended unless it is necessary for the purposes of the green belt as defined in P.P.G. (2).

As it directly prejudices landowners in the otherwise proper development of their land an extension to the green belt should not be brought into effect unless it can be justified directly by those purposes for which the green belt is designed. There must therefore be an inhibition in extending a green belt so as to avoid sterilising unnecessarily neighbouring land (see the provisions of paras. 5 and 6 of Circular 50/57 set out earlier in this judgment) just as much as reductions in the boundaries of the green belt, which would prejudice the purposes of that green belt, must also only be made in exceptional circumstances. On this basis I think that the general concept of the advice in the circulars is that once a green belt has been established and approved as a result of all the normal statutory processes it must require exceptional circumstances rather than general planning concepts to justify an alteration. Whichever way the boundary is altered there must be serious prejudice one way or the other to the parties involved.

This accords with a plain reading of the words "altered" and "alteration" in para. 3(a) of Circular 14/84. Furthermore the general tenor of Circular 14/84 is that once a green belt has been approved—either in an adopted local plan, or if a local plan has not been adopted under the 1971 legislation then the next previously approved and adopted plan—alteration to boundaries of a green belt should only be made in exceptional circumstances. There are two obvious qualifications to this principle. First, if as a result of the supervening structure plan green belt boundaries shown in an earlier development plan become meaningless or anomalous; secondly, if the structure plan for the area concerned has not been approved, then none of the provisions of para. 3(a) apply. The matter is considered in para. 3(b) to which it is, at this stage, interesting to refer:

> Where detailed green belt boundaries have not yet been defined in earlier approved development plans or in adopted local plans—for example, where approved structure plans have extended the area of the green belt to include areas previously referred to as "interim" green belt—it is necessary to establish boundaries that will endure. It is especially important that these boundaries of green belts should be carefully drawn so as not to include land which it is unnecessary to keep permanently open for the purpose of the green belt. Otherwise there is a risk that encroachment on the green belt may have to be allowed in order to accommodate future development. If green belt boundaries are drawn excessively tightly around existing built-up areas it may not be possible to maintain the degree of permanence that green belts should have. This would devalue the concept of the green belt and also reduce the value of local plans in making proper provision for necessary development in the future.

Although for the reasons already stated the emphasis is on erosion of the green belt, this sub-paragraph indicates that the importance of unnecessary extension has not been overlooked.

Although there might have been a case to be made on the grounds that the reasons given in proposed change No. 3 to the draft local plan for extending the green belt were not justifiable in any event, this was not pursued by Mr. Ash and it is not necessary for me to consider this position. I

am satisfied that neither the inspector nor the planning authority "had regard" to para. 3(a) of Circular 14/84. For the purpose of the appeal it was conceded by Mr. Wilson-Smith that there were no "exceptional circumstances" which would justify the inclusion of the wedge in the green belt. I would allow the appeal and quash this part of the local plan.

TAYLOR L.J. I agree that this appeal should be allowed for the reasons given by Purchas L.J. There was no dispute that the local planning authority had a duty to have regard to circulars and P.P.G.s issued by the Secretary of State. The central issue was as to the meaning and effect of para. 3(a) of Circular 14/84 which provides as follows:

> 3. The essential characteristic of green belts is their permanence and their protection must be maintained as far as can be seen ahead. It follows from this that:
>
> (a) Once the general extent of a green belt has been approved as part of the structure plan for an area it should be altered only in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the authority has considered opportunities for development within the urban areas contained by and beyond the green belt. Similarly, detailed green belt boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally.

Without seeking to construe the circular as strictly as a statute, which would be inappropriate, I agree with Purchas L.J. as to its purpose and effect. The introductory words refer to the permanence as well as to the protection of the green belt as being essential. The word "altered" is used in para. 3(a) rather than words such as "reduced," "encroached upon" or "breached." It is suggested that the second sentence is consistent only with alteration by reduction, the implication being that if there are opportunities for development in the urban areas the green belt should not be invaded for such development. However, it could equally apply to exclude extension of the green belt if such extension would diminish unacceptably opportunities for development having regard to the opportunities available in the urban areas. This latter consideration is clearly contemplated in para. 3(b) which states, *inter alia*:

> . . . It is especially important that these boundaries of green belts should be carefully drawn so as not to include land which it is unnecessary to keep permanently open for the purpose of the green belt. Otherwise there is a risk that encroachment on the green belt may have to be allowed in order to accommodate future development. If green belt boundaries are drawn excessively tightly around existing built-up areas it may not be possible to maintain the degree of permanence that green belts should have.

In my view, the requirement of exceptional circumstances before altering the green belt was applicable to increasing as well as reducing it. The prejudice to land owners and developers and the uncertainties which would be created if the green belt, once approved, could be extended other than exceptionally have been fully explained by Purchas L.J. It is true that the circular and P.P.G. (2), which is to similar effect, do not bind the local planning authority, but it must have regard to them. It did not do so. More-

over, it is conceded that there were here no exceptional circumstances. Accordingly, in my view, the decision to include the "wedge" in the green belt was flawed.

BELDAM L.J. In this case the appellant in an application to the High Court under section 244 of the Town and Country Planning Act 1971, challenges the validity of a proposal made by the respondent district council, in formulating the Wyre Forest Urban Areas Local Plan on the ground that it did not have regard to considerations which the Secretary of State in the particular case directed it to take into account. The particular considerations are those contained in circulars and planning policy guidelines relating to green belt areas. As Purchas L.J. records in his judgment, the court has been asked to decide the case on the single issue of the construction to be given to a particular Circular, 14/84, issued by the Secretary of State and entitled "Green Belts." It is said that if the construction contended for by the appellant is correct, its appeal should succeed but if the respondent's construction is right then the appeal must fail. I do not myself believe that this is the correct or a realistic basis upon which to decide whether in any particular case a local planning authority has erred in formulating its proposals in a local plan. Nevertheless under the constraint imposed by the manner in which the case was presented and in the light of the clear concession made on the respondent's behalf by Mr. Wilson-Smith, Q.C. that the respondent's reasons for its decision would be inadequate if it was required to have regard to the Secretary of State's policy for settling the boundaries of a green belt area when enlarging as well as when reducing the area contained within its boundaries, I agree that the appeal should be allowed.

Ministerial guidance clearly does not have the force of a statute or regulations and is not intended to be subjected to a process of legalistic interpretation. Equally ministerial policy is something which a local planning authority is required under the Act to take into account in reaching the decision entrusted to it by Parliament. According to para. 5 of P.P.G. (2) issued by the Department of the Environment in January 1988, one justification for including land within a green belt is so that it may play a positive role in providing access to open countryside for the urban population. Such access may be for active outdoor sports or for passive recreation. The reason given in Appendix 3 of the Wyre Forest Urban Areas Local Plan written statement for the inclusion in the green belt of the wedge of land, part of which belonged to the appellant, was to safeguard the open valley and to provide an area for informal recreation, a purpose which as it seems to me was well within the justification to which I have referred. The paragraphs in Circular 14/84 dated July 4, 1984, and issued by the Department of the Environment upon which so much emphasis has been placed are in part reproduced under the heading "Designation of Green Belts" paras. 7 to 11 of P.P.G. (2). If it were correct to view the ministerial guidance as being subject to strict legal rules of construction, I would for my part have said that in para. 3(a) the Minister clearly had in mind alterations which consisted of allowing development in designated green belt areas. The fact that if such an alteration was proposed the Secretary of State would have to be satisfied that it could not be accommodated within urban areas contained by and beyond the green belt, seems to me to support this. The word "similarly" later in para. 3(a) is in my view used to indicate that the

same criterion should be applied to green belt boundaries defined in adopted local plans or earlier approved development plans as to those approved as part of a structure plan for an area. And although this paragraph in isolation might suggest that ministerial guidance is limited to development which reduces the area of the green belt, there is clearly other policy guidance for green belt boundaries in both the circular and in P.P.G. (2). Circular 14/84 states:

> It is especially important that these boundaries of green belts should be carefully drawn so as not to include land which it is unnecessary to keep permanently open for the purpose of the green belt. Otherwise there is a risk that encroachment on the green belt may have to be allowed in order to accommodate future development. If green belt boundaries are drawn excessively tightly round existing built-up areas, it may not be possible to maintain the degree of permanence that green belts should have. This would devalue the concept of the green belt and also reduce the value of local plans in making proper provision for necessary development in the future.

This guidance is reproduced in P.P.G. (2) in paragraph 10:

> It is necessary to establish boundaries that will endure and they should be carefully drawn so as not to include land which it is unnecessary to keep permanently open. Otherwise there is a risk that encroachment on the green belt will have to be allowed in order to accommodate future development.

Such guidance cannot, I think, be confined to cases where detailed green belt boundaries have not yet been defined. In the context of ministerial policy as a whole it is, I think, intended to apply whether the boundaries of the green belt are being changed to reduce or to enlarge the area. This seems to me clear from the policy more fully set out in Circular 14/84. Thus, a local planning authority considering whether or not to alter the boundaries of a green belt by the inclusion of additional land not previously contained within the boundary should at least take into account as part of ministerial policy whether that boundary is in the longer term defensible against pressure for development and whether to draw the proposed boundary may include land which it is unnecessary to keep permanently open for the purpose of the green belt. The reasons given by the respondent and the manner in which the appeal has been resisted on its behalf, seem to me to indicate that in adopting the recommendation of the inspector who conducted the local inquiry it did not have regard to this important aspect of ministerial policy.

I therefore agree that the appeal should be allowed.

Appeal allowed with costs of appeal and below.

Solicitors—Marriott Harrison Bloom & Norris; the Solicitor to the Wyre Forest District Council.