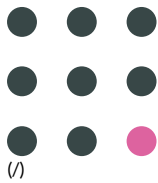


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High Court holds that some residential gardens are brownfield land

21.01.2016

The High Court (Charles George QC sitting as a Deputy High Court Judge) handed down judgment today in *Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015)*.

The principal issue before the Court was whether the definition of "previously developed land" (commonly known as "brownfield land") within the NPPF and Planning Policy for Traveller Sites ("PPTS") excluded all private residential gardens, or just those "in built up areas".

The Deputy Judge held that the wording of the exemption to previously developed land, within the NPPF was significant. It reads "land in built-up areas such as: private residential gardens" (underlining added). As such, the Deputy Judge found that only residential gardens within the "built-up area" were exempt from the definition of previously developed land whereas, residential gardens outside "built up areas" were "brownfield".

The Court held there to be a rational explanation for the distinction, namely that undeveloped land in the urban area was at more of a premium and thus required greater protection. Although such a consideration did not feature in the Written Ministerial Statement or Letter to Chief Planning Officers on the issue of "garden grabbing" which accompanied the amendments to national policy in 2010, those documents had to be read alongside the wording of the amendment to national policy (then contained within PPS3 "Housing") which, in common with the NPPF, preceded the exclusion of residential gardens with the phrase "land in built-up areas".

Ashley Bowes, of Cornerstone Barristers who acted for Dartford BC in the case comments:

"The decision is significant. It holds that residential garden land, outside "built-up areas" is "brownfield" land not, as had widely been understood, "greenfield" land. That finding has consequences in terms of its priority for development. Paragraph 111 NPPF provides that brownfield land is where development ought to be prioritised.

The decision presents councils and others with an interest in the development of land with the obvious quandary as to how to identify "built-up areas". In this case, the land was within the countryside to which the Council's countryside development plan policies applied. There may be very many less clear-cut cases however.

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It remains to be seen whether there is any amendment to the NPPF/PPTS to clarify the Minister's apparent intention in 2010 (via the Written Ministerial Statement the Letter to Chief Planning Officers) to remove all residential gardens from the definition of brownfield land."

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