Hearing Statement: Matter 4 Green Belt boundary alterations

**Issue:** Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust?

**Question 4.1** Was the Green Belt Assessment undertaken on the basis of a clear methodology consistent with national planning policy for protecting Green Belts?

1.1 No. The Green Belt Assessment methodology is not consistent with national planning policy for protecting Green Belts.

1.2 In June 2015, OLRG asked Paul Brown QC for a Note of Advice on the Green Belt Assessment methodology the Council was proposing to use (included at Appendix A of Chapter 14 of our Regulation 19 submission). The note highlighted a number of significant failings in the proposed methodology. We supplied the advice note to the Council during its consultation on the Green Belt Assessment methodology. However, the Council did not take on board all the advice and failings remained.

1.3 The methodology is wrong because the assessments of Green Belt parcels are:

- undertaken as if land was not already designated as Green Belt when it clearly is;
- the conclusions are based on artificially drawn parcel boundaries which illogically divide sections of the Green Belt performing a single purpose, rather than on holistic consideration of the role that the land plays;
- they misinterpret the role of the Green Belt regarding openness by including extraneous factors such as topography and woodland;
- Purpose five is not assessed.

1.4 The Green Belt Assessment takes no account of the fact that existing Green Belt would not have been designated as such if it had not been considered to fulfil a Green Belt function. The Assessment has made the underlying assumption that this is the first time that Green Belt land has been assessed when, in fact, it was assessed in order to be designated as Green Belt in the first place. As a result, it has taken no regard of any conclusions which have been reached before. This relates to the “material change on the ground” point raised by Paul Brown QC in his 2015 advice note which was provided by OLRG to the Council.
Despite this, the Council has founded its conclusions on what (in the absence of any change in circumstances on the ground) can only be a different view on where the boundary should be to that which was taken at the time of the original designation. That approach is impossible to reconcile with the established case law. The Assessment should consider whether the “purpose continues to be fulfilled” in light of any “material changes” on the ground.

1.5 The Council has created small artificial parcels of Green Belt land for analytical convenience rather than holistically considering how the land fulfils the purposes. This means that sections of Green Belt performing a single purpose have been divided, so hindering an assessment of the role of the wider Green Belt around a settlement and consequently tending to diminish the purposes which the Green Belt fulfils in a location. There are many examples of where parcel boundaries are drawn around buildings/previously developed land in the midst of open countryside, and then the assessment concludes the area within the “parcel” does not stop settlements from merging.

1.6 The assessments consistently misinterpret the role of the Green Belt in preserving openness by including what else performs a role in this, such as topography and woodland, instead of using the correct test which is whether the Green Belt itself performs that role.

1.7 There is an important difference between a purpose not being fulfilled and a purpose not being applicable to a site. There is confusion about this and the two are considered to be the same in the assessments.

1.8 The Green Belt Assessment (Part 3): Exceptional Circumstances and Insetting June 2018 (GB1) claims at paragraph 1.1 and in footnote 1 at the bottom of page 5 that the Council’s Green Belt Assessment work has considered how the Green Belt in Tandridge serves the five purposes set out in the NPPF. This is incorrect. The Council’s Assessments have never assessed purpose 5 even though the historic pattern of development in Tandridge shows a strong pattern of recycling of derelict and other urban land because most of the former redundant public sector employment sites have been developed into housing. OLRG has pointed out this omission from the start of the process but the Council has not corrected it. The Council’s failure to consider purpose 5 is not justified because Green Belt land should be assessed against all the 5 purposes set out in the NPPF. The Plan includes a Green Belt objective to ensure that previously developed land is fully utilised. There is an
inconsistency between the inclusion of this and the failure to assess purpose five in the Green Belt Assessment.

1.9 For the Council’s first Regulation 18 Consultation (Issues and Approaches), OLRG commissioned planning consultant, Tony Fullwood MRTPi (Tony Fullwood Associates) to carry out a critique of the assessments contained in the Green Belt Assessment (December 2015). He made a detailed analysis of a case study set of 12 of the Council’s 47 Green Belt “parcels” that illustrate common flaws arising in the assessment work. His analysis explains that many of the conclusions in the assessments that purposes are not fulfilled are flawed because they are the consequence of how the parcel boundaries were drawn, rather than being conclusions arising from an integrated and holistic assessment of how the land fulfils the Green Belt purposes. Mr Fullwood’s analysis is included at Appendix B of Chapter 14 of our Regulation 19 submission.

1.10 The Green Belt Assessments are not sufficiently robust to be used in the planning balance exercise to decide whether “exceptional” or “very special circumstances” exist. They contain flaws both in the methodology and in the application of established case law. The consequence of the flaws is that the assessments conclude that much of the Green Belt land meets fewer of the purposes than it actually does and so unjustifiably weaken protection for the Tandridge Green Belt leaving it unnecessarily at risk from future planning applications and at appeal. This result is contrary to the fundamental aim of Green Belt policy, which is to keep land permanently open.

Suggested modification

1.11 The Green Belt Assessment should be corrected to ensure consistency with national planning policy and case law as set out above.

Question 4.2 In terms of paragraph 84 of the Framework, have the proposed alterations to the Green Belt boundaries taken account of the need to promote sustainable patterns of development and are they consistent with the Local Plan strategy?

1.12 No. We reiterate the points, and suggested modifications, raised in response to question 3.1. The reliance on the car to access employment and services has not been taken into account in the proposals to alter the Green Belt boundaries. Travel to work patterns and the dominance of the car were not used to inform either the Preferred Strategy for the Plan or the final Plan. Ignoring the fact that the car so heavily dominates travel behaviour means that sustainable patterns of development have not been promoted.
**Question 4.3** Have all realistic alternatives to releasing land from the Green Belt been considered, such as further development in the urban area or increasing development densities, and would the most efficient use of land proposed for release from the Green Belt be made?

1.13 There are some brownfield sites in the Oxted and Limpsfield area that have not been considered for housing development at any point during the Local Plan process. These include the Chalkpit Quarry site (where an application for housing development was refused by the Council in 2014) and the Moorhouse site (SES04), both of which are previously developed land in the Green Belt. In addition, as detailed in paragraphs 25.12 – 25.23 of Chapter 25 of our Regulation 19 submission, there is an area of brownfield land in central Oxted which has never been assessed for development. These omissions are inconsistent with national policy to prioritise and make maximum use of brownfield land. This is especially important in Tandridge District which is so heavily constrained by Green Belt.

**Suggested modification**

1.14 Prior to considering any release of Green Belt land, the sites mentioned in the previous paragraph should be considered for housing development.

**Question 4.5** In overall terms, are there exceptional circumstances for the proposed alterations of the boundaries of the Green Belt, to accommodate the level development proposed?

1.15 No. The Plan includes an exceptional circumstances case for release of Green Belt land based on accepting very large elements of unmet need from outside the HMA and from those who move to Tandridge as a “lifestyle choice”. The inward migrants are coming from much larger areas all of which have local employment, services and infrastructure, including public transport. They are moving to Tandridge’s small settlements and rural villages that have limited local employment, services and infrastructure and where everyone drives. We believe this is contrary to the sustainability objective of the NPPF.

1.16 As explained in our answer to question 4.1 the Green Belt assessments have been undertaken as if the land was not already designated Green Belt, and so they do not consistently consider whether there has been a material change “on the ground” that might falsify the reasons that the land was originally designated as Green Belt.
1.17 In its response to this point, the Council has argued that it is not necessary for the original reasons for designating land to be “falsified” before it can conclude that exceptional circumstances exist.

1.18 We recognise that exceptional circumstances do not necessarily depend upon a finding that the land to be removed from the Green Belt no longer fulfils a Green Belt purpose. There may be cases where the Green Belt value of land remains the same, but other considerations, such as need, increase to the extent where the overall balance in favour of release becomes exceptional. To that extent, it is correct that exceptional circumstances do not depend upon the “falsification” of the original reasons for designating the land. However, that has not been the Council’s approach in this case: the Council has generally accepted that, where land continues to fulfil a Green Belt function, it should not be released in order to meet need.

1.19 Consequently, the Council’s decision to release particular sites is justified by reference to the Green Belt Assessment. It is at this point that its reliance on its arguments about “falsification” breaks down. While exceptional circumstances do not depend upon the “falsification” of the original reasons for including land in the Green Belt, that is entirely different from the argument that the importance or value of a site as Green Belt can only change if there has been some change in circumstances (for example, through development of adjoining land or the creation of a bypass) since the original designation. As Paul Brown QC noted in his Opinion, in *Gallagher Estates v Solihull Ltd* (following the decision of Collins J in *R (Hague) v Warwick District Council*) Hickinbottom J observed that:

“The fact that, after the definition of the Green Belt boundary, the local authority or an inspector may form a different view on where the boundary should lie, however cogent that view on planning grounds, that cannot of itself constitute an exceptional circumstance which necessitates and therefore justifies a change and so the inclusion of the land in the Green Belt.”

1.20 In addition, in all iterations of the HELAA and in the Spatial Approaches Topic Papers, the Council has taken no account of whether land is within the Green Belt which is one of the most important constraints of all. Indeed, it has specifically chosen to exclude consideration of this. Both the 2016 Collective Regulation submission and the OLRG 2016 Sites Consultation submission pointed out the omission. As set out in section 4.1 of Chapter 14 of our Regulation 19 submission, the Council has attempted to justify it by saying that because
“the very policies on which the Plan is based are being considered” (SCON5 pages 1103 and 1116) this entitles it to draw up its HELAA as if it was starting with a blank slate.

1.21 The Council’s approach conflicts with the NPPF (paragraph 14) which recognises the Green Belt as a constraint. The PPG requires that the HELAA identify all of the relevant constraints to establish realistic assumptions.

1.22 It is impossible to reconcile the Council’s approach with the longstanding principle that Green Belt boundaries should only be changed in exceptional circumstances. It is self-evident that this principle requires continued recognition of existing Green Belt boundaries to be the starting point when bringing forward a new Plan. There is no provision in either the NPPF or PPG for a different version of the HELAA which excludes the Green Belt as a constraint. It also follows that the need to show exceptional circumstances is also a constraint which should be included in the HELAA. The Council appears to fundamentally misunderstand the PPG, the NPPF and past and present Green Belt policies.