Neutral Citation Number: [2018] EWHC 1753 (Admin)

Case No: CO/145/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT (BIRMINGHAM)

Birmingham Civil Justice Centre

Date: 11/07/2018

Before :

MRS JUSTICE JEFFORD DBE

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Between :

EURO GARAGES LIMITED	**Claimant**
- and -	
(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
(2) CHESHIRE WEST AND CHESTER COUNCIL	

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Mr Kevin Leigh (instructed by **Shoosmiths LLP**) for the **Claimant**
Mr Jack Parker (instructed by **Government Legal Department**) for the First Defendant

Hearing date: 16 May 2018

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Judgment Approved

Mrs Justice Jefford:

Introduction

1. The claimant, Euro Garages Ltd. ("Euro Garages"), is a company which owns and operates a chain of petrol filling stations across the Midlands and the North of England. Those filling stations commonly incorporate food outlets and shops selling convenience goods.

2. Euro Garages operates such a filling station at the Red Ensign Service Station which lies beside Park Gate Road on the A540 beside a roundabout where the A494 and the A5117 bypass intersect. The M56 also joins the A5117. The site is at the junction of the north-south route between Chester and the Wirral and the east-west route between Liverpool and North Wales. At the service station site there are fuel pumps (with a canopy above), Starbucks and Subway outlets, a Spar convenience shop (which I will refer to as "the shop") and parking for 20 vehicles. The site and the surrounding area are within the Green Belt.

3. Euro Garages carried out works, principally to the shop, for which they subsequently sought retrospective planning permission. At the time this claim was made, the works were almost complete.

4. The nature of the works is uncontroversial and can be described as follows:

   (i) a storage area was created on one side of the shop surrounded by close boarded fencing with a link to the shop. A storage container was placed in the storage area. The area had previously contained an LPG storage tank surrounded by palisade fencing.

   (ii) A side extension was added to the shop to relocate an external ATM with internal storage space behind for the shop and a new entrance, the old entrance becoming a window. Previously this area had been occupied by a storage container.

5. Euro Garages sought retrospective planning consent for these works: the storage area was the subject matter of application 17/00885/FUL and the side extension the subject matter of application 17/00657/FUL. Both applications were refused on the basis that they involved inappropriate development within the Green Belt.

6. Euro Garages appealed. The storage area was the subject matter of appeal A0665/W/17/3181400 and the extension was the subject matter of appeal A0665/W/17/3181397. After the original applications had been refused but before the appeals, Euro Garages realised that what had been built did not match the drawings accompanying the original applications in all details. In the appeals, therefore, Euro Garages sought permission for what was in the drawings on the basis that, if permission was granted, it would alter what had already been built.

7. The appeals were made under section 78 of the Town and Country Planning Act 1990 to the first defendant, the Secretary of State for Housing Communities and Local Government, and transferred by the Secretary of State to an Inspector. The appeal was dealt with by written representations to the Inspector who also undertook an accompanied site visit.

8. The Inspector's decision letter was issued on 29 November 2017 and the Inspector refused the appeals and refused to grant planning permission. Euro Garages then made this claim to quash the Inspector's decision under section 288 of the Town and Country Planning Act 1990 on the grounds principally that the decision is not within the powers of the Act, and alternatively that a relevant requirement has not been complied with. Permission was granted on 16 February 2018. The Secretary of State has contested this challenge to the Inspector's decision. The second defendant Council informed the court that it did not contest the claim and would not be represented at the hearing before me.

General principles

9. The applicable general principles were not in dispute between the parties. In summary:

   (i) a challenge under s. 288(1)(b)(i) to the validity of a decision on the grounds that it is not within the powers of the Act is made on the same basis as would be a claim for judicial review.
   (ii) The reasons in the decision letter must be adequate, clear and intelligible so that the person against whom the decision is made may understand why he lost,

ascertain whether the decision maker erred in law, and decide what he may lawfully do in the light of the decision.

10. For the latter propositions, counsel helpfully referred me to the speech of Lord Brown in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33 at [36]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to any substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponent to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he had genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

I set out this passage in full because it is pertinent not only to a reasons challenge but to the way in which the Decision Letter should be read – that is in a straightforward manner and in context.

The National Planning Policy Framework

11. Before I turn to the Inspector's decision, it is convenient to set out the relevant provisions of the National Planning Policy Framework ("NPPF") which provided the basis for that decision.

12. Under the heading Protecting Green Belt land, the NPPF says this:

"79. The government attaches great importance to green belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are that openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of the large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns;
- to assist in urban regeneration, by encouraging the recycling derelict and land.

…..

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.

89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
- [1] buildings for agriculture and forestry;
- [2] provision of appropriate facilities for outdoor sport, outdoor recreation and the cemeteries, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- [3] the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- [4] the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- [5] limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- [6] limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

90. Certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These are:
- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and…"

For ease of reference I have numbered the bullet points that appear in the paragraphs of the NPPF.

13. It was common ground that the policy is not to be interpreted as if it were a statute. It was also, however, common ground at the hearing before me that the interpretation of policy was an objective matter for the court to determine: see *Tesco Stores Ltd v Dundee* [2012] UKSC 13. The further decision of the Supreme Court in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37 [22]-[26] emphasises that the role of the court should not be overstated; that the court should start at least from the presumption that specialist planning inspectors will have understood the policy framework correctly; and that it is important to distinguish between issues of interpretation (suitable for judicial analysis) and issues of judgment in the application of policy, which can, in the normal course, only be challenged if irrational or perverse.

The decision letter

14. In the Decision Letter, the Inspector identified the main issues as being:

    (i) whether or not the proposed developments would be inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework);

    (ii) the effect of the proposed developments on the openness of the Green Belt and the purpose of including land within it; and

    (iii) if the development was inappropriate, whether that was outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

    No criticism can be made of that identification of the issues.

15. The Inspector identified paragraphs 89 and 90 of the NPPF as the relevant paragraphs. She recorded that the parties agreed that, whilst the volume and floor area of the two proposed developments was limited as a result of previous extensions to the building, both on their own and cumulatively they would represent disproportionate additions to the building so that they would not fall within the exception in bullet point [3] under paragraph 89.

16. The decision, therefore, focussed on bullet point [6]. The Inspector considered that the extension with a floor area of 61m^2 and the storage area with a floor area of 22.4 m^2 would be "limited infilling". As she then said, to fall within the exception in this bullet point, the development must also not have a greater impact on the openness of the Green Belt and the purposes of including land within it.

17. Her analysis and reasoning continued as follows:

    "13. Openness is an essential characteristic of the Green Belt. It can be taken as the absence of building and development. Whether harm is caused to openness depends on a variety of factors such as the scale of the development, its locational context and its spatial and/or visual implications.
    14. The appellant's photographic evidence shows that the container would be located in an area that was formerly surrounded by palisade fencing and contained two LPG storage tanks that were around 3.5 m in height, as well as being used for bin storage. Although not as high as these tanks, the overall scale and mass of the container is greater than them, and the proposed 2.6m timber fencing surrounding the container is not as open as the previous palisade fencing.
    15. The appellant has indicated that the extension to the shop building would be located in an area that was formerly occupied by a storage container. However, no details have been provided of how large this container was, how long it had been there, or when it was removed. In the absence of any evidence to the contrary, on the basis that this was a standard sized container, I consider that the scale and mass of the proposed extension is likely to be slightly greater than that of a container.
    16. In addition, the appellant has calculated that overall the appeal scheme would result in a 9.2% increase in floor area, and a 5% increase in volume on the existing filling station, shop and Starbucks building. Whilst these may be relatively small increases, the scale and mass of the resulting building would still be greater than at present.

17. Overall, I therefore consider that the scale and mass of the proposals would have a slightly greater impact on the openness of the Green Belt than the site did previously. I accept that [the] proposals are, to a certain extent, screened by other development on the site and the boundary treatment to the rear. Nevertheless, whilst visibility can be a factor in considering the effect on openness, this does not mean that the proposals would not affect openness, as a lack of visibility does not, in itself, mean that there would be no loss of openness. Moreover, even a limited adverse impact on openness means that openness is not preserved.

18. The purposes of including land in the Green Belt are set out in paragraph 80 of the Framework. As the proposals would be small additions to an existing building within a previously developed site, I am satisfied that the appeal schemes would not conflict with any of the purposes of including land within the Green Belt.

19. Therefore, although the proposal represents the limited infilling of previously developed site, and would not conflict with the purposes of including land in the Green Belt, it would still represent inappropriate development because it would have a greater impact on the openness of the Green Belt than the site does at present."

Bullet point [6] and the interpretation of the policy

18. Perhaps precisely because it is not a statute, bullet point [6] does not entirely make sense. A sensible reading requires the insertion of a few words so that the exception reads:

"limited infilling or the partial or complete redevelopment of previously developed sites *(brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and [conflict more with] the purpose of including land within it than the existing development."*

Not only is this a sensible reading but it accords with the wording used in bullet point [2] of paragraph 89 and in paragraph 90.

19. There are thus two limbs to this exception or two tests which the development must pass to fall within the exception to inappropriateness, namely (i) that the infilling must not have a greater impact on the openness of the Green Belt than the existing development and (ii) that the infilling must not conflict more with the purpose of including land within the Green Belt than the existing development. In the course of the argument before me, Euro Garages appeared to conflate these two. They are distinct elements and the Inspector was right to treat them separately and on the basis that to fall within the exception the development had to meet both tests.

20. So far as the second limb was concerned, the Inspector decided that the development did not conflict with the purposes of including the land in the Green Belt and no issue arises about this. The battleground, therefore, was the meaning of the "greater impact on the openness of the Green Belt" and whether the Inspector had properly interpreted that part of the exception and applied the appropriate test.

21. "Openness" is not a defined term but, in my view, it is clear in this context that it is openness of the Green Belt that must be considered not the site as such. That is not

merely the wording of the paragraph but must be the case because any infill would, almost by definition, have an impact on the openness of a site.

22. I trust that I will do no injustice to the further detailed submissions of Mr Leigh, on behalf of Euro Garages, on this issue, if I summarise them as follows:

    (i) Firstly, it is submitted that for there to be "greater impact" there must be something more than merely a change. The answer to what is meant by that greater impact and what more is required is to be found in the decision of the Court of Appeal in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2018] EWCA (Civ) 489.

    (ii) Paragraph 90 is concerned with other forms of development which are not inappropriate "provided they preserve the openness of the Green Belt". It is submitted that, although the wording is different in bullet point [6] of paragraph 89, it amounts to the same thing: if the openness of the Green Belt is preserved, there is no greater impact. Conversely, if the openness of the Green Belt is not preserved, there will be greater impact.

    (iii) Given that the policy is not to be construed as a statute, one can conclude that greater impact occurs where the openness of the Green Belt is not preserved. In that context "preserved" does not mean not changed but means not harmed. So whether there is greater impact involves, in application, an assessment of the harm occasioned by the change.

23. I largely accept these submissions on behalf of Euro Garages. Firstly it seems to me that Mr Leigh is right to submit that, in the context of the exceptions under paragraph 89, for there to be a greater impact on the openness of the Green Belt there must be something more than just some change to the environment. In each of the instances under the bullet points, it is contemplated that there will be some change to what is presently there. But, despite that change, the openness of the Green Belt will be preserved (bullet point [2]) and/or there will not be a "disproportionate" addition or something "materially larger" (bullet points [3] and [4]). In the case of infill there will necessarily be a change to the scope of the build. So for there to be a greater impact there must be something more. That view is consistent with the decision in the *Samuel Smith* case to which I refer further below. Whether or not there is a greater impact is a matter of judgment.

24. I would not wish to decide, for all purposes, that the concepts of not having a greater impact on the openness of the Green Belt and of preserving the openness of the Green Belt are identical. Having said that, there is an obvious reason why the wording in differs paragraphs and bullet points differs. Where there is no existing development, consideration must be given to whether the development preserves the openness of the Green Belt. Where there is some existing development, the openness of the Green Belt has not been wholly preserved and there will necessarily have been some impact on the openness of the Green Belt already. It makes sense, therefore, to consider whether there will be a greater impact from the contemplated limited infilling. Asking the question whether there is any greater harm is one way of assessing the impact.

25. However one expresses it, a judgment must be made as to whether there is greater impact on the openness of the Green Belt. It is a judgment that needs to be exercised.

26. On behalf of the Secretary of State, Mr Parker drew my attention to the decision of the Court of Appeal in *Turner v Secretary of State of Communities and Local Government* [2016] EWCA Civ 466. In that case, Sales L.J. described the concept of "openness of the Green Belt" as open-textured such that a number of factors were capable of being relevant. Visual impact was implicitly part of the concept of openness of the Green Belt. However, the openness of the Green Belt also has a spatial aspect and the absence of visual intrusion "does not in itself mean that there is no impact on the openness of the Green Belt as the result of the location of a new or materially larger building there" [at 25].

27. As I have said, Euro Garages placed reliance on the decision in the *Samuel Smith* case. The case concerned a challenge to the grant of planning permission for a significant extension to a quarry. The matter fell within paragraph 90 of the NPPF. The inspector's decision was, in part and in summary, challenged on the basis that, although she had considered the visual impact of the development, she had not done so when considering the visual effect on the openness of the Green Belt. At first instance, the court had rejected this challenge, relying on *Turner* as authority for the proposition that the inspector could take into account visual impact but was not obliged to do so. The appeal succeeded on this issue, the Court of Appeal finding that the inspector had taken too narrow a view of the concept of openness of the Green Belt and that she had failed to consider the visual impact of the development on that openness.

28. Euro Garages relied in particular on the following passages in the judgment of Lindblom LJ:

> *"37. The concept of "openness of the Green Belt" is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.'s observations in Turner to the effect that the concept of "openness" as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs. Different factors are capable of being relevant to the concept when it is applied to the facts of a case. Visual impact, as well as spatial impact, is, as Sales L.J. said "implicitly part" of it. In a particular case there may or may not be other harmful visual effects apart from harm in visual terms to the openness of the Green Belt. And the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt.*
>
> *38. As a general proposition, however, it seems to me that the policy in paragraph 90 makes it necessary to consider whether the effect of a particular development on the openness of the Green Belt can properly be gauged merely by its two-dimensional or three-dimensional presence on the site in question – the very fact of its being there – without taking into accounts the effects it will have on the openness of the Green Belt in the eyes of the viewer. To exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic. The policy in paragraph 90 does not do that. A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as spatial effects. Whether, in the individual circumstances sofa a particular case, there are likely to be visual as well as spatial effects on the openness of*

the Green Belt, and if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.

39. The first part of the question posed by the preamble in paragraph 90 – whether the development would "preserve" the openness of the Green Belt – cannot mean that a proposal can only be regarded as "not inappropriate in the Green Belt" if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful – understanding the verb "preserve" in the sense of "keep ... safe from harm" – rather than "maintain (a state of things)" .... There may be cases in which a proposed development in the Green Belt will have no harmful visual effects on the openness of the Green Belt. Indeed, there may be cases in which development will have no, or no additional, effect on the openness of the Green Belt, either visual or spatial ... But development for "mineral extraction" in the Green Belt, the category of development with which we are concerned, will often have long-lasting visual effects on the openness of the Green Belt, which may be partly or wholly repaired in the restoration phase – or may not. Whether the visual effect of a particular project of mineral working would be such as to harm the openness of the Green Belt is, classically, a matter of planning judgment.

40. In my view, therefore, when the development under consideration is within one of the five categories in paragraph 90 and is likely to have visual effects within the Green belt, the policy implicitly requires the decision-maker to consider how these visual effects will bear on the question of whether the development would "preserve the openness of the Green Belt". where that planning judgment is not exercised by the decision-maker, effect will not be given to the policy. This will amount to a misunderstanding of the policy, and thus its misapplication, which is a failure to have regard to a material consideration, and an error of law."

29. It does not seem to me that this decision defines the meaning of "greater impact" or even of "preserving" the openness of the Green Belt but it supports the view, firstly, that a mere change in the current build is not sufficient to establish that there is a greater impact on the openness of the Green Belt. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. Further, the question of whether the openness of the Green Belt is preserved will generally involve an assessment of the visual or perceived impact. That is a matter of planning judgment but it is a matter that needs to be considered.

30. Mr Parker submitted that the decision in *Turner* should not be regarded as providing a check list of matters that must be considered by the decision-maker in order for there to be a lawful decision. I agree that there is not a check list and the mere fact that the decision maker does not recite a check list and his decisions on each item does not, in itself, invalidate the decision. However, I take Lindblom LJ in the *Samuel Smith* case to say that where the issue of openness of the Green Belt arises, the visual impact of a development will generally require consideration, and that should be the case whether there is likely to be a visual impact or there is no visual impact. On the facts of the *Samuel Smith* case, the court was concerned with a scenario in which the development was likely to have visual effects which had not been considered in the context of the issue of preserving the openness of the Green Belt but, in my view, if there is no visual

impact that ought also to be a material consideration for the obvious reason that it is the less likely that the openness of the Green Belt will be harmed. That seems to me to be consistent with the references in the judgment of the Court of Appeal to the perceived effect on openness "if any" and to cases where the proposed development will have no, or no additional, effect on the openness of the Green Belt. This interpretation of the policy seems to me to be equally applicable to the issue of "greater impact" on openness under paragraph 89.

31. Pulling these points together, the policy requires the decision maker to consider and make an assessment, under bullet point [6], of whether the openness of the Green Belt is impacted or harmed by the proposals to a greater extent than that openness has already been impacted. That is an open-textured assessment and there is no check list to be gone through but, where openness of the Green Belt is in issue, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation.

The approach of the Inspector

32. It is entirely clear from the Inspector's decision letter, as set out above, that she properly identified the test that she should apply as to whether the limited infill in this case fell within the exception at bullet point [6] of paragraph 89. She properly identified that she should consider both whether the development was in conflict with the purposes of including land in Green Belt and whether the development had any greater impact on the openness of the Green Belt. She further, entirely properly, framed the issue of greater impact on openness in terms of harm and she rightly identified that whether there was harm might depend on a variety of factors including the scale of the development, its locational context and its spatial and/or visual implications (paragraph 13). The Inspector made no further reference to the scale of the development (other than in terms of its volume) or its locational context. That was entirely proper: there is no check list. She did, however, address both spatial and visual impact, exercising her judgment as to the relevant considerations.

33. So far as the spatial impact was concerned, the Inspector concluded that the scale and mass of the container was greater than the LPG tanks, although not as high, and the scale and mass of the extension was slightly greater than the previous container. Overall, she concluded that the scale and mass of the resulting building would be greater than at present, although there were relatively small increases.

34. Those conclusions appear in turn to have led to the conclusion in paragraph 17 of the decision letter that *"the scale and mass of the proposals have a slightly greater impact on the openness of the Green Belt than the site did previously."* The decision letter discloses no reasoning as to why these "relatively small" increases had a slightly greater impact on the openness of the Green Belt.

35. As I have indicated, Mr Parker reminded me that I should give the letter a "benevolent" reading rather than subject it to a close textual analysis and that I should bear in mind that it was written against the background of the parties' written representations and that it should be sufficient to allow the appellant to understand the Inspector's reasoning when read in that context. That does not, however, seem to me to assist the Secretary of State here because the written representations put squarely in issue Euro Garages' argument that the relatively small increase in floor area and volume did not

have a greater impact on the openness of the Green Belt. Euro Garages identified the percentage increases in floor area and volume and argued that *"such an increase would not be regarded as having a material impact on the open character of the Green Belt …"*. The Decision Letter provides no reasoning as to why the Inspector decided that it did.

36. It seems to me that the only basis on which the Inspector could have reached that conclusion was if she considered that the greater floor area and/or volume necessarily meant that there was a greater impact. The flaw in that reasoning is that any infill (however limited) would necessarily result in greater floor area or volume and it involves the assumption that any change would have a greater impact. As I have said, the concept of greater impact involves something more than that.

37. So far as visual impact of the development is concerned, this was expressly raised in the appellant's written representations. Visual impact was, at the very least, in the mind of the Inspector and referred to in the Decision Letter. However, the consideration that the Inspector gave to visual impact was less than clear.

38. Firstly, in paragraph 14 of the Decision Letter there is reference to the timber fencing around the new container not being as open as the previous palisade fencing. It is not at all clear whether that was a factor that the Inspector took into account but, if she did, then, looked at on its own, it seems to me that that involved a misinterpretation of the policy, in that it was concerned with the openness of the site and not of the Green Belt. There may, of course, be circumstances in which the replacement of an open fence with a solid structure could impact the openness of the Green Belt but here the open fence surrounded tanks and the solid fence surrounds a container (of lesser height) and it is difficult to see how there could be an impact on the openness of the Green Belt as distinct from the site itself.

39. Secondly, paragraph 17 of the Decision Letter also referred to visual impact. The Inspector referred to the fact that the development is, to some extent, screened and not visible. That implies that she considered there to be <u>some</u> visual impact. Despite that, the Inspector then said "a lack of visibility does not, in itself, mean that there would be no loss of openness." Read in context, that is a statement of principle and simply does not address the question of whether, in this particular case, the development (to some extent screened but to some extent visible) does or would have an impact on openness. If the sentence is to be read as meaning that the Inspector has concluded that the development has no visual impact, then the only matter she took into account was the spatial impact, which, as I have said, she appears to have approached on the erroneous basis that <u>any</u> change had a greater impact on the openness of the Green Belt.

40. The final sentence of this paragraph which reads *"… even a limited adverse impact on openness means that openness is not preserved"* might, on a benevolent reading, be taken to mean that the Inspector concluded that the development does have such a limited adverse impact visually but if that is what the sentence means, then it amounts to no more than a decision that because the development is visible, it has a greater impact on openness. That seems to me to disclose the same error of assuming that any change has a greater impact on openness.

41. That the decision was reached in the flawed manner I have set out seems to me to be further evidenced by the Inspector's conclusion in paragraph 23 of the Decision Letter that the development would "not adversely affect the character and appearance of the site or this part of the Green Belt". The Inspector regarded the absence of harm in this respect as a neutral factor but that only makes sense if the Inspector regarded some other harm as necessarily flowing from any alteration to the existing site.

Conclusion

42. In my judgment, therefore, what the Inspector in fact did was treat any change as having a greater impact on the openness of the Green Belt, rather than considering the impact or harm, if any, wrought by the change. Although the Inspector appeared to set out the right test, she then either went wrong in her interpretation of the policy or failed to apply the policy. For these reasons, I would grant Euro Garages the relief sought and quash the decision of the Inspector.

43. For completeness, I should add that Euro Garages advanced, before the Inspector and before me, an alternative argument that the development fell within bullet point [3] under paragraph 90 as "local transport infrastructure which can demonstrate a requirement for a Green Belt location." It is not necessary for me to consider this alternative case or express any view, as counsel for Euro Garages invited me to do, as to whether a petrol filling station fell within the definition of "local transport infrastructure".