Neutral Citation Number: [2014] EWCA Civ 825

Case No: C1/2013/2697

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Mr Justice Ouseley
[2013] EWHC 2643 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2014

Before :

LORD JUSTICE MOORE-BICK
LORD JUSTICE RICHARDS
and
LORD JUSTICE KITCHIN

- -

Between :

Europa Oil and Gas Limited	**Claimant/ Respondent**
- and -	
Secretary of State for Communities and Local Government	**First Defendant/ Respondent**
and	
Surrey County Council	**Second Defendant/ Respondent**
and	
Leith Hill Action Group	**Third Defendant/ Appellant**

- -
- -

Stephen Whale (instructed under the Direct Public Access rules) for **Leith Hill Action Group**
Andrew Newcombe QC and **Mark Westmoreland Smith** (instructed by **Charles Russell LLP**) for **Europa Oil and Gas Limited**

Hearing date : 30 April 2014

- -

Approved Judgment

Lord Justice Richards :

1. This appeal concerns an application for planning permission for exploratory drilling for hydrocarbons in the Green Belt. It raises a point of interpretation of paragraph 90 of the *National Planning Policy Framework* ("the NPPF"), which was issued in March 2012 and sets out the Government's planning policies for England.

2. Paragraphs 79-92 of the NPPF relate to the protection of Green Belt land, replacing the former *Planning Policy Guidance 2: Green Belts* ("PPG2"). Paragraph 79 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 80 provides more specifically that Green Belt serves five purposes, which include assisting in safeguarding the countryside from encroachment.

3. Paragraph 87 states that, 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". Paragraph 89 provides that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, with specified exceptions such as the provision of appropriate facilities for outdoor sport (subject to a proviso). Paragraph 90 states:

> "Certain other forms of development are also 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 Green Belt. These are:
>
> - mineral extraction;
>
> - engineering operations …."

4. The central question in the appeal is whether the proposed development by way of an exploratory drillsite falls within the scope of the expression "mineral extraction" in that paragraph.

5. The *Surrey Minerals Plan 2011: Core Strategy Development Plan Document* ("the Surrey MCS") also contains a provision, Policy MC3, relating to mineral development in the Green Belt and distinguishing between "mineral extraction" and "mineral development other than extraction". The terms of the policy are set out later in this judgment. The policy has a subsidiary role in the case.

The history

6. Europa Oil and Gas Limited ("Europa") applied in 2008 to Surrey County Council for planning permission for a development described in these terms:

> "Construction of an exploratory drillsite to include plant, buildings and equipment; the use of the drillsite for the drilling of one exploratory borehole and the subsequent short term testing for hydrocarbons; the erection of security fencing and the carrying out of associated works to an existing access and

> track all on 0.79 ha, for a temporary period of up to 3 years, with restoration to forestry."

7. The purpose of the proposed development is to explore for hydrocarbons in the Holmwood Prospect, located beneath Coldharbour village, near Leith Hill. The site is in the Metropolitan Green Belt and the Surrey Hills Area of Outstanding Natural Beauty. The proposal would involve offset drilling to establish whether hydrocarbons are present. If viable reserves were found, any exploitation of them would have to be the subject of a separate planning application.

8. Planning permission was refused by the Council, contrary to its officer's recommendation. Europa's appeal under section 78 of the Town and Country Planning Act 1990 ("the 1990 Act") was dismissed by an inspector, Mr Keri Williams, appointed by the Secretary of State. At paragraph 15 of his decision the inspector referred to paragraph 147 of the NPPF, which draws a distinction between three phases of on-shore oil and gas development, namely exploration, appraisal and production. He continued:

> "15. … I have considered the appellants' contention that this exploratory development should be regarded as part of mineral extraction. However, in the light of paragraph 147 of the Framework, this does not seem to me to be the correct approach. In that context, I do not consider that this development falls within the specific term 'mineral extraction', which is the production phase and is cited in paragraph 90 of the Framework as a category of development which is not inappropriate subject to the effect on Green Belt openness and purposes. Nor does the development, when considered as a whole, fall into the category of 'engineering operations', which is also referred to in paragraph 90, although it includes elements of such operations. Moreover, the Framework does not exclude temporary development from amounting to inappropriate development.
>
> 16. Having regard to the above, I conclude that the development would amount to inappropriate development. Paragraph 87 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This requirement is also reflected in MCS policy MC3."

9. The inspector concluded that very special circumstances to justify the grant of planning permission did not exist. Part of his reasoning in reaching that conclusion is relevant to the question whether his overall decision would have been the same even if he had found that the proposed development fell within "mineral extraction". At paragraph 17 he considered the effect on Green Belt openness and purposes. Having referred to paragraphs 79 and 80 of the NPPF and to the fact that the appeal site was within woodland, so that the site and the surrounding area were not of an open appearance, he continued:

> "17. … However, I consider Green Belt openness in terms of the absence of development. The proposal would require the creation of an extensive compound, with boundary fencing, the installation of a drilling rig of up to 35 metres in height, a flare pit and related buildings, plant, equipment and vehicle parking on the site. Taking this into account, together with the related HGV and other traffic movements, I consider that Green Belt openness would be materially diminished for the duration of the development and that there would be a conflict with Green Belt purposes in respect of encroachment into the countryside over that period."

In striking the overall balance, at paragraph 57, he said that he attached substantial weight to the harm through inappropriateness; that in the particular circumstances of the case, where the development would be temporary and reversible, moderate weight should be given to the harm to Green Belt openness and from encroachment into the countryside; and that, having regard to the temporary and limited extent of the harm to the Area of Outstanding Natural Beauty with regard to visual impact and effect on its character, only moderate weight should be attached to that harm.

10. Europa challenged the inspector's decision by an application to the High Court under section 288 of the 1990 Act. Ouseley J upheld the challenge and quashed the inspector's decision. He held in particular that (1) "mineral extraction" in paragraph 90 of the NPPF and Policy MC3 of the Surrey MCS included exploration and that the proposed development was therefore for mineral extraction, so that the inspector had erred in law on the issue of interpretation; and (2) without that error the inspector's decision might well have been different.

11. Leith Hill Action Group, which was a defendant to the proceedings in the High Court, brings the present appeal against the judge's decision. Permission to appeal was granted by the judge himself. The grounds of appeal take issue with the two aspects of the judge's decision that I have identified above.

12. I should explain the stance taken by the Secretary of State in the proceedings. He originally supported the inspector's decision generally. The day before the hearing before Ouseley J, however, he changed his mind as regards the issue of interpretation, in the light of a recent policy document to which I make reference below. He continued to support the decision on the ground that the inspector's error made no difference to the outcome. Following the judge's rejection of that argument, he has played no part in the proceedings in this court.

Ground 1: the interpretation of paragraph 90 of the NPPF

13. Paragraph 90 of the NPPF is a policy statement which, in accordance with basic principle, "should be interpreted objectively in accordance with the language used, read as always in its proper context" (per Lord Reed JSC in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, para 18).

14. It is common ground that on-shore oil and gas development has three phases: exploration, appraisal and production. The appellant's case is that on the proper interpretation of paragraph 90 "mineral extraction" refers only to the production

phase. This is put forward not as the *necessary* meaning of "mineral extraction" but as the meaning it must be understood to bear in the particular context. Mr Whale, on behalf of the appellant, accepted that the expression is *capable* of encompassing all three phases. An illustration of that is to be found in the policy document that led the Secretary of State to change his mind on the interpretation of paragraph 90. The document, *Planning Practice Guidance for Onshore Oil and Gas*, July 2013, stated at paragraph 9: "There are three phases of onshore hydrocarbon extraction: exploration, testing (appraisal) and production". It has been replaced more recently by further guidance containing the same language. Beyond illustrating that "mineral extraction" is capable of having the wider meaning, however, those documents have no bearing on the construction of paragraph 90 since they post-date the NPPF.

15. On the face of it, the NPPF is a stand-alone document which should be interpreted within its own terms. It even contains a glossary (Annex 2) which explains familiar planning terms such as "local plan" and "planning condition", cross-referring as appropriate to legislation. The glossary defines "minerals of local and national importance" as including "oil and gas (including hydrocarbons)" but casts no light on the meaning of "mineral extraction". The only other place within the NPPF where reference is made to the extraction of minerals is in section 13, headed "Facilitating the sustainable use of minerals", where it is stated:

> "142. Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation.
>
> 143. In preparing Local Plans, local planning authorities should:
>
> - identify and include policies for extraction of mineral resource of local and national importance in their area …
>
> - so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;
>
> - …
>
> - set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place ….
>
> 144. When determining planning applications, local planning authorities should:

> • give great weight to the benefits of the mineral extraction, including to the economy ….
>
> …
>
> 147. Minerals planning authorities should also:
>
> • when planning for on-shore oil and gas development, including unconventional hydrocarbons, clearly distinguish between the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production ….”

16. It would be very surprising if, in the absence of a clear indication to that effect, “mineral extraction” had a different meaning in paragraph 90 of the NPPF from its meaning in the later passages of the same document. Whilst those later passages do not *compel* any particular interpretation, in my view they lean in favour of one that includes exploration as well as production. Given the importance of mineral resources, it would be surprising if the instruction in paragraph 143 to identify and include policies for extraction did not extend to exploration as well as production. The realisation of the economic and other benefits referred to in the first bullet point of paragraph 144 depends upon establishing by exploration and appraisal suitable locations for production. Moreover, if “extraction” were intended to be limited to production, one would have expected a reference to “extraction” rather than to “production” in the first bullet point in paragraph 147. As the judge said at paragraph 44 of his judgment: “The three phrases are treated as components of the one process, the one process they naturally make up is the overall process of extraction”.

17. Mr Whale’s arguments to the contrary included the contention that production generates known benefits, including benefits to the economy, whereas exploration generates no known benefit and indeed is unlikely to generate any benefit, whether from the appeal site or elsewhere. The evidence before the inspector was that the drill site would explore two reservoir rocks, with an estimated 32 per cent probability of hydrocarbons being present in one reservoir and a 25 per cent probability of its being present in the other. Those levels of probability were said to be high by industry standards but meant, of course, that it was more likely than not that no hydrocarbons would be found. Even if they were found, it is likely that production would be in a location different from the appeal site. All that was submitted by Mr Whale to tell against exploration, as distinct from production, falling within “mineral extraction” so as to be potentially excepted from the general policy relating to inappropriate development in the Green Belt.

18. A further contention was that exploration for oil and gas, although temporary and reversible, is liable to be more disruptive than the production phase and that this again tells against exploration falling within the potential exception for “mineral extraction”. It is difficult to attribute much weight to that point even in relation to oil and gas, given the range of factors that will affect the extent of disruption caused either by exploration or by production: in the present case, the period of actual development from start of work to completion of restoration works was expected to

be only 18 weeks. Any weight the point might have disappears altogether when one considers, for example, the likely disruption caused by exploration as compared with production in the case of the quarrying of aggregates.

19. The judge dealt with these arguments of Mr Whale in this way:

> "41. The inspector and Mr Whale's approach depends on the proposition that whilst extraction may be appropriate development in the Green Belt, the necessary prior work of exploration and appraisal never can be, and that actual extraction may involve no harm to the Green Belt while exploration and appraisal always will. The former will not require or may not require the demonstration of very special circumstances, the latter always will. That is a distinctly odd interpretation of NPPF. [By] paragraph 144 planning authorities are enjoined to give great weight to the benefits of what is referred to as mineral extraction. Again, that is referred to in general terms, covering all minerals. Yet, on the inspector's interpretation, no such weight at all would be given to works essential before any production took place. That interpretation would, on its face, be likely to undermine the scope for great weight to be given to the benefit of mineral extraction. What might be very valuable reserves if extracted, and the extraction of which would require no very special circumstances to be shown, could not be explored or appraised without very special circumstances being shown.
>
> 42. Mr Whale asked why a planning authority should give weight to trying to find something that is probably not there. But it is obvious why one would give great weight to trying to explore for a valuable resources although it might, in the end, never be found; and especially so [since], as was evidenced, it is always more likely than not that this mineral will not be found [on] exploration of a seismically surveyed prospect and where the resource is at the high end of the likelihood being found. There is obvious potential on Mr Whale's approach to undermine the aim of benefiting the economy through extracting the mineral. In general, his would be a policy that involves straining at the gnat only to swallow the elephant. If oil exploration may be more intrusive than oil production – the reverse of the usual position in mineral extraction – that does not mean that a general mineral policy such as paragraph 90 should be interpreted differently …."

20. The judge went on to reject certain further arguments of Mr Whale which did not appear to feature in his case on the appeal and which were in any event rightly rejected. The judge then made some points about paragraph 147 of the NPPF, to which I have already made brief reference, before concluding that "mineral extraction" in paragraph 90 includes exploration as well as production.

21. The judge's reasoning strikes me as cogent, and looking at the specific context of the NPPF's Green Belt policies and the wider context of the NPPF as a whole there appears to me to be a strong case for interpreting "mineral extraction" in the broad way the judge did. Before reaching a final decision on the issue, however, I need to consider both Policy MC3 of the Surrey MCS and the legislative material and guidance employed by Mr Whale in support of the narrow interpretation.

22. We were told that the parties were content at the inquiry before the inspector to proceed on the basis that Policy MC3 was consistent with the NPPF and that Europa's Green Belt case on the one stood or fell with its case on the other. It is necessary to consider the policy, however, because the judge reached a positive conclusion, which Mr Whale has challenged, that "extraction" had the same meaning in the policy as in the NPPF. The policy reads as follows:

> "**Policy MC3 - Spatial strategy – mineral development in the Green Belt**
>
> Mineral extraction in the Green Belt will only be permitted where the highest environmental standards of operation are maintained and the land restored to beneficial after-uses consistent with Green Belt objectives within agreed time limits.
>
> Proposals in the Green Belt for mineral development other than extraction and primary treatment, will only be permitted where the applicant has demonstrated that very special circumstances exist to outweigh the harm by reason of its inappropriateness and any other harm."

Paragraph 3.45 of the supporting text, referring to PPG2 (to which I return below), states that mineral extraction need not be inappropriate development in the Green Belt as it is a temporary operation that can be carried out without compromising openness.

23. The Surrey MCS is an unsatisfactory document to interpret. It states at paragraph 1.5 that "'mineral development' applies to any development primarily involving the extraction, processing, storage, transportation or manufacture of minerals" and also includes development such as rail aggregate depots and the provision of facilities for aggregate recycling; and at paragraph 1.6 that "'mineral working' or 'mineral extraction' refer to the quarrying of minerals, and ancillary development (such as processing plants, site offices and weighbridges)". The implications of this for the appellant's case were well dealt with by the judge:

> "47. Mineral development in the definition section of the MCS includes extraction and processing and other specifically identified forms of mineral development. It does not expressly refer to exploration and appraisal, yet one word or another used in the definition must be given broad enough scope for exploration to be included within it. Were it otherwise, exploration would fall outside the scope of the MCS altogether. No one has suggested that. The consequence, therefore, is that a word must be found within the definition section which

> encompasses exploration. The obvious word to encompass it is 'extraction'. It cannot be 'processing, storage, transportation or manufacture'. It is not within the same broad categories as rail depots and recycling. It is closer to what 1.6 envisages."

24. The judge went on in paragraph 48 to make a further point, in relation to which I accept Mr Whale's submission that it is founded on an obvious error in the table at paragraph 1.10 of the Surrey MCS (which mistakenly lists "oil and gas" under "Aggregates" rather than "Non-Aggregates"). But that does not affect the judge's reasoning at paragraph 47 of his judgment, with which I agree.

25. Whether or not the judge was right to treat Policy MC3 as *reinforcing* his conclusion on paragraph 90 of the NPPF, as he did at paragraph 46 of his judgment, it seems to me that there is nothing in Policy MC3 to undermine that conclusion and that there is nothing that requires "mineral extraction" to be given a different interpretation in Policy MC3 from that in the NPPF.

26. I turn to consider Mr Whale's more general submission that the interpretation of "mineral extraction" both in the NPPF and in Policy MC3 should be informed by the meaning that "extraction" of minerals had in the legislation and national guidance that preceded those documents; and that "extraction" had been used consistently in such material to refer to the actual winning or working of minerals rather than to the exploration phase.

27. Thus, for example, section 336(1) of the 1990 Act defines "the winning and working of minerals" as including (except in so far as the context otherwise requires) "the extraction of minerals from a minerals working deposit", which is defined in turn as a deposit of material remaining after minerals "have been extracted" from land; and paragraph 1 of Schedule 1 to the same Act distinguishes between "the winning and working of minerals" and "the carrying out of searches and tests of mineral deposits". In *Secretary of State for Communities v Bleaklow Industries Ltd* [2009] EWCA Civ 206, [2009] P&CR 21 at [29], it was held that in principle "winning" refers to the process of achieving access to the desired mineral, and "working" refers to the process of removing the desired mineral from its position in the land.

28. Similarly, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 distinguishes between development the principal purpose of which is "any purpose other than … purposes in connection with the winning and working of minerals …" (Part 19, paragraph A.1) and development for the purpose of "mineral exploration" (Part 22).

29. The former Green Belt policy guidance in PPG2, issued in January 1995, contained the following passage under the heading "Mining operations, and other development":

> "3.11 Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. Mineral and local planning authorities

> should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration …."

Whilst I see the force of Mr Whale's argument that the expressions used in that guidance echoed the statutory definitions and distinctions to which I have referred, it is unnecessary to reach a decision on the point. PPG2 was replaced by the NPPF, the terms of which are different, and it is within the context of the NPPF that the meaning of "mineral extraction" must be decided.

30. It was after dealing in his submissions with PPG2 that Mr Whale brought in Policy MC3 of the Surrey MCS, on the basis that it, in turn, echoed PPG2 and should be interpreted in the same way as PPG2. But I have already expressed my agreement with the main reason given by the judge for interpreting MC3 Policy in the same way as he interpreted paragraph 90 of the NPPF.

31. Mr Whale went on to make reference to two former statements setting out the Government's national planning policies for minerals planning in England. *Minerals Policy Statement 1: Planning and Minerals* ("MPS1"), issued in November 2006, contained a number of passages in which references to "extraction" of minerals was consistent with the narrower meaning attributed to it by the appellant. In particular, paragraph 1.1 of Annex 4 stated that the annex "sets out Government planning policy on planning control of land-based exploration, appraisal, development and extraction of oil and gas (including gas from coal) resources in England"; and paragraph 1.4 referred to "oil and gas exploration and extraction operations". *Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Minerals Extraction in England* ("MPS2"), issued in March 2005, also referred to minerals "extraction" in terms that suggested that the focus was on the working of minerals. The same general point was made in relation to the *Planning and Minerals Guide, 2006*, which was not itself a policy statement but was intended to inform and support the application of MPS1. For example, paragraph 36 of the Guide included the statement that "The process of exploration and appraisal does not carry any presumption that long-term production or mineral extraction will take place at that location". Both MPS1 and MPS2 and the related Guide were replaced by the NPPF but, together with the other pre-NPPF material to which I have referred, were relied on by Mr Whale as indicia of the meaning of minerals "extraction" over many years. He also pointed out that they were referred to in the Surrey MCS.

32. Mr Whale's deployment of all this earlier material does not persuade me that the judge was wrong to interpret paragraph 90 of the NPPF as he did. The NPPF replaced the earlier guidance (though not of course the legislation) and, so far as material, was more than a simple carry-across of the language used in the guidance it replaced. The interpretation to be given to "mineral extraction" in paragraph 90 has to take account both of the specific context and of other indicators within the NPPF itself. I have explained why those factors lead me to the same conclusion as the judge, and why I also agree with his related conclusion on the meaning of the same expression in Policy MC3 of the Surrey MCS.

33. I therefore agree with the judge that the inspector erred in law in finding that the proposed development did not constitute "mineral extraction" within paragraph 90 of the NPPF and Policy MC3 of the Surrey MCS.

Ground 2: whether the inspector's error made no difference

34. By the opening words of paragraph 90 of the NPPF, developments constituting mineral extraction are not inappropriate in the Green Belt "provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt". The second ground of appeal relates to that proviso. The appellant's argument is that even if the inspector had proceeded on the basis that exploration for hydrocarbons fell within "mineral extraction", he would inevitably have found that the particular development proposed in this case did not satisfy the proviso and was therefore inappropriate development, so that his overall decision would have been the same. The argument is based on the latter part of paragraph 17 of the inspector's decision, quoted at paragraph 9 above. In that passage, having summarised what the development would involve and having referred to related traffic movements, the inspector found "that Green Belt openness would be materially diminished for the duration of the development and that there would be a conflict with Green Belt purposes in respect of encroachment into the countryside over that period".

35. Ouseley J gave detailed consideration to the effect of the inspector's error concerning the interpretation of paragraph 90. He was not satisfied that without the error the decision would inevitably have been the same. He set out his reasons at paragraphs 64-78 of his judgment. I think it sufficient for present purposes to summarise them, though a summary cannot do them full justice.

36. First, the judge said that the premise of paragraph 17 of the inspector's decision was that exploration for hydrocarbons *cannot* be appropriate development in the Green Belt, whereas any correct analysis of the proviso to paragraph 90 of the NPPF has to start from the different premise that exploration *can* be appropriate, i.e. that there is nothing inherent in such development that would necessarily compromise the objectives in the proviso. Were it otherwise, the proviso would always negate the appropriateness of such development in the Green Belt and would simply make the policy pointless.

37. The judge's second reason was that considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of buildings or structures but include their purpose. For example, paragraph 89 of the NPPF treats a house differently from a sports pavilion: the Green Belt is necessarily harmed by one but is not necessarily harmed by the other. One relevant factor, of particular importance to the thinking that makes mineral extraction potentially appropriate, is the duration of development and the reversibility of its effects. Another is the fact that extraction of minerals, including exploration, can only take place where minerals are found or may be found. Whether development that is capable of being appropriate for the purposes of paragraph 90 is in fact appropriate is a more complex question than the consideration of the effect on the Green Belt where development has already been concluded to be inappropriate.

38. The judge's third reason was that the factors spelled out in the first paragraph of Policy MC3 of the Surrey MCS or apparent from the supporting text (the temporary nature of the activity, the environmental standards maintained during operation, and the restoration of land to beneficial after-uses consistent with Green Belt objectives, within agreed time limits) are all relevant to appropriateness and may well be important to the judgment of openness and conflict with Green Belt purposes. The significance that the inspector attached at paragraph 17 of his decision to the duration of the development was not as a factor relevant to appropriateness but simply as a factor showing that for the duration of inappropriate development there would be an impact. The judge expressed surprise that the inspector saw the temporary nature and reversibility of the development as wholly irrelevant to the effect on openness and even more so to conflict with the purposes of Green Belt. He said that if paragraph 90 of the NPPF is of any purpose, the mere fact of the presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate.

39. Finally, the judge was not persuaded that the judgments made by the inspector in striking the overall balance, and in particular as regards his assessment of the weight to be given to the harm caused by the development, would inevitably have been the same without the error he made in his understanding of whether exploration fell within "mineral extraction".

40. Mr Whale submitted that this issue should have been resolved "on a straightforward down-to-earth reading of [the] decision letter without excessive legalism or exegetical sophistication" (per Sir Thomas Bingham MR in *Clarke Homes Ltd v Secretary of State for the Environment* (1993) 66 P&CR 263, 272), whereas the judge approached it with excessive legalism and sophistication. The inspector referred at paragraph 15 of his decision to the proviso to paragraph 90 of the NPPF. He was mindful of the purpose of the proposed development and its nature, and of its duration and reversibility. It was wrong to infer that he saw those matters as being irrelevant to openness or conflict with Green Belt purposes. He expressly recognised that minerals can only be worked where they are found. So the inspector had the relevant points in mind.

41. I reject those submissions. I agree with the general thrust of the judge's reasoning, without needing to consider every detail of it. The key point, in my judgment, is that the inspector approached the effect on Green Belt openness and purposes on the premise that exploration for hydrocarbons was necessarily inappropriate development since it did not come within any of the exceptions. He was not considering the application of the proviso to paragraph 90 at all: on his analysis, he did not get that far. Had he been assessing the effect on Green Belt openness and purposes from the point of view of the proviso, it would have been on the very different premise that exploration for hydrocarbons on a sufficient scale to require planning permission is nevertheless capable in principle of being appropriate development. His mind-set would have been different, or at least it might well have been different. Thus, the findings in paragraph 17 of his decision do not mean that if he had considered the matter on the correct premise he would necessarily have concluded that this development failed to meet the proviso in paragraph 90 of the NPPF that developments "preserve the openness of the Green Belt and do not

conflict with the purposes of including land in Green Belt". He might have reached that conclusion but it cannot be said that he would inevitably have done so.

42. Accordingly, the judge was entitled to find that the decision might have been different but for the inspector's error, and thus to exercise his discretion to quash the decision.

Conclusion

43. I would dismiss the appeal.

Lord Justice Kitchin :

44. I agree.

Lord Justice Moore-Bick :

45. I also agree.