

## IN THE WELWYN HATFIELD LOCAL PLAN

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ADVICE

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1. I am asked to advise as to whether national Green Belt guidance in the NPPF 2012 (which applies to the emerging Welwyn Hatfield Local Plan) requires a sequential approach to be taken to the selection of land.
2. Guidance was given as to the proper approach to the 2012 test in the *Calverton* case at [51] and more recently in the *Compton* case [68] – [72]. Both of those cases are in the examination library.
3. What is often referred to in shorthand as the “Calverton approach” is the one that has been adopted by the Council and the inspector and consistently applied for the purposes of the examination (EX39 p.4). In EX39 the inspector identified the essence of the exceptional circumstances test as being “*a matter of rational judgement between competing considerations whereby different weight is given to them to arrive at an objective decision*”. Quite correctly, no sequential element is involved in that formulation of the test by the inspector.
4. In *Calverton* itself sets out at [51] what was there described as an ideal (and at [52] as a counsel of perfection), rather than a required, approach. Ouseley J. confirmed that the factors are not a checklist or necessarily exhaustive in the *Compton* case [72]. The Calverton approach It is well known and involves consideration of the following matters:

“(i) the acuteness/intensity of the objectively assessed need (matters of degree may be important);

(ii) the inherent constraints on supply/availability of land prima facie suitable for sustainable development;

(iii) (on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt;

(iv) the nature and extent of the harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and

(v) the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent”

5. The *Calverton* guidance was explained further in the *Compton* case at [68] – [72] where a very similar formulation was used. It is important to note that in providing his guidance there is no indication that Ouseley J. was seeking to extend the law or introduce new principles: He was setting out existing principles. The approach is summarised in [69] “*All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional circumstances” in this context*”. The clear similarity between that test and the test correctly summarised by the inspector in EX39 is plain. As both Jay J. and Ouseley J. pointed out, a deliberate policy decision was made in the 2012 NPPF not to define “exceptional circumstances”, but to entrust decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case (see *Calverton* at [20] and *Compton* at [68]).

6. The *Compton* guidance at [70] expressly reiterates and endorses the guidance from the earlier case of *IM Properties* [2014] PTSR 1484 [91] confirming there is no policy test that Green Belt land should only be released as a last resort under the 2012 NPPF. The rest of the guidance given in *Compton* therefore needs to be read bearing in mind that endorsement. (As a more general point, it is noteworthy that the NPPF is clear about the circumstances in which a sequential test is required, for example, in cases relating to flood risk and retail provision).
7. General planning needs such as housing or the delivery of infrastructure can, in appropriate cases, be determinative themselves of a need to alter the Green Belt boundary [72]. Further, it is open to a plan making authority, in exercising their planning judgment, to decide that an important factor is *“the overall distribution of development, and the scope for other uses to be provided for along with sustainable infrastructure”* [72]. Those are plainly factors that have influenced the Council here.
8. It is not for me to make planning judgments on the various factors that have shaped the Council’s approach to Green Belt release within the emerging Local Plan, but in my view the approach adopted by the Council is clearly legally consistent with (i) the applicable national guidance, (ii) the above caselaw, and (iii) the principle of the approach endorsed by the inspector in EX39.

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