Neutral Citation Number: [2022] EWHC 2145 (Admin)

Case No: CO/820/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
(Sitting in Birmingham)

Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 12th August 2022

Before :

MR JUSTICE EYRE

- -

Between :

WARWICK DISTRICT COUNCIL	**Claimant**
- and -	
SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**First Defendant**
- and –	
MR JULES STORER	**Second Defendants**
MRS ANN LOWE	

- -
- -

Ben Fullbrook (instructed by **Warwickshire Legal Services**) for the **Claimant**
Victoria Hutton (instructed by **Government Legal Department**) for the **First Defendant**
The **Second Defendants** did not appear other than by a noting observer

Hearing date: 19th July 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE EYRE

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be **10:30am** on **12th August 2022**

Mr Justice Eyre:

Introduction.

1. This case arises out of the Claimant council's refusal of the Second Defendants' application for planning permission for the demolition of an existing outbuilding and its replacement by a garden room/home office. Both the existing structure and the proposed replacement are physically detached from the relevant dwelling house. The Second Defendants' property is in the Green Belt and the Claimant's refusal of permission was on the basis that the proposed structure did not fall within any of the exceptions to the principle that the construction of new buildings in the Green Belt is inappropriate. The Second Defendants appealed that decision and the appeal was allowed by the First Defendant's inspector ("the Inspector") on the basis that the new building was within the exception identified at paragraph [149(c)] of the National Planning Policy Framework namely "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".

2. The Claimant applies with the permission of Lang J for planning statutory review of the Inspector's decision pursuant to section 288 of the Town & Country Planning Act 1990. The Claimant had originally sought to proceed by way of judicial review rather than statutory review but Lang J permitted the reconstitution of the claim by way of amendment. The case turns on the proper interpretation of the [149(c)] exception. The Claimant says that the interpretation of that provision is a matter of law and that on its proper interpretation in order for a new building to be an extension of an existing building the former must be physically attached to the latter. As a consequence it is said that the Inspector erred in law in concluding that the exception applied. The First Defendant says that this is not a case where it is appropriate for the court to express a view on the meaning of the term "the extension … of a building". Alternatively he says that the proper interpretation of that term does not require the extension to be physically attached to the building of which it is an extension.

The Factual and Procedural Background and the Applicable Policies.

3. The Second Defendant's property is in Vicarage Road in Stoneleigh. The village of Stoneleigh is "washed over" by the West Midlands Green Belt. The Second Defendant's property consists of a Grade II timber-framed cottage ("the Cottage"), a garden, a garage, and a currently disused timber structure. That structure has a footprint of 10.2m^2 and appears to have been originally used as the garage for the property but that use has been superseded by a more recently-built garage. This timber structure is in the garden of the Cottage but is approximately 20m from the Cottage itself. The Second Defendants sought permission to demolish the timber structure and to replace it with a garden room/home office with a footprint of 16m^2.

4. Policy DS18 of the Claimant's Local Plan addressed the Green Belt and provided that the Claimant would "apply national planning policy to proposals within the green belt".

5. The relevant national planning policy is set out in the NPPF. The current version of the Framework was introduced in July 2021 which was between the date of the Claimant's refusal of permission and the Inspector's determination of the appeal. Although there was a change in the paragraph numbering the text of the relevant

passages was unaltered and I will use the current paragraph numbering throughout. The relevant provisions are:

> "137. 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 their openness and their permanence.
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> 138. Green Belt serves five purposes:
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> a) to check the unrestricted sprawl of large built-up areas;
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> b) to prevent neighbouring towns merging into one another;
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> c) to assist in safeguarding the countryside from encroachment;
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> d) to preserve the setting and special character of historic towns; and
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> e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
>
> …
>
> 147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
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> 148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
>
> 149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
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> a) buildings for agriculture and forestry;
>
> b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
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> c) 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;
>
> d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
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> e) limited infilling in villages;
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> f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
>
> g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
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> – not have a greater impact on the openness of the Green Belt than the existing development; or

> – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."

6. Section 336 of the 1990 Act defines "building" as including "any structure or erection, and any part of a building, as so defined but does not include plant or machinery comprised in a building".

7. On 30th April 2021 the Claimant refused the application for planning permission on the basis that the proposed structure constituted inappropriate development in the Green Belt and that there were no very special circumstances outweighing the harm which inappropriate development would by definition cause. The Officers' Report concluded that none of the exceptions in NPPF [149] applied and the Claimant's decision to refuse permission was on that basis. Neither the report nor the decision addressed [149(c)] directly but instead focused on the possible application of [149(d)] and concluded that it did not apply because the proposed garden room/home office would be materially larger than the existing disused garage which was to be replaced.

8. The Second Defendants appealed the Claimant's refusal of planning permission. They made four points in support of the appeal. First, it was said that the proposed new building was within the exception at [149(d)] because the addition of $6m^2$ did not cause it to be materially larger than the building being replaced. Next, the Second Defendants contended that the proposed garden room/home office was a "normal domestic adjunct" to the Cottage and as such was an extension within the scope of [149(c)]. In that regard they invoked the decision of Malcolm Spence QC sitting as a deputy judge in the case of *Sevenoaks DC v Secretary of State for the Environment & another* [1997] EWHC 1012 (Admin) ("*Sevenoaks")* which I will consider below. Then, the Second Defendants invoked [149(g)] arguing that the proposed structure amounted to limited infilling or the partial redevelopment of a previously developed site. Finally, they pointed to a number of matters which they said combined to constitute very special circumstances such as to warrant the grant of permission even if none of the exceptions applied.

9. By her decision of 20th January 2022 the Inspector allowed the appeal in the light of the assessment contained in the Appeal Planning Officer's report. In doing so she agreed with the Claimant that the exception at [149(d)] did not apply. In that regard she concluded that the additional $6m^2$ would amount to a "significant enlargement" of the existing structure and that the proposed building would also be "visibly larger in scale and bulk than the existing building". However, she did conclude that the proposed building would be an extension within the meaning of [149(c)] setting out the reasoning in that regard as follows:

> "9. Framework paragraph 149 (c) permits 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. The existing building was the original garage to the house and as such could reasonably be considered to have been a normal domestic adjunct to it. Likewise, the proposed outbuilding would be used for purposes clearly related to the occupation of the dwelling. It would be in the same location on the site, relatively close to the dwelling and within a group of buildings closely associated with it. Therefore, I am satisfied that the proposed out building can be considered as an extension to the dwelling.

> 10. The evidence before me is that there have been various extensions to the original building and a detached garage. Planning permission has recently been granted to replace the rear single storey extension with something similar in scale and the garage is relatively small in relation to the dwelling. The proposed outbuilding would be located behind this building and would be much smaller in scale compared with the host dwelling. Given the modest scale of these existing additions and the limited additional footprint from the proposed outbuilding, I find that the proposal, in combination with previous additions, would not result in disproportionate additions to the host dwelling."

10. In the section 288 review the Claimant raises a single ground of challenge namely that the Inspector's interpretation of [149(c)] was erroneous in that it was not open to her to conclude that a structure which was not physically attached to another building could be an extension of that other building.

The Issues.

11. The Claimant and the First Defendant were agreed that the issue between them was whether in order to be an extension for the purposes of [149(c)] the structure said to be an extension must always be physically attached to the building of which it is purportedly an extension. In the course of counsel's submissions it became apparent that there were really two issues between the parties. The first was whether the court should embark on the exercise of defining "the extension … of a building" for these purposes. The First Defendant said that I should not engage in that exercise but should instead regard the meaning of that provision as a matter for the judgement of planning decision makers to be applied on a case by case basis. The second was as to the meaning of the exception if I did engage in determining that meaning. In that regard the Claimant contended that a purported extension had necessarily to be attached to the building of which it was an extension whereas the First Defendant said that physical attachment was not necessary and that a building could be an extension of another building even though the two were not physically attached to each other.

12. The Second Defendants did not attend the hearing before me (other than by way of an observer taking notes). At the time when the Claimant had applied for judicial review the Second Defendants had responded pointing out the inappropriateness of that procedure; saying that they did not propose filing an Acknowledgement of Service; and contending that the Claimant's challenge to the Inspector's decision was "oppressive and disproportionate". However, their planning consultant had responded in rather more detail to the Claimant's pre-action protocol letter. In that response the *Sevenoaks* decision was invoked again and reference was made to a number of instances in which planning inspectors had given planning permission for freestanding buildings in the Green Belt on the footing that they were extensions to existing buildings. It was said that these illustrated "the well-established principle that detached outbuildings can be treated as extensions to dwellings (for the purposes of Green Belt planning policy) in accordance with the *Sevenoaks* approach".

13. In that response it was also said on behalf of the Second Defendants that although they had made reference to [149(c)] and to the *Sevenoaks* approach in their planning appeal the Claimant had not made any submissions in that regard and that the point was now being raised for the first time. The First Defendant expanded on that point in his Detailed Grounds of Defence. There the First Defendant said that although the

Claimant had responded to the Second Defendants' appeal documentation it had not in its response addressed the argument based on *Sevenoaks.* The First Defendant said that the fact that the Claimant was now advancing an argument which it had not previously advanced was to be seen "as an indication of the `unrealistic and unpersuasive nature'" of the Claimant's legal challenge (adopting the language used by Holgate J in *R (Gosea) v Eastleigh BC* [2022] EWHC 1221 (Admin) at [129]) and referring also to the judgment of Coulson LJ in *R (Gathercole) v Suffolk CC* [2020] EWCA Civ 1179 at [56] – [57]). I do not find this criticism persuasive. Holgate J and Coulson LJ were considering instances where at a late stage environmental assessments had been said to be inadequate as a matter of law in circumstances where the alleged inadequacy had not been raised previously. In such circumstances it is readily understandable that the failure to raise the point at an earlier stage was seen as indicating that the party raising the point did not in truth regard the statement as inadequate. The position is different here where the Claimant's stance throughout has been that none of the [149] exceptions apply and where the issue is one of pure interpretation of the terms of the NPPF. The arguments now advanced are to be considered on their merits and such force as the Claimant's contentions might otherwise have is not reduced by the fact that they were not asserted in the same terms previously.

Is the Meaning of "the Extension … of a Building" a Matter of Definition for the Court or of Judgement for the Decision Maker?

14. The First Defendant contended that there was no one objective meaning which would be applicable in all circumstances to the term "the extension … of a building". Miss Hutton submitted that as a consequence the court should not engage in seeking to define that term but should instead regard it as a matter for the judgement of planning decision makers on a case by case basis. It was, Miss Hutton said, not appropriate for the court to set out one part of a definition of that term but to leave other elements at large.

15. In support of that argument Miss Hutton referred me to *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13, [2012] PTSR 983 where referring to policy statements in development plans and similar documents Lord Reed said at [19]:

> "19 That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse: Tesco Stores Ltd v Secretary of State for the Environment [1995] I WLR 759,780, per Lord Hoffmann. Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean"

16. Miss Hutton relied on the middle portion of that passage and said that the application of the language of [149(c)] to the facts of any given case was a matter of judgement for the planning decision maker. She sought to contrast the language of [149(c)] with that which Lieven J had considered in *Wiltshire Council v SSHCLG* [2020] EWHC

954 (Admin), [2020] PTSR 1409 where the issue of the meaning of the words in question was "capable of one objective answer regardless of the facts of any particular case" (see at [26]).

17. I do not accept this contention. To adopt the course proposed by the First Defendant would amount to prejudging the core question before me.

18. The approach to be taken to the interpretation of planning policy documents and the distinction between the interpretation of policy and the application of the policy when properly interpreted were explained in *Tesco Stores Ltd v Dundee CC* and in *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37, [2017] 1 WLR 1865. I adopt the summary of the principles to be derived from those authorities which Dove J set out in the following terms in *Canterbury CC v SSCLG & another* [2018] EWHC 1611 (Admin), [2019] PTSR 81 at [23]:

> "In my view in the light of the authorities the following principles emerge as to how questions of interpretation of planning policy of the kind which arise in this case are to be resolved:
>
> i. The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purpose of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.
> ii. The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see Tesco Stores at paragraph 19 and Hopkins Homes at paragraph 25) Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.
> iii. For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context (see Tesco Stores at paragraphs 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.
> iv. As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken (see Tesco Stores at paragraphs 19 and 21). It is of vital importance to distinguish between the interpretation of policy (which requires judicial

> analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker (see Hopkins Homes at paragraph 26)".

19. In *Wiltshire Council v SSHCLG* Lieven J was addressing the meaning of the phrase "subdivision of an existing residential dwelling" for the purposes of the version of the NPPF then in force. The issue before Lieven J was whether for those purposes a dwelling was limited to a single building or could extend to a "wider residential unit that can include secondary buildings within the same plot". It was in that context that the judge concluded that the issue was capable of only one objective answer in all circumstances and that "subdivision of a dwelling implies a single building" (see at [27]). It is of note that Lieven J was not providing a definition which would remove the need for judgement in all circumstances. Similarly she was not purporting to say what would or would not amount to "subdivision of an existing residential dwelling" in all circumstances. Rather she was setting the parameters of the legitimate interpretation of that expression and saying that there were particular circumstances to which it could not extend outside (to apply the language of Lord Reed) "the world of Humpty Dumpty".

20. If the Claimant is right to say that for the purposes of [149(c)] an extension must be attached to the building of which it is an extension the exercise I am being asked to undertake would not amount to setting out one part of a definition and leaving the other elements at large. Instead (as was the case in *Wiltshire Council v SSHCLG*) it would be the entirely legitimate exercise of identifying some situations to which the term could not apply on the basis that in all circumstances the question of whether the extension and the building being extended had to be physically attached was capable of only one objective answer. A conclusion that the Claimant's interpretation was correct would not determine whether a particular attached structure was or was not an extension for these purposes. That would remain a matter of judgement. It would, however, identify structures which were not capable as a matter of law of being extensions.

21. It follows that the exercise is one in which I should engage and where I have to consider whether the meaning of [149(c)] is limited in the way asserted.

The *Sevenoaks* Decision and its Relevance to the Interpretation of NPPF [149(c)].

22. The Second Defendants had relied on the *Sevenoaks* decision in support of their appeal. In their response to the Claimant's pre-action correspondence they again made reference to the decision. They also cited a number of instances where planning inspectors appear to have applied the approach derived from that decision and have permitted the construction of detached outbuildings in the Green Belt on the basis that they were extensions to existing dwellings.

23. The Claimant says that part of the reason why the Inspector fell into error was that she also had regard to the *Sevenoaks* approach. That approach was applicable to the former policy contained in PPG2 which addressed extensions to dwellings. It is not, the Claimant says, applicable to the current policy as set out in the NPPF and which is concerned with the extension of buildings.

24. Although Miss Hutton emphasised that the invocation of the *Sevenoaks* approach formed only one of the First Defendant's arguments she nonetheless contended that the decision was relevant and could not be distinguished from the present case. She submitted that the use of the word "building" in the NPPF rather than "dwelling" as had been used in PPG2 was "neither here nor there" and that focus in *Sevenoaks* as before me was on the proper meaning of "extension".

25. *Sevenoaks* concerned a dwelling house in the Green Belt. Before me there was some question as to whether the proposed new car shelter which was the subject matter of the relevant application there was to be physically attached to an existing structure. It was, however, clear that the deputy judge proceeded on the footing that it was physically detached from the dwelling house in question.

26. The relevant planning policy was set out in PPG2. This provided that "the construction of new buildings inside a Green Belt is inappropriate unless for the following purposes". There then followed a list of five matters the relevant one of which was:

> "limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6 below)
>
> 3.6 provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts"

27. The local planning authority had refused planning permission but this had been granted on appeal. The inspector had concluded that the proposed car shelter was within the exception and so not inappropriate because it was a "normal domestic adjunct" to the dwelling house even though it was not physically attached to it. The claimant council brought a statutory review contending that the inspector's decision was incorrect. The council's case was, at least in part, based on the fact that the proposed car shelter was physically detached from the dwelling house.

28. The deputy judge rejected that argument. He said, at [26]:

> "In my judgment, the Inspector was fully entitled to hold that the garage was part of the `dwelling', in the sense that it was a normal domestic adjunct, and thus to treat the appeal proposal as an extension of it. The words `extension... of existing dwellings' are certainly capable, in my judgment, of having that meaning, and he was entitled to form his opinion in determining this matter in that way. The garage is an important domestic adjunct, just as the coal shed was in earlier days, and for example, an outside playroom often is. The mere fact that any of these uses is physically separated from the main house does not prevent them from being part of the dwelling. It is a matter of fact and degree in every case and, for example, if the garage had been at the bottom of the garden, the Inspector would doubtless have taken a different view."

29. I can derive only very limited assistance from the *Sevenoaks* decision and it certainly does not bear the weight which the Second Defendants (and to a lesser extent the First Defendant) sought to place on it.

30. As Mr Fullbrook pointed out considerable caution is needed in applying to the NPPF decisions considering the different wording of PPG2: see *Turner v SSCLG* [2016] EWCA Civ 466, [2017] 2 P& C.R. 1 at [17] – [21] per Sales LJ.

31. In addition to that general need for caution it is not safe to assume a simple "read across" from "dwelling" to "building". It cannot be assumed that development which would be an extension of a dwelling could necessarily be regarded as an extension of a building. Thus a dwelling can readily be regarded as including a number of structures physically separated from each other each of which would be a separate building for the purposes of the 1990 Act (and so for the purposes of the NPPF) but which would nonetheless form part of the same dwelling and be "normal domestic adjuncts" of the relevant dwelling house. A garage would be a prime instance of this as would be a coal shed or an ice house to name some of the somewhat dated examples mentioned in argument before me. That view of a dwelling as capable of including a number of physically separated buildings is not precluded by Lieven J's decision in *Wiltshire Council v SSHCLG*. There the judge was not purporting to define "dwelling" for all purposes nor even for the entirety of the NPPF. Instead she was addressing the meaning of "subdivision of an existing residential dwelling" for the purpose of a particular part of the NPPF.

32. It would, therefore, be possible to conclude that a particular structure was an extension of a dwelling but not an extension of an identified building. [149(c)] of the NPPF is concerned with "the extension … of a building" not with the extension of a dwelling. As noted above the definition of a building is a wide one and covers a range of structures. In her skeleton argument Miss Hutton referred to stadia, warehouses, factories, art installations, and a range of other structures. Many of those would or could have adjuncts or ancillary structures but those could not readily be described as "normal domestic adjuncts".

33. The decision in *Sevenoaks* is, accordingly, distinguishable from the circumstances which I have to consider. In that case the deputy judge was considering different wording from that of [149(c)] in a similar but different context and where there cannot simply be a transposition from "dwelling" to "building". In those circumstances Mr Spence's reasoning provides little assistance with the task I have to undertake.

34. There is, however, force in the First Defendant's argument that the Claimant's interpretation of [149(c)] would mean that the introduction of the NPPF had the effect of restricting the scope for the extension of dwellings in the Green Belt from that which had previously applied. It would mean that the scope for the erection of normal domestic adjuncts to dwelling houses in the Green Belt had been reduced because those would no longer be seen as permissible extensions if physically detached from the relevant dwelling house. That restriction could not, in all cases, be overcome through the use of permitted development rights: for example, those rights do not apply to listed buildings such as the Cottage and so would not come into play here. It follows that if the Claimant's interpretation is correct the structure proposed by the Second Defendants would not have been inappropriate development for the purposes of PPG2 but would be for the purposes of the NPPF. That restrictive effect would, the First Defendant says, be contrary to the apparent purpose of the relevant part of the NPPF. In that regard the First Defendant says that the use of the term "building" in this portion of the NPPF should be seen as widening the scope for development in the Green Belt subject to the protections in the policy and as identifying a wider range of

structures that can safely be extended without causing harm to the Green Belt. The First Defendant then says that it would be inconsistent with that change for a narrow reading of extension to be adopted so as to reduce the scope for the extension of dwelling houses. This argument is far from determinative of the proper interpretation of [149(c)] but it is a relevant and weighty consideration.

35. Mr Fullbrook invited me to conclude that decision in *Sevenoaks* was in any event bad law and that the deputy judge had erred in concluding that the proposed structure was an extension of the relevant dwelling. I can deal with that argument very briefly. The first point is that I am concerned with the proper interpretation of part of the NPPF and it is neither necessary nor appropriate for me to purport to determine definitively the correct interpretation of the now superseded PPG2. Second, as I have explained at [31], the concepts of the extension of a dwelling and of the extension of a building are not necessarily the same and Mr Spence's interpretation of the former is understandable and persuasive. Finally, although I have derived little assistance in my interpretation of [149(c)] from the sundry decisions of inspectors to which reference was made those do show the *Sevenoaks* approach being applied in practice. It follows that the approach being taken in practice and the position as it was in the light of authority at the time of the introduction of the NPPF was that the extension of dwellings in the Green Belt was governed by the decision in *Sevenoaks*. That, in turn, suffices to form the basis for the First Defendant's argument that the Claimant's interpretation of [149(c)] would mean that the introduction of that provision effected a restriction on the scope for installing normal domestic adjuncts to dwellings in the Green Belt.

The Meaning of "the Extension … of a Building".

36. As already noted the approach to be taken to the interpretation of planning policy was summarised by Dove J in the passage I have quoted at [18] above. In short the language used is to be read in the context of the subject matter; the policy framework; and the planning objectives of the policy in question and having regard to the broad nature of statements of planning policy.

37. Mr Fullbrook advanced a number of matters as supporting the Claimant's interpretation of [149(c)].

38. He focused, first, on the wording of that provision. He emphasised that it referred to "the extension … of a building" and that the proviso to it was concerned with the "size of the original building". Alongside that point Mr Fullbrook noted that the reference was to "the extension or alteration" of a building and said that the reference to alteration indicated that the paragraph was concerned with the physical effect on a single building. He contrasted the extension or alteration of a building with the erection of an outbuilding saying that such an erection was not an extension of the existing building but the creation of a separate building.

39. Mr Fullbrook noted the change from the language of PPG2 and the change from a reference to a "dwelling" to one to a "building" saying that this was significant and required attention to be focused on the physical structures.

40. In addition Mr Fullbrook said that the emphasis on the building as a single structure and that interpretation of [149(c)] was supported by the terms of [149(d)] with its

focus on the size of the building being replaced. That reference was supplemented by the argument that the First Defendant's interpretation of [149(c)] would enable the restrictions contained in [149(d)] to be subverted. It would mean that, as in this case, a new structure could be erected by way of replacement of an existing building in circumstances where the requirements of [149(d)] were not met. Mr Fullbrook argued that such a result should be regarded as contrary to the intention of the policy. Instead buildings replacing existing buildings should only be permitted under [149(d)]. On this view sub-paragraphs (c) and (d) operated to provide that there could only be additional building if there was an extension physically attached to an existing building or the replacement of such an existing building subject to meeting the proviso to [149(d)]. The difficulty with this argument is that sub-paragraphs (c) and (d) are not the only parts of [149]. Mr Fullbrook's argument treated them as a comprehensive code and overlooked the other sub-paragraphs which would permit the construction of new buildings which did not satisfy the requirements of either (c) or (d).

41. Mr Fullbrook placed considerable stress on what he characterised as the "everyday meaning" and the dictionary definition of "extension". He said that as a matter of normal usage "an extension of a building is a structure which is added to an existing building and is physically connected to it. A detached building is not an extension." In addition Mr Fullbrook referred to the Oxford English Dictionary definition which gave the primary meaning of the word as "a part that is added to something to enlarge or prolong it; a continuation". As an illustration of that meaning the example of "the railway's southern extension" was given and reference was also made to "a room or set of rooms added to an existing building." Although physical attachment of the extension to the object extended is not said there to be an essential part of the meaning of the word "extension" there is considerable force in Mr Fullbrook's contention that physical attachment is inherent in the examples given. However, it is to be noted that as part of the primary meaning of the word the dictionary also refers to its use as a mass noun to describe "the action or process of becoming or making something larger". Physical attachment is not necessarily inherent in that use (although normally the process will involve physical attachment) and the use in [149(c)] of the words "the extension or alteration of a building" could be read as a reference to such a process.

42. Next, Mr Fullbrook contended that because the sub-paragraphs of [149] set out exceptions to the general principle that the construction of new buildings is inappropriate in the Green Belt they should be construed narrowly. That is in order to avoid undermining that principle. At first sight this is a powerful argument and Miss Hutton accepted it albeit subject to the important qualification that the exceptions are to be seen in the context of the policy as a whole. However, a degree of care is needed as to what is meant by a narrow construction. The First Defendant's acceptance that a narrow construction was appropriate was made by reference to the decision of Green J (as he then was) in *Timmins & another v Gedling BC* [2014] EWHC 654 (Admin). It is apparent that Green J was not indicating there that an artificial approach is to be taken to the interpretation of the exceptions to the principle that the construction of new buildings in the Green Belt is inappropriate development. Instead he was at pains to stress that he was applying the normal canons of construction (see at [25] – [28]) and the absence of any special rule was indicated also by Richards LJ in the Court of Appeal's upholding of Green J's decision (see at [24] in [2015] EWCA Civ 10, [2015] PTSR 837). Green J was explaining that unless

development fell properly within one of the exceptions it was inappropriate by definition. As a consequence care was needed to consider whether particular development was within the exception. The exception was not to be expanded artificially and in particular a category of development was not to be regarded as characterised as appropriate by inference. It follows that the construction of the exceptions is to be narrow in the sense that they are not be regarded as applying by inference or artificial extension to categories of development not properly within the language used. It is not, however, to be narrow in the sense of being artificially restrictive and excluding categories of development which are within the exception on a proper reading of that language. The construction is to be narrow but not artificial and as with statements of planning policy more generally the meaning of the exceptions is to be derived from the language used when seen in the context of the subject matter and the purpose of the policy in accord with the principles summarised by Dove J and set out above. Here the context and purpose are to be seen as the importance of the Green Belts and the purposes which they serve as identified in [137] and [138] of the NPPF having regard to the particular points that inappropriate development is by definition harmful to the Green Belt and that the construction of new buildings is inappropriate development unless within one or more of the exceptions.

43. Finally, Mr Fullbrook asked how the scope of [149(c)] was to be confined if the meaning of "extension" was not restricted to structures which were physically attached to the building being extended. It is right that the interpretation proposed by the Claimant would provide a clear "bright line" definition. That is far from being a conclusive argument and there was considerable force in Miss Hutton's response that rejection of the Claimant's interpretation would not remove all restraint on purported extensions. Instead it would be a matter of fact and degree having regard to the proximity of the new building to the existing building; to the purpose and use of the buildings; and to factors such as the size of the buildings whether the new building was or was not an extension with the result that some detached structures would be found to amount to extensions of existing buildings but that others would not.

44. There are a number of factors which support the First Defendant's interpretation of [149(c)].

45. I have already noted the point that on the Claimant's interpretation the replacement of PPG2 and the *Sevenoaks* approach by the NPPF will have reduced the scope for the installation of normal domestic adjuncts to dwelling houses in the Green Belt and that is a result which appears to run counter to the more expansive tenor of this part of the NPPF.

46. It is to be noted that [149] is concerned with "the construction of new buildings". The wide definition of "building" means that the addition of a new part to an existing building will itself be a new building but such additions are clearly not the main focus of [149]. Rather the provisions of the paragraph as a whole are more naturally read as concerned with new buildings in the sense of new free-standing structures.

47. A building can readily be regarded as being an adjunct to another building even though the two are not physically connected. As Miss Hutton said, buildings can readily be considered to be extensions of other buildings even though the buildings are not physically connected. In the domestic setting it is not artificial to describe

garages or other outbuildings as being extensions of the principal dwelling house. In non-domestic settings it is similarly not artificial to see sundry ancillary structures as being ancillary to and extensions of the main building. To adopt an example advanced by Miss Hutton this would not be an artificial way of characterising freestanding entrance kiosks erected outside a sports stadium or a commercial use such as a factory or warehouse.

48. [149(c)] is to be read in the context of the NPPF as a whole and, more particularly, in the light of the purposes of the Green Belt. It is apparent from the sub-paragraphs of [149] that there are a number of instances in which the erection of a new building will not be inappropriate in the Green Belt. To read [149(c)] as permitting extensions which are physically distinct from the building being extended is not obviously harmful to the Green Belt or inconsistent with the thrust of [149] read as a whole. The requirement that the structure in question must not result in "disproportionate additions over and above the size of the original building" operates to provide protection for the purposes of the Green Belt. There is force in the First Defendant's argument that a physically separate structure may have less impact on the openness of the Green Belt than a physically attached extension. The interpretation advanced by the Claimant could lead to artificial and arbitrary consequences not necessary for furthering the purposes of the Green Belt and arguably inconsistent with those purposes. Thus on the Claimant's approach a building very close to but physically separate from an existing building could never be seen as a permissible extension to that building regardless of its size or purpose whereas (subject to meeting the other requirements of [149(c)]) a structure the bulk of which is further away from a building but connected to it by a covered walkway could be an extension. Putting the point rather more shortly the presence or absence of a physical connection between the original building and the new building is not conclusive as to and arguably is of minimal relevance to the degree of impact on the Green Belt. The artificiality resulting from the Claimant's interpretation is heightened when it is remembered that there are circumstances in which it will be undesirable for a new structure to be attached to the existing building. In the current case the Cottage dates from the Seventeenth Century and has a Grade II listing. As such it does not have the benefit of permitted development rights and although permission has been given for a replacement rear extension the scope for extensions which are physically attached to the building will inevitably be limited by the need to have regard to its special character. One can readily envisage circumstances where that the installation of a detached outbuilding close to a listed dwelling in the Green Belt would be less harmful both to the purposes of the Green Belt and to the character of the listed building than an attached structure. The Claimant's interpretation of [149(c)] would exclude the possibility of such detached structures and would preclude any extension where an attached extension was precluded by reason of the building's listed character.

49. Mr Fullbrook accepted that the Claimant's interpretation of [149(c)] could lead to results which might appear arbitrary or artificial. He said, however, that this should not cause a different interpretation to be adopted. Rather he said that such results were the inevitable consequence of the use of language which has a particular meaning and that the risk of such results should not cause the court to adopt a strained or artificial reading of the words of the sub-paragraph. In addition he submitted that the allegedly artificial consequences and the apparent prohibition of all detached outbuildings save

where permitted development rights could be invoked would or could be obviated in practice by application of the doctrine of a fallback development. In essence the contention was that a person seeking permission for a detached outbuilding would be able to use the fallback doctrine to establish that there were very special circumstances warranting approval by saying that if permission were not given that person would rely on [149(c)] to install an attached extension (which on this hypothesis would be less desirable). I need not explore in any detail the extent to which that analysis would work in practice though it faces the difficulty that falling within [149(c)] does not give an entitlement to permission but rather provides that the construction is not inappropriate by definition. It suffices to note that the argument involved overcoming artificiality by a chain of reasoning which was itself artificial or at least convoluted.

50. Miss Hutton contended that the fact that [149(c)] was concerned with "the extension or alteration" of a building supported the First Defendant's position because it indicated that there could be an extension which did not constitute an alteration of the existing building. This point was not persuasive. The use of those words was indicating that the sub-paragraph addressed both those alterations which added to the extent of the building in question and those which did not. Their use was not an indication that an extension could be physically separate from the building.

51. Similarly, I did not derive assistance from the First Defendant's references to the use of the word "extension" in other parts of the NPPF. Those references showed that the word could be used in different contexts but did not assist in determining the meaning of "the extension …of a building" still less in determining whether such an extension had necessarily to be physically attached to the building being extended.

52. Looking at the matter in the round no one of the points advanced is conclusive by itself but I am persuaded by the combined weight of the points advanced by the First Defendant. It is right to note that if the language of [149(c)] were to be considered in isolation from its context then the Claimant's interpretation of the words used would be the more natural reading of those words. It is not, however, the only legitimate reading of the words and the First Defendant's interpretation that an extension of a building can include a physically detached structure is also a tenable reading of the words used. The First Defendant's interpretation is, in my judgement, the reading which accords considerably more readily with the content and purpose of the relevant part of the NPPF. While the Claimant's interpretation has the potential to lead to artificial distinctions which would do nothing to further the purposes of the Green Belt whereas that advanced by the First Defendant would remove the risk of that artificiality without jeopardising those purposes. Accordingly, I am satisfied that [149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.

Conclusion.

53. If, as I have found, an extension can be detached from the building of which it is an extension the Inspector did not err in law in granting planning permission and this claim fails.