Neutral Citation Number: [2019] EWCA Civ 840

Case No: C1/2018/1755

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION
Mr David Elvin QC (sitting as a Deputy High Court Judge)
CO/5866/2017

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16th May 2019

Before:

LORD JUSTICE LEWISON
LORD JUSTICE FLOYD
and
LORD JUSTICE HENDERSON

- -

Between:

WILTSHIRE COUNCIL	**Appellant**
- and -	
COOPER ESTATES STRATEGIC LAND LTD	**Respondent**
- and -	
RICHARD GOSNELL	**Interested Parties**
ROYAL WOOTTON BASSETT TOWN COUNCIL	

- -
- -

Mr Paul Brown QC & Mr Stephen Morgan (instructed by the **Legal Unit Wiltshire Council**) for the **Appellant**
Mr Gregory Jones QC & Mr Philip Petchey (instructed by **Blake Morgan LLP**) for the **Respondent**

Hearing date: 8th May 2019

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Approved Judgment

Lord Justice Lewison:

Introduction and background

1. The issue on this appeal is what it takes in a development plan document to identify land for potential development. If land is so identified, the right to apply for registration of a town or village green (a "TVG") is suspended. The essentials of a TVG, defined in section 15 of the Commons Act 2006, are that it consists of land where:

> "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years"

2. For decades government policy has been that development should be "plan-led". This policy is currently given statutory effect by section 38 (6) of the Planning and Compulsory Purchase Act 2004 which provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

3. The reference to the "development plan" now includes development plan documents, and neighbourhood plans: Planning and Compulsory Purchase Act 2004 section 38 (3). A neighbourhood plan must be in *general* conformity with the strategic policies contained in the development plan for the area: Town and Country Planning Act 1990 Sched 4B para 8 (2) (e). But it need not slavishly adopt every detail. Once made, a neighbourhood plan becomes part of the statutory development plan; and thus benefits from the presumption in section 38 (6). The importance of development plan documents is also stressed in the National Planning Policy Framework. Paragraph 15 of the NPPF states:

> "The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings."

4. Ever since the Trap Grounds case (*Oxfordshire CC v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674) the courts have adopted a definition of a TVG which goes far beyond what the mind's eye would think of as a traditional village green. The consequence of this interpretation of the definition is that there have been registered as TVGs: rocks, car parks, golf courses, school playgrounds, a quarry, scrubland, and part of a working port. If land is registered as a TVG the effect of the registration is, for practical purposes, to sterilise land for development. This became a concern for the government, because the criteria for registration did not take into account any planning considerations; and because it was thought in some quarters that applications for registration of TVGs were being used as a means of stopping development outside the planning system.

5. In the light of these (and other) concerns the government commissioned a report from Mr Adrian Penfold into "Non-planning consents". He reported in July 2010. He noted concern that registrations had been used to prevent development; and recommended that:

> "Where planning has dealt with an 'if' issue, the Review would argue that that issue should not be re-opened. Thus, where the possibility of TVG registration has been considered as part of planning, the Review would contend that granting planning permission should then provide protection from TVG registration for the duration of that permission. Such an approach would enable all the relevant issues to be weighed together, rather than the merits of TVG registration being considered in isolation, as is the case now."

6. Following that report, DEFRA consulted on changes to the legislation affecting TVGs. As the consultation document put it at para 5.6.1:

> "The greens registration system works entirely independently of the planning system. There is increasing concern that it is being used in some parts of the country as a mechanism to prevent development proposed and approved through the planning system."

7. The consultation document therefore envisaged excluding land proposed for development from the right to register as a TVG. Allied to this proposal was a proposal to create a new planning designation; namely a Local Green Space. The thinking behind this was that the designation of land as Local Green Space would be achieved through the planning process by the creation of development plan documents, which were themselves the subject of extensive public consultation and involvement. This new designation is reflected in the NPPF. As paragraph 99 of the NPPF explains:

> "The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period."

8. Paragraph 100 of the NPPF states:

> "The Local Green Space designation should only be used where the green space is:
>
> a) in reasonably close proximity to the community it serves;

> b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
>
> c) local in character and is not an extensive tract of land."

9. The description of a Local Green Space is similar to the definition of the TVG (but without the requirement of 20 years' use as of right). Where land has been designated as Local Green Space, the NPPF states at para 101:

> "Policies for managing development within a Local Green Space should be consistent with those for Green Belts."

10. In other words, land designated as a Local Green Space has a very high level of protection against development. But it is not as absolute as a registered TVG.

The Commons Act 2006

11. The consultation document recognised that its objective required primary legislation. The relevant legislation was contained in the Growth and Infrastructure Act 2013. Section 16 (headed "Restrictions on right to register land as town or village green"), inserted section 15C into the Commons Act 2006. It provides, so far as material:

> "(1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land ("a trigger event").
>
> (2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land ("a terminating event")."

12. The particular trigger event with which we are concerned is that in paragraph 4 of the Table:

> "4. A development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act."

13. There are a number of other trigger events, which include;

i) An application for planning permission in relation to the land is publicised;

ii) A draft of a development plan document which identifies the land for potential development is published for consultation;

iii) A proposal for a neighbourhood development plan which identifies the land for potential development is published by a local planning authority for consultation;

iv) A neighbourhood development plan which identifies the land for potential development is made.

14. The table has since been amended in various ways; but the amendments do not bear on the essential issues in this appeal.

15. Following this change in the law, DEFRA issued guidance to registration authorities. That guidance states in paragraph 3:

> "In July 2011 the Government published a consultation on the registration of new town and village greens ("greens") due to increasing concerns about the impact of such applications on the planning system. The Government places great importance on the planning system to support efficiency, effectiveness and growth. This is partly why the Government committed to delivering the *Penfold* review recommendation to reduce the impact of the greens registration system on the planning system. The *Penfold* review looked into whether non-planning consents discourage or delay investment in development projects."

The facts

16. On 20 April 2016 Mr Gosnell applied to Wiltshire County Council to register land as a TVG. The land in question is a triangular area, of some 380 sq m, adjacent to Vowley View and Highfold, Royal Wootton Bassett. On one of the maps that we were shown the land was on the edge of the settlement boundary of Royal Wootton Bassett; but we were told that adjacent land outside that boundary has since been developed for housing. Cooper Estates Strategic Land Ltd owns the land; and objected to the application on the ground that it was precluded by section 15C of the Commons Act 2006. The ground of the objection was that the land had been identified for potential development in an adopted development plan document. Accordingly, a trigger event as defined in paragraph 4 of the table had occurred, and there had been no terminating event in relation to that trigger event.

17. Officers of the Council considered that objection and recommended the Council to reject it. They considered other trigger events, relating to applications for planning permission, but decided that in relation to those trigger events, terminating events had also occurred. Officers considered that the provisions of the development plan document were not enough to satisfy the definition of a trigger event. The Council accepted that recommendation and decided to register the land as a TVG.

18. Cooper applied to the Administrative Court to challenge the registration. The challenge succeeded before Mr David Elvin QC. The Council appealed against his order. Cooper sought to uphold it on additional grounds. At the conclusion of the hearing before us we announced that we would dismiss the appeal, with reasons to follow. That made it unnecessary to consider the additional grounds. These are my reasons for joining in that decision.

The Wiltshire Core Strategy

19. Cooper relied on the Wiltshire Core Strategy, adopted in 2015. Section 4 of that document contains the spatial strategy for Wiltshire. Paragraph 4.3 describes the Spatial Strategy as consisting of three elements. Of these, the Delivery Strategy identifies the level of growth and how Wiltshire's settlements will develop in the most sustainable fashion. As paragraph 4.4 of the supporting text explains, the Spatial Strategy makes provision for the growth of around 27,500 new jobs and at least 42,000 new homes from 2006 to 2026. Paragraph 4.6 explains that the Settlement Strategy (Core Policy 1) identifies the different tiers of settlements based on an understanding of their role and function. In so doing the Settlement Strategy, coupled with the Delivery Strategy (Core Policy 2) seeks to "define where development will be the most sustainable across Wiltshire's settlements". Paragraph 4.12 says that Core Policy 2 "presents the way in which these settlements will develop in the future". Paragraph 4.13 points out that it is the prerogative of the community "to review settlement boundaries through a neighbourhood plan"; and paragraph 4.15 states that settlement boundaries will also be reviewed as part of the Housing Sites Allocation DPD as set out in the Council's Local Development Scheme. Relaxation of the boundaries will be supported through a subsequent development plan document, a community-led neighbourhood plan, which includes a review of the settlement boundary "to identify new developable land to meet the housing and employment needs of that community".

20. Core Policy 1 states:

> "**Core Policy 1**
>
> **Settlement Strategy**
>
> The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.
>
> The area strategies in Chapter 5 list the specific settlements which fall within each category.
>
> **Principal Settlements**
>
> …
>
> **Market Towns**
>
> Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities.
>
> Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

> The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett."

21. The text of the development plan document goes on to introduce the Delivery Strategy. Paragraph 4.20 states that in order to support the most sustainable pattern of growth, in line with the principles of Core Policy 1, indicative housing requirements are provided for each market town. It goes on to say:

> "The indicative figures also allow a flexible approach which will allow the council, including through the preparation of the Site Allocations DPD, and local communities preparing neighbourhood plans, to respond positively to opportunities without being inhibited by an overly prescriptive, rigid approach which might otherwise prevent sustainable development proposals that can contribute to delivering the strategic objectives of the plan."

22. The indicative requirement for Royal Wootton Bassett is 1,070.

23. Core Policy 2 states:

> "**Core Policy 2**
>
> **Delivery Strategy**
>
> In line with Core Policy 1, the delivery strategy seeks to deliver development in Wiltshire between 2006 and 2026 in the most sustainable manner by making provision for at least 178ha of new employment land and at least 42,000 homes distributed as follows ……
>
> ....
>
> **Within the defined limits of development**
>
> Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.
>
> **Outside the defined limits of development**
>
> Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans."

24. The policy goes on to identify 16 strategically important sites. In terms of housing land, each such site would support hundreds of dwellings or more. In relation to those sites, the policy states that:

> "Development will be supported … in accordance with the Area Strategies and requirements in the development templates at Appendix A."

25. The land in issue in this appeal is not one of the strategically important sites. But it lies within the settlement boundary of Royal Wootton Bassett. As such it is a parcel of land to which the presumption in favour of sustainable development applies. As far as Royal Wootton Bassett is concerned, Core Policy 19 provides:

> "Development in the Royal Wootton Bassett and Cricklade Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1. …
>
> Over the plan period (2006 to 2026) approximately 1,455 new homes will be provided of which about 1,070 should occur at Royal Wootton Bassett."

26. The supporting text dealing with Royal Wootton Bassett goes on in paragraph 5.101 to state:

> "Housing in the main settlements will help improve their vitality and create a critical mass to deliver improvements in infrastructure. However, given that there are a number of existing outstanding housing commitments, no further strategic housing allocations are needed early in the plan period. Future growth should be brought forward in a balanced way to ensure infrastructure is delivered alongside housing."

27. In paragraph 5.102 the text states:

> "non-strategic growth should be brought forward in accordance with Core Policies 1 and 2 and phased throughout the plan period to deliver homes in a balanced manner that will enable infrastructure issues to be addressed"

28. The overall thrust of the development plan document was thus to identify those parts of Wiltshire in which development would be encouraged. In some cases, the plan descended into detail by specifically allocating sites. In other cases, including that of Royal Wotton Bassett, specific site allocations would come later in the plan period. But it is clear that those sites which had been specifically allocated by the plan itself would not, on their own, deliver the required development over the plan period.

Development plan documents

29. The key parts of a development plan document are the policies themselves. The interpretation of a development plan document is a question of law, which is ultimately for the courts to determine. A development plan document must be construed as a whole; but recognising that in some cases broad statements of policy

may pull in different directions: *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13, [2012] PTSR 983. Supporting text is relevant to the interpretation of the policies; but cannot trump the policies themselves: *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567, [2014] 2 EGLR 98 at [16].

The judge's reasoning

30. The judge considered the various trigger events that suspend the right to apply for registration of a TVG. Some, like an application for planning permission, are site specific, and limited in duration to the processing of the application. Others, like those relating to development plan documents, are dealing with less specific matters. As the judge pointed out at [32]:

> "… in the case of development plans these will generally be wider in their effects than a planning application and to be longer-lived since development plans are intended to apply for many years. The issue there is whether the plan identifies the land for potential development since in the case of a plan policies may be more or less specific and still be relevant in terms of the statutory mischief even if they are not specific to the land itself but are sufficiently directed to an area, or circumstances, which include the land that a registration application would fall within the statutory mischief of inhibiting future development."

31. He went on to hold that the mere fact that a development plan document encourages a particular form of development is not enough. There must be "a sufficient nexus between the plan and the land".

32. The judge then considered the development plan document in detail. At [60] he said:

> "There is no reason in principle why identification could not be through the means of a variety of planning methods. Allocation would, perhaps, be the paradigm example but identification could be through preferred areas for development, opportunity areas, reserved areas etc. The fact that that identified area might contain constraints would be no surprise and was no reason for not regarding that area as identified for potential development. It did not need to allow any development in any location within the area of the application of the policy in order to identify it for potential development. If that were the case, the statutory purpose would be seriously undermined since many if not most sites are subject to some constraints, even if they are of the more mundane varieties such as design and highway capacity."

33. At [63] he said that he accepted Cooper's submission that:

> "… the Core Strategy through CP1 and CP2 identifies an area of land which includes the Land (i.e. the boundary of Royal Wootton Bassett) and identifies it for potential development by

> creating a presumption in favour of development within the settlement boundary."

34. In essence that was the reason that he held that the right to apply for registration of the TVG had been suspended.

Identified for potential development

35. As I have said, the key issue on the appeal is whether the land has been identified for potential development.

36. It is common ground that it is not a requirement of the trigger event that only the land in question is identified. It may be part of a larger identified area. We were referred to the decision of Lindblom J in *West Kensington Estate Tenants and Residents Association v Hammersmith and Fulham LBC* [2013] EWHC 2834 (Admin), as was the judge. The issue in that case was whether two housing estates had been identified as an area of specific change or special conservation in a supplementary planning document; or whether they had already been identified in the London plan and adopted development plan documents. Lindblom J said:

> "[54] In my view, …the concept of identifying an area as one of significant change, …means establishing the principle of such change in a particular, defined area. Once this principle has been established the identification is complete. If a document is to be an area action plan it must be the document that achieves the identification. It must make … the "primary identification", or, … the "autonomous identification" of the area as one of significant change. The sense of the word "identifies" …is plainly the ordinary English meaning of the transitive verb "to identify", namely to "[e]stablish the identity of; establish who or what a given person or thing is; recognize" (The New Shorter Oxford English Dictionary (1993).
>
> [55] To construe the word "identifies" …as if it meant "confirms the identification of" or "acknowledges" or "provides policy or guidance for" would be to rob it of its true sense in its statutory context."

37. Both parties to the appeal agreed that these observations were correct; and I am content to accept this explanation of what "identifies" means. But the question still remains: identified for what? The trigger event is not that the land in question has been identified "for development"; but that it has been identified for "potential development". "Potential", as the judge pointed out at [65]:

> "is a very broad concept, is not qualified, and is not to be equated with likelihood or probability."

38. In the context of town and country planning, it can, for example be contrasted with "allocation" where a site is allocated for a *particular* use or development: see Town and Country Planning (Local Development) (England) Regulations 2004 reg 2 (1).

39. Mr Brown QC, for Wiltshire, submitted that the mere fact that land was within a settlement boundary to which a policy of the nature of CP1 and CP2 applied was not enough. If the judge were right, his conclusion would apply to all settlement boundaries. The main purpose of a settlement boundary was to delineate the difference between countryside and built-up areas. The very nature of a TVG was that it was a piece of land used by the inhabitants of a neighbourhood or locality. Necessarily, that entailed that it was used by the inhabitants of a settlement. If mere inclusion within a settlement boundary was enough to suspend the right to register a TVG, that would remove a valuable right from most people who would otherwise have been entitled to it. That right would have been removed even in relation to land within the settlement boundary where there was no real risk of development. That was unlikely to have been Parliament's intention in changing the law; and would have been a disproportionate response to the identified mischief.

40. The requirement was that "the land" be "identified". "The land" must refer to the land the subject of the application for registration as a TVG. That land is not identified merely by narrowing the field. It must be specifically identified. But, as I understood it, Mr Brown accepted that land could be identified in a number of different ways. It could be identified by a line on a map. If so, the line on the map need not be restricted to the application land alone. It could be identified by a verbal description of the parcels. But it could also be described by reference to prescribed criteria. Each of these ways of identifying the land seems to me to admit of the possibility that more than one site could satisfy the description. So the field is not necessarily restricted to one. On the other hand, as Mr Jones QC, for Cooper, submitted, there is no difficulty in identifying the land in issue as being land within the settlement boundary drawn on the map, to which policies CP 1 and CP 2 apply. I would hold, therefore, that the land has been identified by the development plan document.

41. Nevertheless, I would accept Mr Brown's submission that the mere fact that land is included within a settlement boundary is not enough to suspend the right to apply to register a TVG. But that is because suspension of the right depends on the consequences, as set out in the development plan document, of land being within a settlement boundary. So I turn to the next question: does the development plan document identify the land "for potential development"?

42. Mr Brown put the case in a number of different ways. What was necessary, he said, was that one could see from the development plan document that development of the land in question was acceptable, or that the land was suitable for development. The acid test was whether there would ultimately be a form of development on the land that would be acceptable. The land in issue had to be the subject of an allocation or something of essentially the same nature. But in my judgment the question is not whether the land has been identified "for development" but whether it has been identified "for *potential* development". Mr Brown argued that the meaning of the word "potential" did no more than reflect the fact that a development plan could not compel the development of a particular parcel of land. However, in my judgment that gives no force to the ordinary meaning of the word. Moreover, even if a site is allocated, in the sense in which that term is used in town and country planning, the mere fact of allocation cannot compel development.

43. Mr Brown also argued that the judge's interpretation poses problems for the process of adopting a development plan. The judge's conclusion meant that everything within

the settlement boundary was "up for grabs". If correct, the only way in which an objector to an emerging plan could prevent identification of land for potential development would be by objecting to a settlement boundary. What the planning authority would have to do is to carve out areas from the settlement boundary, thus creating a "Swiss cheese". In my judgment there are at least four answers to this point. The first is that, as envisaged by the consultation preceding the change in the law, protection for what would otherwise be registered as a TVG would be governed by the planning process. That would be entirely in line with the policy underlying the change in the law. The second is that the fact that land is identified "for potential development" does not mean that it will be developed. Although the absolute protection against development in consequence of registration as a TVG is removed, that does not lead to the consequence that the land will be developed. Within the planning system, the land in question could be given the status of Local Green Space within the emerging plan. That would confer on the land the same planning status as green belt land. So there is no question of a free for all within the settlement boundary. The third is that the legislation requires us to look at the development plan document. How that document is drafted is for the planning authority to decide (subject to the process of consultation and examination). There would be no objection to a policy which stated that it applied to land within a settlement boundary subject to exceptions (e.g. in the case of SSSIs, or school playing fields). The fourth is that the settlement boundary could be reviewed by means of a neighbourhood plan, or by a revision of the development plan document itself.

44. In addition, I also consider that there is force in Mr Jones' submission that a narrow interpretation of the trigger event would itself cause difficulties in the formulation and adoption of a development plan document. Such a document may go through many iterations in the course of its preparation and examination. Suppose that a draft plan proposes development in particular areas, in terms similar to CP1 and CP2. Different sites may be proposed for allocation for development at different stages of the process. If an application for registration of a TVG could be made before the stage of allocation, the mischief which the change in the law was designed to prevent would recur.

45. But in any event, in the present case the development plan document does show that the land is identified for potential development. CP1 identifies "the settlements where sustainable development *will* take place." CP2 provides that within the settlement boundary "there is a presumption in favour of sustainable development." I agree with Mr Jones that these policies clearly identify the land as having potential for development. This reading is supported by the explanatory text. Paragraph 4.3 states that CP2 "identifies … how Wiltshire's settlement *will* develop in the most sustainable fashion". Paragraph 4.6 states that CP1 and CP2 seek "to define where development will be the most sustainable". Paragraph 4.12 says that CP2 "presents the way these settlements *will* develop in the future". Paragraph 4.15 refers to relaxation of settlement boundaries "to identify new developable land". I agree with Mr Jones that that necessarily implies that land within the settlement boundary is already developable land.

46. Mr Brown argued that within the settlement boundaries there are parcels of land which may be governed by policies protecting open space, playing fields and areas of conservation values which would preclude development. Such land, he submitted, is

plainly not "identified for development" despite being within the settlement boundary. Although a development plan document must be read as a whole, it cannot be right that a registration authority has, in effect, to decide whether planning permission would be granted before deciding whether to entertain an application for the registration of a TVG. This submission too, in my judgment, rests upon the false premise that the trigger event is identification of land "for development" rather than "for potential development". The registration authority would not be required to consider whether planning permission *would* be granted. I do not rule out the possibility that prima facie identification of land for potential development by one policy could be contradicted by countervailing policies elsewhere in the plan. But that is not this case. The Council does not rely on any countervailing policy which contradicts policies CP1 and CP2.

47. The phrase we are called upon to interpret is imprecise. Each side was able to point to potential difficulties if the other side was right. One of the few things on which both Mr Brown and Mr Jones were agreed albeit from completely different perspectives was that if we chose the other side's interpretation we would be on a slippery slope. That makes it imperative, in my judgment, to interpret it in accordance with the policy underlying the change in the law. That policy, as I understand it, was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG.

48. It is clear from the development plan that the planning authority envisaged that during the currency of the development plan over 1,000 new homes would be needed in Royal Wootton Bassett. Paragraph 5.101 stated that it was not necessary to make specific allocations at the early stages of the plan. To allow a registration of a TVG within the settlement boundary would, in my judgment, frustrate the broad objectives of the plan. That is precisely the reason why Parliament decided that, in circumstances like the present, a TVG should not be registered; but, instead, the question of development should be left to the planning system.

49. The judge said at [67]:

> "I do not consider that there is a concept of "balance" to be implied into paragraph 4 or s. 15C. These provisions have been overlaid on the scheme of the 2006 Act by the amendments made by the 2013 Act. Parliament undoubtedly intended to make a change in the law. The only balance, if such it is, is the one struck by Parliament through the provisions and seeking to protect future development opportunities against the effect of s. 15 applications. If those provisions apply, according to their language and purpose, then the right to apply is excluded. Their extent is defined primarily by the language used, supported by the mischief they sought to address. As a matter of language paragraph 4 applies and in my judgment this is reinforced by the purpose, namely to prevent a s. 15 application from hindering potential development of the land."

50. I agree. It was for these reasons that I joined in the decision to dismiss the appeal.

Lord Justice Floyd:

51. I agree with the reasons Lewison LJ has given for the appeal to be dismissed. I add a few words of my own in relation to one particular argument advanced on behalf of the Council by Mr Brown.

52. Mr Brown's argument was that the settlement boundary could not identify *every* site falling within it as having the potential for development because no reader of the development plan would so understand it. For example, the reader would not understand that listed buildings or conservation areas which fell within the limits of the settlement were being identified for potential development. The purpose of the settlement boundary was different, namely to steer development to suitable sites within the area which it defined and to discourage development outside it. If that is so, then the premise of the judgment of the deputy judge was undermined, because he took the fact that the land fell within the settlement boundary, coupled with policies CP1 and CP2, as sufficient to identify the land for potential development.

53. This argument does not do justice to the reasoning of the deputy judge. At paragraph 65 he deals with the argument that the settlement boundary may include within it sites which are subject to constraints, which he had earlier identified in paragraph 65(1) as including such things as listed buildings and conservation areas. He says:

> "There might be specific cases where the plan constraints do bear directly on the land and might on the facts preclude potential development, but this is not such a case. [Counsel] accepted that there were no constraints that applied to the land."

54. The judge did not therefore treat the settlement boundary and CP1 and CP2 as conclusive of the question in all cases without reference to the policy as a whole. It was common ground that there was nothing else in the policy which could contradict a conclusion that the policy identified the land in question for potential development.

55. Like the judge and Lewison LJ, I would not exclude the possibility that other policies might trump the presumption in favour of development for sites within the settlement boundary, and thus compel a conclusion that the land was not identified for development. It must be kept firmly in mind, however, that the words "potential" and "development" are both very wide terms. The former falls a very long way short of "suitable for" and the latter includes within its scope developments which do not include any new construction, such as a change of use. On this footing, the notion, for example, that a site in a conservation area might have the potential for a change of use is not so far-fetched as to cause one to understand that the settlement boundary does not identify such sites for potential development.

Lord Justice Henderson:

56. I agree with both judgments.