



Francis Taylor Building

A Lesson in Legal Alchemy: *Leech Homes v Northumberland County Council* [2020] UKUT 150 (LC)

James Pereira QC and Daisy Noble

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building



Morpeth Northern Bypass

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Points

1. Overall approach for CAAD appeals
2. Relevance of consistency in decision-making
3. Interpretation of Green Belt “general extent” policies
4. Permission to Appeal decision

[For practical tips, see CAAD webinar on 28 April 2020]

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Facts

- DCO made for bypass scheme including CP powers
- Agreed in XX that land fell within “general extent” of GB under adopted DP policy at RVD
- Agreed no detailed GB boundaries had been adopted in a DP
- AA (also the LPA) had not treated land as GB when promoting DCO
- At CAAD stage argued land was in GB if policy properly applied
- Tribunal agreed with AA’s case

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Point 1: Overall approach

- “Reasonable LPA” NOT “this LPA” (*Essex Showground Group Ltd v Essex County Council* [2006] RVR 336; *Urban Edge Group Ltd v London Underground Ltd* [2009] UKUT 103)
- Effect: actual decisions of LPA only probative if taken on a proper understanding of law and policy
- Two Qs then arose: What about consistency of decision making ? + What was the proper understanding of GB policy?

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Point 2: Relevance of Consistency in DM

- Consistency of actual planning decision making: relevant or not for CAADs?
- Context: *North Wiltshire District Council v Secretary of State* (1993) 65 P & CR 137; *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] EWCA Civ 1305
- Can see how arguments pull in different directions
- But CAAD process distinct statutory process
- And, anyway, if earlier decision not based on “proper understanding” then there are reasons to depart
- UT agreed principle of consistency had no application

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building



City of York

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Point 3: Interpretation of GB Policies

- “General extent” GB policies - quite common
- Delay between strategic (general extent) and local (detailed boundary) policy not unusual
- What is status of land in meantime?
- UT: “Precautionary approach”: In absence of good reason to the contrary, assume GB policies apply to land in general extent, unless and until precise boundaries are defined through LP process
- After draft decision: *Wedgewood v City of York Council* [2020] EWHC 780 (Admin)
- UT found it would make no difference to outcome
- But granted PTA on basis not a straight forward question

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Key Point 4: Permission to Appeal

- Claimant applied for PTA contesting UT's treatment of Key Point 2 and Key Point 3
- UT granted PTA within a few days without waiting for any representations from AA
- So issues remain uncertain
- Note procedural behaviour of UT though: unusual

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Questions?



Morpeth, Northumberland

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

A Lesson in Legal Alchemy: *Leech Homes v Northumberland County Council* [2020] UKUT 150 (LC)

James Pereira QC and Daisy Noble

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. James Pereira QC, Daisy Noble and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk