

Planning Appeals Seminar 2016

Housing policies: Cheshire East in the Supreme Court

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Landmark Chambers



National Planning Policy Framework

49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

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for

/fɔː, unstressed fə/

preposition, conjunction, & noun. OE.

[ORIGIN: Old English *for* = Old Frisian, Old Saxon *for*, Gothic *faur*, prob. reduced form of Germanic preposition meaning 'before (of place and time)', repr. by Old English **fore preposition** = Old Frisian, Old Saxon, Old High German *fora*, beside Old Saxon, Old High German forms with *-i*, viz. *furi* (German *für*) and Old Norse *fyrir*.]

A. **preposition.**

†I. Before. Cf. **fore preposition.**

1. In front of, in or into the presence of; (in oaths) before. OE-LME.
2. Before in time. OE-ME.
3. In preference to. OE-E16.

II. Of representation, substitution, or exchange.

4. Representing, as a representative of. OE.

I. **Murdoch** A fear not exactly of James but of something that James stood for

The High Court cases



- *William Davis Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin)
- *Cotswold DC v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin)
- *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin)
- *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin)
- *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)
- *Phides Estates (Overseas) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin)
- *Wenman v Secretary of State for Communities and Local Government* [2015] EWHC 925 (Admin)

Ouseley J. in *Barwood Land*

“For the supply of housing” is either:

- a) “**very narrow and specific**, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction”, or
- b) “requires a **broader approach** which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner”.

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2 conjoined appeals



Hopkins Homes v Suffolk Coastal DC

- 26 houses in Yoxford.
- LPA refused permission.
- Inspector dismissed appeal, finding policies on (a) settlement hierarchy, and (b) key and local services centres not “policies for supply of housing”.
- Supperstone J. quashed Inspector’s DL.

Richborough Estates v Cheshire East BC

- 170 houses in Willaston.
- LPA non-determination.
- Inspector allowed appeal, granted permission, finding that (a) open countryside and (b) green gaps policies were “policies for the supply of housing”.
- Lang J. quashed Inspector’s DL.

Lindblom LJ in Court of Appeal (1/2)



- Para 49 NPPF to be interpreted in **context**.
 - i.e. Government's aim to “*boost significantly the supply of housing*” through “*presumption in favour of sustainable development*”.
- “For supply of housing” = “**affecting** supply of housing”.
- Includes policies whose effect influences housing land by e.g. restricting locations for development (Green Belt, AONB, countryside, conservation, heritage).
- LPAs’ “narrow” interpretation ignores fact that in every plan policies support each other.

Lindblom LJ in Court of Appeal (2/2)



- NPPF does not displace statutory development plan. It is a material consideration for s.70(2) TCPA 1990 and s.38(6) PCPA 2004.
- These are matters of planning judgment for decision-makers:
 - Weight to give to NPPF as a material consideration.
 - Whether dev. plan policy is “for the supply of housing” or not.
 - If policies are “out-of-date”, weight to be given to those policies not prescribed by NPPF. Another question of judgment.
- Paras 14, 47 and 49 NPPF are not to punish but incentivise LPAs.

LPAs' case in Supreme Court



- “For supply of housing” = “in respect of supply of housing”
- Court of Appeal improperly elevated:
 - NPPF over statutory development plan.
 - Housing delivery over other NPPF objectives.
 - Housing delivery over locally important matters.
- CoA approach requires judgments on evidence of policies’ **effect**. Burdensome, subjective, inconsistent and undermines plan-led system.



Points to watch out for...

- Supreme Court hearing: 22nd – 23rd February 2017.
- First time Supreme Court has considered NPPF, and particularly:
 - NPPF’s interplay with stat. dev. plan s.38(6) and s.70(2).
 - Interplay between paras 14, 47 and 49.
 - Which issues are for the Court vs. decision-makers. Will the court re-visit *Tesco v Dundee*?
- The central issue – “for the supply of housing” – critical for **70-80%*** of UK LPAs without full up-of-date local plans.

* para 1.7 of March 2016 LPEG report to SoSCLG.

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