

Court clarifies meaning of new 'isolated' homes in National Planning Policy Framework (*Braintree District Council v Secretary of State for Communities and Local Government and others*)

12/04/2018

Planning analysis: Discussing the Court of Appeal's decision in *Braintree District Council v Secretary of State for Communities and Local Government and others*, Stephen Whale, barrister at Landmark Chambers, points out that the judgment has clear and important implications for countless planning applications for new homes in the countryside.

Braintree District Council v Secretary of State for Communities and Local Government and others
[\[2018\] EWCA Civ 610](#)

What are the practical implications of this case?

The judgment provides clarity on the meaning of paragraph 55 of the current version of the National Planning Policy Framework (NPPF). The ruling that 'isolated' in this context means 'physically isolated' and that there is no need to take into account 'functional isolation' as well (ie whether the proposed dwelling would be isolated relative to services and facilities) means, all other things being equal, that it will be easier to obtain planning permission for a new home in the countryside than if the appellant council's argument had prevailed and both criteria had to be taken into account. Given that the NPPF applies right across England, the judgment has clear and important implications for countless planning applications for new homes in the countryside. The draft replacement NPPF, currently at the consultation stage, repeats the 'isolated' term in the NPPF, para 81. The judgment will therefore continue to apply if the new version of the NPPF, once published, is in line with the consultation draft. Those advising would-be applicants for planning permission and those deciding such applications have certainty as to the meaning of 'isolated' now and in the future.

While the objective interpretation of national planning policy and guidance (like development plan policies) is a question of law for the courts, the decision emphasises that the courts must avoid the mistake of treating the policy in question as if it had the force or linguistic precision of a statute and must bear in mind that broad statements of policy do not lend themselves to elaborate exegesis. The Court of Appeal added that it will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance, that it will not engage in or encourage the dissection of an inspector's planning assessment in the quest for such errors of law and that excessive legalism in the planning system is always to be deprecated. Whether this serves to put a brake on the number of claims based on the interpretation of planning policy or guidance remains to be seen.

What was the background?

Blackmore End is a recognisable village in Essex, characterised by linear development extending along several roads, with a very limited range of services and facilities. The site in question is in the village, but outside the settlement boundary in the emerging development plan. The site is 'in the countryside' for the purposes of the NPPF, para 55. There were two pre-fabricated agricultural buildings on the site, now demolished, which lies between farmhouses. The council refused planning permission for the erection of two single-storey dwellings on the site, and the developer appealed. The Secretary of State's appointed inspector decided, among other things, that accessibility to services, facilities and employment from the site other than by car would be poor. However, he also

decided that there were a number of dwellings nearby and that the development 'would not result in new isolated homes in the countryside' to which the NPPF, para 55 refers. This was a factor which led to his overall conclusion that the appeal should be allowed, and planning permission granted. The aggrieved council challenged the inspector's decision in the High Court and then again in the Court of Appeal.

What did the court decide?

The Court of Appeal dismissed the council's appeal, upholding the decision of the High Court (and hence the underlying inspector's decision granting planning permission) that 'isolated' in the NPPF, para 55 means 'physically isolated'. That interpretation, said Lindblom J, reflects common sense and the government's intention as well as being the literal and natural construction of the word. The judgment leaves open two interesting questions:

- First, is it inappropriate in principle to use the national planning practice guidance to assist in construing policies in the NPPF?
- Second, does the NPPF, para 55 fall within the ambit of the exception in NPPF, para 14 for 'specific policies' that 'indicate development should be restricted'?

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.