

**Hopkins Homes**  
**in the Supreme Court**

**Christopher Lockhart-Mummery QC**

**&**

**Zack Simons**



**19<sup>th</sup> June 2017**  
**Landmark Chambers**



**Introduction**



*Suffolk Coastal DC v Hopkins Homes Ltd* &  
*Richborough Estates Partnership LLP v Cheshire East BC*  
[2017] UKSC 37; [2017] 1 W.L.R. 1865

- Great expectations.
- The key findings? Narrow meaning of “relevant policies for the supply of housing”.
- But what next? Further litigation? Stemming the flood of ***Tesco v Dundee***? Amendments to the NPPF?

## How did we get here...



### 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:

- “**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
- “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

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### *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.
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## 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.
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## 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.



## The Supreme Court's Judgments



### 3 key issues:

- Basis for / role of the NPPF.
- Interpreting v Applying policy.
- § 14 / § 49 NPPF.



## (1) Basis for / role of NPPF

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- A question we were not expecting:

*Where does the SoSCLG's power to make national planning policy come from?*

- West Berkshire [2016] 1 WLR 3923: “royal prerogative”.
- Carnwath disagreed - power arises from the Planning Acts which give SoSCLG overall responsibility for planning system.
- Important “not to overstate the scope” of NPPF. Does not “displace the primacy” of development plan.



## (2) Interpreting v applying policy

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- Re-stated **Tesco v Dundee**, i.e. policy should be interpreted objectively. But noted “over-legalisation of planning process”
- So Lord Carnwath added 4 points (every little helps):
  - **Tesco** was about “suitable”.
  - Policies are not statutes. Interpretation points may not be decisive.
  - Presumption in favour of planning inspectors.
  - Applicants to “distinguish clearly” between interpretation and application.





(3) § 14 / § 49 NPPF [1/2]

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- “Relevant policies for the supply of housing” = **narrow definition**, i.e. policies dealing only with the numbers and distribution of new housing.
  - But the “important question” is not defining individual policies, but whether LPA has a **5 year housing land supply**.
  - If not, § 14 is triggered.
  - Restrictive non-housing policies (e.g. Green Belt / countryside) to be weighed against need for development in the tilted balance.
  - Matter of planning judgment.
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(3) § 14 / § 49 NPPF [2/2]

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- E.g. weighing policies in each appeal:
    - Inspector entitled to give countryside protection / green gap policies reduced weight to the extent that they derived from “settlement boundaries that in turn reflect out-of-date housing requirements” (**Cheshire East**).
    - Settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled (**Suffolk Coastal**).
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## So what next?



### 6 headlines from *Hopkins*

1. Weight to be given to restrictive policies in the development plan (specific or not) will need to be judged against the need for development, especially housing [56].
2. The important question is not how to define individual policies, but whether the result is a 5 year supply. The shortfall is enough to trigger the tilted balance of paragraph 14.
3. Policies for the supply of housing in paragraph 49 of the NPPF means policies for the “numbers and distribution” of new housing [48, 57-59].
4. The weight to be given to restrictive policies may be reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements [63].
5. A settlement hierarchy policy “may” be a policy for the supply of housing [64]
6. A settlement boundary/hierarchy policy may be a “counterpart of the housing policies”, and its weight in the paragraph 14 balance might need to be reduced if the housing objectives are to be fulfilled [66].



## Plus ça change [1/3]



- A victory for LPAs?
- Impact of the “narrow interpretation”?
- Absent 5yhls, § 14 *bound* to be engaged.
- The “tilted balance” is endorsed.



## Plus ça change [2/3]



- How different is the *effect* from the CoA judgment?
- Take e.g. policies NE2 & NE4 in Cheshire East on countryside and Green Gaps. Inspector concluded no 5yhls, and reduced weight to reflect out of date requirement
- Lord Carnwath endorsed the conclusion at 63:

“63. [...] On my understanding of paragraph 49, the Council and the Inspector both erred in treating policy NE.2 (“Countryside”) as “a policy for the supply of housing”. But that did not detract materially from the force of his reasoning (see the summary in paras. 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from “settlement boundaries that in turn reflect out-of-date housing requirements”..”



## Plus ça change [3/3]

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- Another example = policies SP19 & SP27 in Suffolk Coastal, settlement / hierarchy policies.
- See Lord Carnwath at 66:

*“But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed it’s supposed status as an “up-to-date” policy under paragraph 49 to give it added weight.”*



## Conclusions

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- § 47 NPPF objective of significantly boosting housing supply through § 49 NPPF deeming process **unscathed**.
- Any need to amend NPPF?



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