

NPPF and housing land supply

Recent case-law

Stephen Whale
Landmark Chambers

NPPF paragraph 47



To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period.
- identify and update annually a supply of specific deliverable sites sufficient to meet five years worth of housing against their housing requirements [...]
- [...]

NPPF paragraph 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.

City and District Council of St Albans v Hunston
Properties Ltd [2013] EWCA Civ 1610



DCLG 2008 projections (688 new households p.a.; most up-to-date figures)

Or

Revoked RSS figure (360 units p.a.; reflected constraints in the District especially extensive Green Belt)

The error of law



Inspector's error of law: using a figure for housing requirements (360 units p.a.) "below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure."

Hunston: the sting in the tail



- * Constraints come into play as part of the overall planning balance e.g. a lack of a five year housing land supply may carry little weight if it is inevitable given the constraints in the area (Green Belt, AONB, National Park etc)
- * An adopted Local Plan *can* fall short of meeting the full, objectively assessed needs for housing of its area because of the conflict which would otherwise arise with policies on the Green Belt or indeed on other designations hostile to development

Hunston: a post-script in Solihull



Gallagher Homes Ltd v Solihull MBC [2014] EWHC 1283 (Admin)

- Section 113 Planning and Compulsory Purchase Act 2004
 - Challenge to adoption of Local Plan
- Failure by examining Inspector to deal with the issue of the full objectively assessed housing need
- Confusion of “policy off” housing needs with “policy on” housing requirement targets

Cotswold DC v SSCLG [2013] EWHC 3719 (Admin)

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POLICY 19: DEVELOPMENT OUTSIDE DEVELOPMENT BOUNDARIES

Outside Development Boundaries, and subject to policy GB.1 and policies for site-specific allocations indicated on the Proposals Map and insets, development appropriate to a rural area will be permitted, provided that the proposal relates well to existing development; meets the criteria set out in other relevant policies in the Plan; and would not:

- (a) result in new-build open market housing other than that which would help to meet the social and economic needs of those living in rural areas;
- (b) cause significant harm to existing patterns of development, including the key characteristics of open spaces in a settlement;
- (c) lead to a material increase in car-borne commuting;
- (d) adversely affect the vitality and viability of settlements; and
- (e) result in development that significantly compromises the principles of sustainable development

Conclusion at paragraph [72] of the Judgment:

“The short answer is that Local Plan Policy 19 is a policy relating to the supply of housing (amongst other developments). It restricts development, including housing development. As the inspector correctly held, applying the Framework, Local Plan Policy 19 should be disapplied “to the extent” that it “seeks to restrict the supply of housing...”

The South Northamptonshire trilogy



SNC v SSCLG [2013] EWHC 4377 (Admin) – 10 December 2013

SNC v SSCLG [2014] EWHC 570 (Admin) – 10 March 2014

SNC v SSCLG [2014] EWHC 573 (Admin) – 10 March 2014

Policy G2



Provision will be made for new development to be concentrated in Towcester, Brackley and closely related to the Northampton borough boundary. New development will be limited in the villages and severely restrained in the open countryside.

NB this is a General Strategy policy in Chapter 1 of the Local Plan. The Housing chapter is Chapter 2.

Conclusion in [2013] EWHC 4377 (Admin) at paragraph 34:

“In my judgment, [Policy G2] is a housing supply policy within the meaning of paragraph 49 of the National Framework. It applies to residential development and other forms of development, but to the extent that it seeks to restrict housing development and to concentrate it in Towcester, Brackley and other areas, it is on the Cotswold District Council side of the line and falls within the scope of paragraph 49 of the National Framework.”

Policy EV2



Planning permission will not be granted for development in the open countryside, although exceptions may include:

- (I) The conversion of an existing building in accordance with policies EV16 and EV17; or
- (II) Development necessary for the purposes of agriculture, forestry, tourism or recreation; or
- (III) In the Special Landscape Areas, appropriate development essential for the purposes of agriculture, forestry, tourism or recreation; or
- (IV) Development in accordance with the special policies that apply to particular sites dealt with in Chapter 13

NB Policy EV2 is a Chapter 4 Environment policy

Conclusion in [2014] EWHC 573 (Admin) at paragraphs [46]-[48]

- * The phraseology in NPPF paragraph 49 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 alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.

- * The language of NPPF paragraph 49 cannot sensibly be given a very narrow meaning.
- * Policy EV2 clearly falls within the scope of the phrase in NPPF paragraph 49.

The RSS issue in the South Northants litigation

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The RSS issue in the South Northants litigation

- A RSS is not “expunged from history” upon its revocation.
- Even after revocation, a RSS figure or evidence base may still be relied upon to determine the full objectively assessed housing needs for an area (if not constrained or inflated by a growth strategy), the housing shortfall (if any) or whether to apply a 5% or 20% buffer.

Green Wedges and the like



William Davis Ltd v SSCLG [2013] EWHC 3058 (Admin)

North-West Leicestershire Local Plan Policy E20: Green Wedge

Development will not be permitted which would adversely affect or diminish the present open and undeveloped character of the Coalville-Whitwick-Swannington Green Wedge, identified on the Proposals Map.

Appropriate uses in the Green Wedge are agriculture, forestry, minerals extraction and outdoor sport and recreation uses.

Any built development permitted within the Green Wedge will be limited to minor structures and facilities which are strictly ancillary to the use of the land for these purposes.

NB Policy E20 is a Chapter 4 Environment policy

Conclusion at paragraph [47] of the Judgment: “...Policy E20 does not relate to the supply of housing, and therefore is not covered by [NPPF] paragraph 49.”

NB [2014] EWHC 573 (Admin) at [47], when discussing Policy EV2: “Such very general policies contrast with policies designed to protect specific areas or features, such as gaps...all of which could sensibly exist regardless of the distribution and location of housing or other development.”

NPPF paragraph 14



NB William Davis at paragraph [37]:

“I accept [the Secretary of State’s] submission that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development.”

NB permission to appeal was refused by Lord Justice Sullivan

Conclusions



1. Pre-Local Plan, the full objectively assessed needs figure cannot be a constrained figure or an inflated figure.
2. The RSS is not expunged from history upon revocation.
3. Even non-Housing Chapter policies can be “relevant policies for the supply of housing” for NPPF paragraph 49 purposes. This phraseology has a broad meaning, but it does not include policies designed to protect specific areas or features.
4. NPPF paragraph 14 only applies to sustainable development.