

The NPPF: Recent Changes and Case Law, Including Housing Land Supply

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Outline of Talk

- The new NPPF
- The Technical Consultation
- Housing supply
- *Not* talking about:
 - Habitats [NPPF 177]
 - Green Belt

Outline of Talk (2)

- Am going to talk about:
 - Housing land supply
 - Sustainable development
 - Valued landscape
 - Design
 - Heritage

What is the NPPF?

- NPPF described as a “rule book” by SoS
- Still (only) a material consideration under s.38(6) PCPA
- DP is the starting-point
- Weight is a matter for decision-makers, even in the context of the development plan; no systematic primacy to be accorded to the development plan (*West Berks* [2016] 1 WLR 3923)

What is National Planning Policy?

- The making of national planning policy is the “business of the Secretary of State” (*Alconbury* [2003] 2 AC 295)
- Lindblom J in *Cala Homes* [2011] 1 P&CR 22 – power does not come from statute
- *West Berks* – the power comes from the prerogative
- *Hopkins Homes* [2017] 1 WLR 1865 – power comes from the Planning Acts (expressly or by implication)

Housing Land Supply – Calculating Need

- The approach of the new NPPF (and PPG) is to make this a less evaluative exercise via the Standard Methodology (*Dartford BC* [2016] EWHC 649 (Admin))
- Proposed change to SM by the Technical Consultation
- Latest household projection figures mean the SM wouldn't give the Government's desired figures
- Consultation proposal: use the 2014-based data for assessment of need, but review the SM formula
- 2016-based figures do not constitute exceptional circumstance for departing from methodology

Housing Land Supply – Tweaks to the Wording

- The Technical Consultation seeks to make clear that the use of the justified alternative to the SM for calculating housing need (in exceptional circumstances) would apply only in production of strategic policies, not at individual application stage.
- The Technical Consultation also seeks to make clearer the definition of ‘deliverable’. All sites with detailed PP benefit from assumed deliverability

Housing Land Supply – Recent Cases

- How specific must an Inspector be when making a finding of a shortfall in HLS? *Hallam Land Management Ltd* [2018] EWCA Civ 1808:
 - No need to determine exact level of shortfall
 - Inspector should consider broad magnitude of shortfall, expected duration, LPA’s steps, and the impact of the proposed development
- *Cheshire East Council* [2018] EWHC 2906 (Admin) – precautionary approach by Inspector was not additional policy test but application of judgment. Use of word “certain” did not render decision unlawful.

Presumption in Favour

- No more golden thread!
- *Barker Mill* [2017] PTSR 408 and *East Staffordshire DC* [2018] PTSR 88 remain good guides
- Presumption in favour to be conclusively found in NPPF 11
- Presumption does not displace s.38(6) PCPA; presumption of policy only
- Impact of the presumption not conclusive on the grant of permission
- Footnote 6 – now closed list
- Plan must be up to date for NPPF 11(c)
- Change: “no relevant development plan policies”

Valued Landscape

- Considered by Ouseley J in *Stroud DC*: [2015] EWHC 488 (Admin) – does not need to be designated
- Possible test of demonstrable physical attribute?
- Appears to have been taken up by Hickinbottom J in *Forest of Dean DC* [2016] EWHC 2429 (Admin) – physical attributes taking a site out of the ordinary?
- *Ceg Land Promotions II* [2018] EWHC 1799 (Admin)
 - Is the NPPF’s policy already reflected in DP?
 - “demonstrable physical characteristics” is not a test
- *Preston New Road Action Group* [2018] Env LR 18 – temporary harm to valued landscape

Valued Landscape – New NPPF

- Land at Melton Road, Rearsby, Leicestershire
APP/X2410/W/17/3190236
- Notes lack of designation
- Notes lack of identification in DP
- Site had value “in its own right and as part of the wider landscape”; Inspector acknowledged that valued by local residents, but that this does not necessarily mean that valued in the context of the NPPF
- Agreed that Box 5.1 of GLVIA 3 useful for assessing value
- Identified features “not unduly unusual and are generally representative”, therefore site not valued

Design

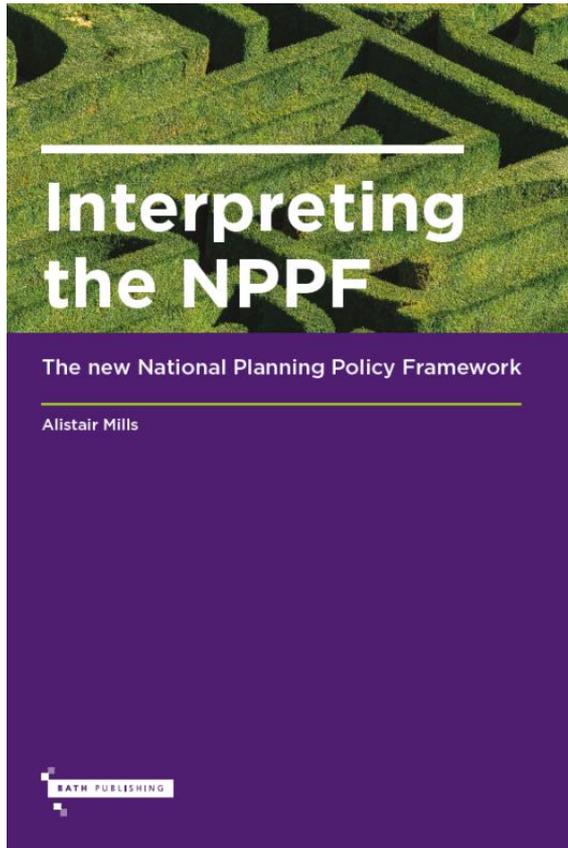
- Perhaps not most fertile ground for HC challenge:
Horsham DC [2015] EWHC 109 (Admin)
- Increased weight to design matters in the new NPPF
- Potential for better design does not mandate refusal:
Horsham DC
- The weight to be given to engagement: NPPF 128
- Sustainable development and design: *Scrivens* [2014]
JPL 521
- Emphasis on design vision in the plan

Heritage

- No major change in heritage policy in the new NPPF
- Note decision *R (Historic England) v Milton Keynes Council* [2018] EWHC 2007 (Admin)
 - Loss of use, or loss of built environment?
- *Catesby Estates v Steer* [2017] EWCA Civ 1697
 - Factors when considering setting
 - Economic, social and historical
- *Bohm* [2017] EWHC 3217 (Admin) – helpful guidance on deliberate neglect (prohibition of relying upon own default)

Technical Consultation

- This was produced in October 2018
- It deals with:
 - assessment of housing need
 - assessment of supply
 - the “definition” of deliverable
 - development requiring HRA
- Consultation does not close until 7 December 2018 (at 23:45)



Interpreting the NPPF: The New National Planning Policy Framework
Bath Publishing, 2018

<https://bathpublishing.com/products/interpreting-the-nppf-the-new-national-planning-policy-framework>

<https://www.landmarkchambers.co.uk/resources/the-nppf-a-digest-of-decisions/nppf-home/>

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