

The NPPF: Recent Changes and Case Law

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Outline of Talk

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

Outline of Talk (2)

- Am going to talk about:
 - 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)

Limitations on National Planning Policy

- Cannot make policy inconsistent with s.38(6); TCPA s.70(2)
- Cannot introduce matters which are not proper planning considerations (*West Berks*)
- *McCarthy and Stone* [2018] EWHC 1202 (Admin) – conflict with DP does not mean that national policy unlawful

How is the NPPF Interpreted?

- No cases yet on the interpretation of the new NPPF
- Likely to be a similar approach to interpretation of original NPPF
- Objective approach to interpretation
 - NB however *Good Energy Generation Ltd* [2018] EWHC 1270 (Admin)
- Not overly legalistic
- Role of the PPG?
- Role of legislative definitions?

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

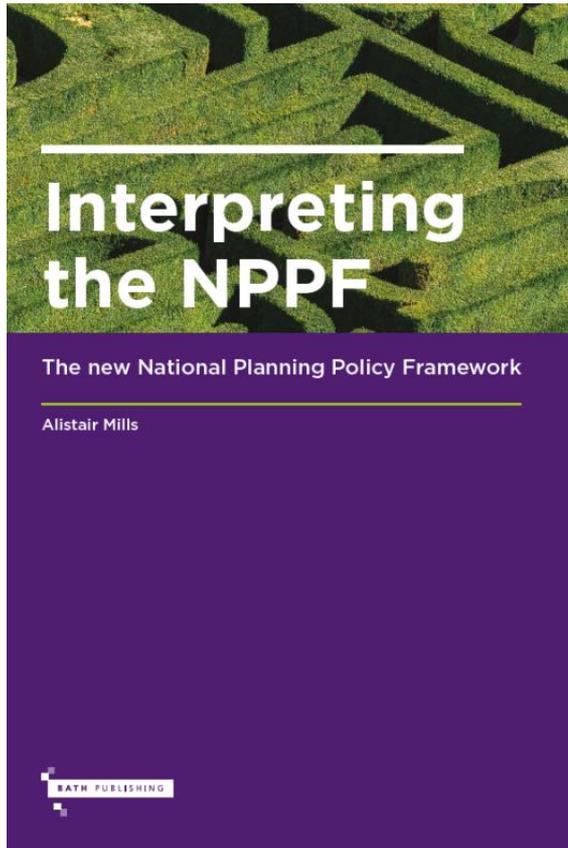
- Perhaps not most fertile ground for HC challenge:
Horsham DC [2015] EWHC 109 (Admin)
- Increased weight to design matters in the new NPPF
- Potential for better design does not mandate refusal:
Horsham DC
- The weight to be given to engagement: NPPF 128
- Sustainable development and design: *Scrivens*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