

**“*MAJOR DEVELOPMENTS*” IN
NATIONAL PARKS**

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“major developments” – some basics

- National policy currently requires that planning permission for “*major developments*” in AONBs, the Broads and National Parks (“NPs”) (together referred to as “*designated areas*”) should be refused unless:
 - (i) there are “*exceptional circumstances*”; and
 - (ii) it is demonstrated that they are in “*the public interest*”.
- In considering these matters regard must be had to:
 - (i) the need for the development;
 - (ii) the scope for meeting the development outside the designated area; and
 - (iii) “*any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*”
- See para. 172 of the NPPF (2018), previously para 116 in NOOF (2012). NB the latest NPPF (February 2019) is identical in this regard, I shall refer to NPPF (2018)).

Why it is important to know what is “*major development*”

- In any application for PP – whether major or not - in a designated area “*great weight*” is to be given to “*conserving and enhancing scenic beauty*” because these areas have “*the highest status of protection*” (see NPPF (2018) at para. 172, formerly para. 115 in NPPF (2012).
- But if proposal is for a “*major development*” the hurdle is much, much higher; the tests being “*exceptional circumstances*” and “*public interest*”.
- There are risks if “*major development*” defined too widely:
 - (i) some very beneficial developments will not be consented as will fail the higher tests; or
 - (ii) to avoid that outcome the tests will instead be watered down by decision-makers.
- For developers the aim is always to try and argue that what is proposed is not “*major development*” as it lowers the hurdle.

Why me?

- Acted for DEFRA in 2005 – 2007: legal challenges to the designation of the New Forest NP: (i) by RWE on Fawley power station; and (ii) ***Meyrick Estate v SSEFRA*** [2007] 2 WLUK 4 on “*natural beauty*” (led to s. 99 of the Natural Environment and Rural Communities Act 2006);
- In lead up to designation of South Downs also advised DEFRA;
- Then released by DEFRA to advise new SDNPA on planning matters;
- Advice included the so-called “Maurici opinions” as they have become known on the meaning of “*major development*” in a NP:
 - (i) first opinion – on PPS7 in 2011: <https://www.southdowns.gov.uk/wp-content/uploads/2015/01/Legal-Opinion-of-Major-Development-June-2011.pdf>;
 - (ii) second opinion - on NPPF (2012) in 2014: <https://www.southdowns.gov.uk/wp-content/uploads/2015/01/Guidelines-on-Significance-for-SDNP-Planning-Applications---NPPF-Complaint-July-2014.pdf>
- Much publicised, argued about on planning appeals/applications and considered by High Court in ***R(Green) v SDNPA*** [2018] EWHC 604 (Admin) (see below);
- Part of the team for the SDNPA Local Plan;
- Regularly act for and advise developers on schemes in AONBs including in ***Wealden DC v SSCLG*** [2017] JPL 625.

Government guidance on *“major development”*

- 3 sources:
 1. NPPF (2018) para 172;
 2. The Planning Practice Guidance (“PPG”);
 3. English National Parks and the Broads UK Government Vision and Circular 2010 (“the Circular”)



(1) NPPF (2018) para 172

Para 172: “ ... *Planning permission should be refused for major development 55 other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*

- *a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- *b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- *c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”*

Footnote 55: “*For the purposes of paragraphs 172 and 173, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.”*

(2) The PPG

“How is major development defined in National Parks and Areas of Outstanding Natural Beauty, for the purposes of the consideration of planning applications in these areas?”

Planning permission should be refused for major development in a National Park, the Broads or an Area of Outstanding Natural Beauty except in exceptional circumstances and where it can be demonstrated to be in the public interest. Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 172 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 172 is applicable.”
(emphasis added).

Paragraph: 005 Reference ID: 8-005-20140306; Revision date: 06 03 2014

(3) The Circular

“Major Developments

31. Major development in or adjacent to the boundary of a Park can have a significant impact on the qualities for which they were designated. Government planning policy towards the Parks is that major development should not take place within a Park except in exceptional circumstances. This is set out in Planning Policy Statement 7: Sustainable Development in Rural Areas and restated in Minerals Policy Statement 1: Planning and Minerals. Applications for all major developments should be subject to the most rigorous examination and proposals should be demonstrated to be in the public interest before being allowed to proceed. The criteria for the assessment of such applications is currently set out in Paragraph 14 of Minerals Policy Statement 1 and Paragraph 22 of Planning Policy Statement 7. The Government expects all public authorities with responsibility for the regulation of development in the Parks to apply the test rigorously, liaising together to ensure that it is well understood by developers.”

Some history ...

- The text on major developments in what is now para 172 of the NPPF (2018) is very similar to what as was included in para. 116 of the NPPF (2012).
- What is new is footnote 55.
- This was absent from the NPPF (2012), which like PPS7 before it, said nothing on what was “*major development*”.
- Will consider:
 - (i) Briefly the pre NPPF (2012) history;
 - (ii) NPPF (2012);
 - (ii) The Maurici opinions;
 - (iii) Case-law under the NPPF (2012) pre and post the Maurici opinions, including the **Green** case;
 - (iv) The draft revised NPPF and how we ended up with footnote 55;
 - (v) What impact footnote 55 may have on the meaning of “*major development*”
- Before doing so two further introductory points:

(1) Key documents

- If you are considering what is “*major development*” there are some documents to have to hand:
 - (i) NPPF (2018) para 172;
 - (ii) The PPG (see above);
 - (iii) The Maurici opinions, especially the later one;
 - (iv) The **Green** case – see below;
 - (v) The report by Sheffield Hallam University for the Campaign for National Parks entitled “*An examination of the development and implementation of planning policy relating to major development in the English and Welsh National Parks*” dated November 2016: <https://www.cnp.org.uk/blog/investigating-major-development-test> (hereinafter “the Major Development Report”)

(2) Statutory definition of “major development”

- See the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 (“the DMP Order”) at Art 2:
 - “major development” means development involving any one or more of the following—*
 - (a) the winning and working of minerals or the use of land for mineral-working deposits;*
 - (b) waste development;*
 - (c) the provision of dwellinghouses where—*
 - (i) the number of dwellinghouses to be provided is 10 or more; or*
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*
 - (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*
 - (e) development carried out on a site having an area of 1 hectare or more;”*
- Similar provision in earlier legislation e.g. Art. the TCP (General Development Procedure) Order 1995 and the TCP (DMP) Order 2010.
- Not applicable in present context: see below.

(i) Pre NPPF (2012)

- There has been Government guidance on “*major development*” in NPs since the 1949 Act.
- The so-called Silkin test was laid down in 1949 – see the Major Development Report at para 1.2;
- This was then incorporated into PPG7 in the early 1990s;
- In the 2000s it was included in PPS7 – the subject of the first Maurici opinion;
- Two things to note:
 - (i) No definition of “*major development*”; and
 - (ii) The language/test where something is “*major development*” has changed over time e.g. in PPS7 used to say “*applications for all such development proposals should be subject to the most rigorous examination*”, that not in the NPPF.

(ii) The NPPF

- The NPPF (2012) as seen in near identical form to NPPF (2018) minus footnote 55 so, and very similar to PPS7:
 - (i) no definition of “*major development*” – as was said in the case of **Aston** (see below) the NPPF “*does not define or seek to illustrate the meaning of the phrase “major developments”*” in para. 116
 - (ii) nor did NPPF (2012) seek to define “*major development*” more generally e.g. in glossary.
 - (ii) same tests applied where something is such development: e.g. exceptional/public interest.
- Publication of NPPF coincided with Supreme Court decision in **Tesco Stores Ltd v Dundee** [2012] P.T.S.R. 983 which held meaning of planning policy a question of law and thus generated, for first time, litigation on what was “*major development*” as defined in national policy.

(iii) The Maurici opinions (1)

- Focus on the second opinion (July 2014), looking at NPPF (2012);
- Focused on the meaning of “*major development*”;
- My view was:
 - (1) Wrong to treat “*major development*” in NPPF as having meaning in the DMP Order (see above);
 - (2) Wrong to apply any rigid or set criteria;
 - (3) Wrong to only consider it to apply only to developments raising issues of national significance. A view supported by in a number of appeal decisions. Albeit Major Development Report says some LPAs still applying this definition!
 - (4) Determination of whether something is or is not “*major development*” is a matter of planning judgment for the decision-maker;

(iii) The Maurici Opinions (2)

- (5) Determination requires consideration of “*the proposal in question*” and “*the local context*”: direct support for this in the PPG. So the very same type/scale of development may amount to “major development” in one NP, but not in another; or in one part of a NP, but not in another part of the same NP.
- (6) “*in making a determination as to whether the development is “major development”, the decision maker may consider whether the development has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB by reason of its scale, character or nature*”.

(iii) The Maurici Opinions (3)

- (7) *“the application of criteria such as whether the development is EIA development, whether it falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended), whether it is “major development” for the purposes of the 2010 Order, or whether it requires the submission of an appraisal/ assessment of the likely traffic, health, retail implications of the proposal will all be relevant considerations, but will not determine the matter and may not even raise a presumption either way”*
 - NB this last point disapproved of in **Green**, see below.

(iv) Case-law (1)

- At time of 2011 Opinion no case-law on meaning of “*major development*” in designated areas.
- Since NPPF, and post ***Tesco v Dundee*** (see above), there is case-law on meaning:
 - (i) ***Aston v SSCLG*** [2013] EWHC 1936 (Admin);
 - (ii) ***R (Forge Field) v Sevenoaks DC*** [2014] EWHC 1895 (Admin);
 - (iii) ***R (Cherkley Campaign) v Mole Valley DC*** [2014] EWCA Civ 567;
 - (iiv) ***Green*** – see above;
 - (v) ***R (Steer) v Shepway DC*** [2018] EWHC 238 (Admin).

(iv) Case-law (2) - Aston

- PP granted on appeal for 14 dwellings in an AONB;
- C argued “*major development*” in para. 116 of the NPPF had meaning in the DMP Order e.g. in this regard 10+ dwellings;
- Inspector rejected – said development of 14 dwellings could not properly be described as “*major*” “*by any published or even commonsense criterion*”;
- Challenged in the High Court, Wyn Williams J. holds (emphasis added):
 - “... appropriate that the term should be construed in the context of the document in which it appears. In my judgment the context of the NPPF and paragraphs 115 and 116 in particular militate against the precise definition which [C] suggests should attach to the phrase “major development”. The word major has a natural meaning in the English language albeit not one that is precise. In my judgment to define “major development” as precisely as suggested by [C] would mean that the phrase has an artificiality which would not be appropriate in the context of national planning policy”.
 - “I am satisfied that the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words”

(iv) Case-law (3) – *Forge Field*

- PP granted by LPA for 6 dwellings in an AONB;
- Officer Report (“OR”) seemed to suggest that the officer had concluded it was not major development because it did not exceed 10 dwellings as per the DMP Order definition.
- C challenged on basis that this an error post-**Aston**.
- Claim fails – Lindblom J. holds:
 - (i) view of officer that this was not major development “*consistent with common sense*”;
 - (ii) should not import DMP Order meaning into para. 116;
 - (iii) “*concept should be understood in the context of the document in which it appears, and in paragraphs 115 and 116 of the NPPF*”
 - (iv) “*“major developments” would normally be projects much larger than six dwellings on a site the size of Forge Field*”
 - (v) whether a “*major development*” an exercise of planning judgment.

(iv) Case-law (4) – Cherkley

- CA, Richards LJ
- *“I do not think that the creation of one fairway and one tee of a golf course could reasonably be regarded as a major development in the AONB, even if account is taken of the fact that they form part of a larger golf course development the rest of which is immediately adjacent to the AONB”*



(iv) Case-law (5) – Green (1)

- PP granted for redevelopment of Grade II listed building into a hotel and restaurant (28 rooms) and associated facilities including staff accommodation and provision of parking spaces (68) within the South Downs NP.
- JRd – alleged that OR failed to correctly apply the test for major development in paragraph 116 of NPPF (2012).
- OR referred to Maurici Opinions and noted *“Mr Maurici’s Opinions form part of a Member’s training programme and the test of what amounts to a “major development” within the meaning of paragraph 116 is an issue which is often referred to in planning applications that come before the Defendant’s Planning Committee”* (see para. 15)
- The OR’s conclusion on *“major development”* was said to be flawed for three reasons – all said to be contrary to the Maurici opinions:
 - (i) Failure to take into account the designation of the proposal as major development under the DMP Order
 - (ii) Failure to consider *“all the circumstances”* as advised by, in particular the consultee responses identifying potential for serious adverse impacts.
 - (iii) Failure to fully consider the local context.

(iv) Case-law (6) – Green (2)

- I did not appear in the case but my name appears 15 times in the judgment!
- Not often barristers have their opinions before the Court, being judged by the Court!
- In large part the Maurici opinions passed muster;
- 2 matters of possible disagreement between me and Judge on “*major development*”:
 - (1) Judge read my opinion as saying that whether the development was defined as major in the DMP Order was always relevant. He disagreed. Said it may be relevant and material; but that fact sensitive and not susceptible to hard and fast rules or set criteria.
 - (2) At para. 55 Judge said “*In the context of the OR as a whole, I regard any distinction between "potential" for harm and "likelihood" of harm as sterile and unimportant. Any assessment of potential for harm necessarily includes some consideration of whether harm is likely; and if Mr Maurici meant to advise that the existence of any possibility at all of serious harm would require any development to be categorised as a "major development" within the meaning of paragraph 116, I would respectfully disagree.*”

(iv) Case-law (7) *Green* (3)

- So:
 - Maurici opinion stands;
 - On first point of possible disagreement: No actual disagreement. I also rejected hard and fast rules. I was not suggesting whether a relevant development was major as defined by the DMP Order was always material, but that it could be. It was one of those relevant considerations to which regard could be had but need not be had.
 - On second point of possible disagreement. No disagreement. I was not suggesting that the any possibility of serious harm would require that a development be classed as major.
 - With all due respect to the Judge (Stuart-Smith J) on the limited points of so-called “disagreement” he did not read my opinion fairly and as a whole!

(iv) Case-law (8) *Steer* (1)

- PP for the development of a holiday park in AONB. The development would include the construction of 12 holiday lodges, a reception building, a store building, formation of a fishing lake, a car park, tennis courts, a children's play area and a putting green.
- OR said it could be "*major development*" but that "*an Inspector could formulate a different view on this at appeal.*"
- At no point did the OR the Committee conclusively determine whether or not the proposals were "*major development*".
- Lang J. "*the question as to whether or not this particular proposal was a "major development" could have been decided either way, on the evidence. On the one hand, there would only be twelve lodges, but on the other hand, this was a sizeable holiday park, with construction of a reception building, a store, a fishing lake, a car park, tennis courts, a children's play area and a putting green, on what was agricultural land, located next to a wood classified as Ancient Woodland*"

(iv) Case-law (9) *Steer* (2)

- Judge found that there was “*real doubt*” as to whether the members in fact gave proper consideration to whether para. 116 of NPPF (2012) applied;
- Ultimately, “*because of the lack of any reliable record of the meeting*” she was not satisfied, on the balance of probabilities, that they did not do so.
- Therefore “*since the burden of proof rests on the Claimant*” the challenge on this ground failed.
- A lucky escape!
- Lesson: need to reach, and evidence, a conclusion on whether development proposed is “*major*”. If not a big JR risk, even if LPA got away with it here

(v) The draft revised NPPF

- The draft revised NPPF (March 2018) sought to define in the glossary “*major development*” by reference to the DMP Order.
- This on face of it would have applied to the definition of “*major development*” in relation to designated areas.
- A lot of consultation responses, including from NPs opposed this.
- Would have been a radical departure from the past for 2 reasons:
 1. National policy previously left term wholly undefined; and
 2. The view that the DMP Order test applied to para. 116 had been rejected – see above.
- This risked pushing much more development in to the “*major*” category and risked a consequential watering down the exceptional circumstances/public interest test.
- The Government seemed to change course, as we have seen, and introduced footnote 55, albeit did not remove definition in glossary.

(vi) The future: footnote 55 (1)

- Footnote 55 to para. 172 says ‘major development’ is “*a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.*”
- Needs to be read with PPG – guidance unchanged (see above) re: “*local context*”.
- But NPPF (2018) still a departure as we now have a definition, albeit a loose one, of “*major development*” in the footnote;
- On one view this not seeking to be radical:
 - Matter of judgment for decision-maker;
 - Must have regard to “*nature, scale and setting*”;
 - Must consider “*whether it could have a significant adverse impact on the purposes for which the area has been designated or defined*”
- This is clearly consistent with previous approach as per Maurici opinions and the case-law.

(vi) The future: footnote 55 (2)

- NB though the glossary retained the definition of “*Major development*” as being “*For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015*”.
- “*Major development*” referred to in other paras. of NPPF (2018) not in context of Broads, AONBs and NPs: so see paras. 63, 64, 76 (all housing), 165 (flooding) and 173 (Heritage Coast).
- **Concern**: whether this general definition for other purposes in the NPPF may influence meaning of “*major development*” under para 172.

(vi) The future: footnote 55 (3)

- No Case-law on this since July 2018 when NPPF (2018) published.
- But there are a number of appeal decisions under NPPF (2018) some of which specifically reference footnote 55.
- (1) APP/K1128/W/18/3208541, Land to the east of Lyte Lane West Charleton, Kingsbridge (26 March 2019), PP sought for 24 dwellings (including affordable housing), village green, children’s play area, parking area and associated works including landscaping. The site was in an AONB.
 - Held “*major development*: (i) would be major development under DMP Order which Inspector equated with being position relating to development outside an AONB; and (ii) “*Mindful of the great weight otherwise to be given to conservation and enhancement of AONBs I see no basis as to why this footnote should be considered to promote a definition of major development that was, as a matter of course, larger outside the AONB*”

(vi) The future: footnote 55 (4)

- (2) APP/D0840/W/18/3208554 and APP/D0840/W/18/3213658, Land South of Tregellast Parc, St Keverne (7 March 2019), PP sought in an AONB for (1) a sustainable residential development of 10 dwellings and associated vehicular access; and (2) affordable housing led development of up to 10 dwellings, site access and associated landscaping. The Inspector dismissed the appeal having concluded that the proposal constituted major development in the AONB:
 - *“19. Paragraph 172 of the revised Framework also advises that planning permission should be refused for major development other than in exceptional circumstances. Housing schemes of 10 or more dwellings are generally classified within the Glossary of the revised Framework as major development, and with regard to footnote 55 I see no reason why the proposed schemes should be considered otherwise in this case.”*
 - My view: same flawed reasoning as above.
- Seems definition elsewhere in NPPF (2018) is influencing para. 172 definition. So on these 2 decisions the DMP Order definition is basically being applied under para. 172. I think this is an error.

(vi) The future: footnote 55 (5)

- (3) APP/W0340/W/18/3211943, Land north of Stretton Close, Bradfield Southend, Reading, Berkshire (15 February 2019), outline PP sought in an AONB for 11 dwellings with layout, means of access and scale reserved. The Inspector allowed the appeal finding that:
 - *“9. The Council’s Committee report says that, “taking into account the amount of development, comparative to the size of the settlement, the location on the edge of the settlement, along with Bradfield Southend’s relationship with Newbury, Pangbourne Reading and Thatcham’s built up areas, it is considered that the proposed development does not amount to major development in terms of paragraph 116” of the Framework. I agree with this assessment that the appeal proposal does not amount to major development within the AONB.”*
 - More orthodox analysis.

(vi) The future: footnote 55 (6)

- (4) APP/M2270/W/18/3196553, Land at Triggs Farm, Cranbrook Road, Goudhurst, Cranbrook Road, (18 January 2019), outline PP sought in an AONB for the demolition of an existing property and the erection of a new access and the erection of a new access road and 12 detached dwellings:
 - Referred to earlier decision in a different AONB under NPPF (2012) where 29 dwellings held to be “*major development*” but said no relevance. Each case turns on own facts.
 - Concluded that as impact on AONB would be “*a significantly adverse one*” was major development.
 - Orthodox analysis.

(vi) The future: footnote 55 (7)

- (5) APP/K1128/W/18/3205992, Land east of Creek Close, Creek Close, Frogmore (27 December 2018), outline PP sought for 8 dwellings (including affordable), access and associated landscaping, within an AONB. The Inspector rejected the argument that permissions granted for other nearby developments should impact on whether a given proposed scheme should be treated as “major development”:
 - *“11. ... There is nothing in the Framework to suggest that, in reaching a view as to whether the scheme amounts to ‘major development’, a proposal in question should be considered alongside other nearby developments. In fact the development is referred to in the singular in the footnote.”*
 - *“12. ... When I consider all these factors together it is clear to me that the appeal scheme should be considered in isolation.”*
 - *“13. Frogmore is a small settlement; however it is not so small that 8 dwellings would significantly increase its size. The land take would be modest compared to the size of the village and the site would also be well contained. I have identified that there would not be a significant adverse effect on the purposes of the AONB. It follows that the proposal is not ‘major development’ for the purposes of paragraph 172 of the Framework.”*

(vi) The future: footnote 55 (8)

- (6) APP/X2220/W/18/3194604, Ringwould Alpine Nursery, Dover Road, Ringwould, Kent CT14 8HG (decision date 13 December 2018), PP sought in an AONB for erection of a water bottling plant including storage and offices (totalling around 1,800sqm of floorspace), new vehicular access, parking and turning areas, landscaping and biodiversity enhancements.
 - The Inspector refused the appeal on the basis that the proposal would have *“an unacceptable effect in relation to the AONB...regardless of whether the proposal is considered to be “major” or not”*.
 - *“21. ... In this individual case, I consider that the proposal has an unacceptable effect in relation to the AONB and its effects on neighbours and this is regardless of whether the proposal is considered to be “major” or not. However, and for the purposes of clarity, taking account of the scale, character and nature of the proposal and the surrounding in which it would be constructed, as well as the effects that I have determined that it would have, I consider that it represents “major development” for the purposes of paragraph 172 of the NPPF.”*

(vi) The future: footnote 55 (9)

- (7) APP/W0340/W/18/3200575, Land off Charlotte Close, Hermitage, Berkshire (3 December 2018), PP sought for 36 dwellings with associated landscape and highway works within an AONB. The Inspector dismissed the appeal on the basis of the material harm that the scheme would cause to the AONB despite finding it would not amount to “*major development*”:
 - *“47. ... I do not consider the appeal scheme to amount to major development in the sense of paragraph 172. In the context of a village of some 800 dwellings, it would not amount to a significant proportional increase (some 4.5%). While harm would be caused to the AONB as already discussed, it would be localised – being restricted to the site itself and a limited number of viewpoints. It would not therefore have a significant adverse impact in the terms set out in footnote 55. I note in this context that the Council does not consider either the Old Farmhouse scheme (21 units) or the site’s development for the approximate 15 dwellings set out in policy HSA24 to amount to major development in this context. Nevertheless, this does not affect the material harm that the appeal scheme would cause to the AONB’s natural beauty.”*
- Important reminder: development can be refused because of impact on designated area even if not “major”.

(vi) The future: footnote 55 (10)

- (8) APP/J3530/W/17/3172629, Brickfield Barns, Saxmundham Road, Aldeburgh Suffolk (21 November 2018), PP sought in AONB for demolition of existing redundant stores, change of use of builder’s yard and the redevelopment of quarry site to provide 43 dwellings (including 14 affordable).
 - The Inspector noted that the 2018 Framework is clear that there is a separate definition for “*major development*” within an AONB (emphases added):
 - *“56. At the time of the application Council officers concluded that the proposal was major development, but considered that the public benefits arising from the provision of the proposed dwellings in this location, were sufficiently ‘exceptional’ to justify the proposal. In reaching a judgement on this matter they had regard to the definition within The Town and Country Planning (Development Management Procedure) (England) Order 2010. This definition includes developments of 10 dwellings or more. **The 2018 Framework is clear that this definition is not the basis for assessing whether a scheme is major development within an AONB.**”*

(vi) The future: footnote 55 (11)

- Inspector nonetheless found to be “*major development*”;
- “*The appeal scheme would be a substantial extension to a small market town and would considerably exceed the 10 dwellings allocated in the SAASP. The amount of new buildings and the extent of the access road, footways, hard surfaced areas and other infrastructure would be of a significant scale in this part of the AONB*”
- This approach:
 - (i) recognising that “*major development*” has a different definition to “*major development*” for other purposes is, in my view, correct;
 - (ii) Decision on why it was “*major*” orthodox: looked at potential impacts.

(vi) The future: footnote 55 (12)

- (9) APP/N2535/W/18/3200598, Kingsmead Park, Swinhope, Market Rasen (24 October 2018) PP sought in an AONB for a change of use to an open field to site 35 holiday lodge caravans and one site office/reception caravan.
 - The Inspector does not discuss the “*major development*” test;
 - Simply states that “[f]or the purposes of paragraph 172 of the Framework the proposal would constitute major development”: at para. 9;
 - However, within the same section, there is comment that the development would have “*an unacceptable negative impact on the scenic character of the area*” and “*result in an intrusion to the landscape that would cause unacceptable harm to the landscape and scenic beauty of the AONB*”: at paras. 10 and 11.

(vi) The future: footnote 55 (13)

- (10) APP/X0415/W/18/3202036, Land to the rear of the Old Red Lion, High Street, Great Missenden (4 September 2018), PP sought in an AONB for demolition of three 4-bed houses, a disused industrial building and 20 garages, the removal of spoil and trees from rear of site and the construction of 34 residential dwellings (25 houses and 5 flats), with associated landscaping, tree replacement, car parking and internal road, along with some amendments to existing buildings on the site. The site measured 0.9 hectares (much of which constituted previously developed land).
 - The Inspector found that the site makes little contribution to the AONB and therefore development of it did not constitute “*major development*”.
 - “37. *With these points in mind I share the appellant’s view that at present the appeal site, which is very enclosed by mature trees on its northern, southern and western boundaries, and by existing buildings on its eastern boundary, makes little contribution to the AONB ...*”.
 - “41. *...Overall I consider that the proposed development would not have any detrimental effect on the environment or the landscape and with this in mind, and having regard to para.172 of the NPPF, I do not consider that this proposal should be seen as major development in the AONB.*”

(vi) The future: footnote 55 (14)

- (11) APP/A2280/C/17/3177781, Matts Hill Farm, Matts Hill Lane, Rainham, Gillingham, (29 August 2018) PP sought for the change of use of old silage clamps on about 0.4 hectares of land to open storage for temporary road barriers. The site was located within Kent Downs AONB.
 - The Inspector concluded that the proposal was not “*major development*” given the site’s low visibility in wider views and the various mitigation measures proposed:
 - “25. *I concur with the appellant’s view that this is not a ‘major development’. The development mainly related to open storage on about 0.4 ha of land and work to the adjacent bunds. The remainder of the land subject of Appeal D is intended to enhance the landscaping and biodiversity of the land at Matts Hill Farm. I recognise that the land occupies a sensitive setting within the AONB and SLA. However, the site is not visible in wider views (as acknowledged by Kent Downs AONB Unit) and the proposal subject of Appeal D contains various measures to mitigate its local impact.*”

(vi) The future: footnote 55 (15)

- (12) APP/B9506/W/18/3196556, Hoburne Bashley, Sway Road, New Milton (24 August 2018), development was proposed for the use of land to site 41 holiday lodges year round. The site measured 1.9 hectares and was within an existing holiday park in the New Forest NP but was currently used as a football field, dog exercise area and a section of the golf course.
 - The Inspector did not discuss the meaning of “*major development*” but concluded that “*In view of the nature, scale and setting of the proposal...the proposal would be a major development in the terms of Footnote 55 of the revised Framework.*”
 - Only one of appeal decisions post NPPF (2018) in NP – not very informative on approach!

(vi) The future: footnote 55 (15)

- (13) APP/K1128/W/17/3185418, Proposed phase 2 development site, Mill Lane, Frogmore, Kingsbridge, Devon, TQ7 2PA (decision date 17 August 2018) PP sought for 28 dwellings (including affordable/starter homes), community allotments, accesses, highway improvements and associated landscaping. The site formed part of the open countryside surrounding Frogmore and was situated within the South Devon AONB.
 - The Inspector dismissed the appeal on the basis that the scale of the development in the context of the surrounding area constituted “*major development*”.
 - “15. ... As made clear in Annex 2/The Glossary and Footnote 70 to the Framework, for AONBs this does not mean development of 10 or more homes or a site with an area of 0.5 ha or more.”
 - Correct approach.

- *“16. However, in this instance, the proposal would involve a substantial extension of a very modest-sized settlement along the lower slopes of an unspoilt river valley.*
- *“17. Moreover, the proposal would take place within a part of the landscape that is integral to the setting and charm of the village of Frogmore. It would comprise major development within the AONB.”*
- The Inspector also rejected a comparison with two other appeal decisions where larger schemes were held not to comprise major development because in both cases the existing settlements were towns and therefore the context for considering the scale of new development was very different.
- *“21. ... Each case must be determined on its own merits and none of these other decisions set a precedent that I must follow.”*

(vi) The future: footnote 55 (16)

- **Difficult to draw conclusions:**
 - (i) some appeals recognise that it was intended via footnote 55 to define “*major development*” differently for purposes of para. 172 – the correct approach in my view;
 - (ii) some appeals taking wrong approach and being influenced by definition of “*major development*” for other purposes in the NPPF (2018) based on the DMP Order and going on to say cannot be that major development something means something “*larger*” in an AONB etc. – the wrong approach in my view;
 - (iii) some cases analysing on facts, as under NPPF (2012), with little reference to new NPPF and footnote 55.

Some other points (1)

- (1) Policy is about “*major development*” within designated areas;
- (2) Concern: whether decision-maker considers “*major development*” influenced by whether wants to grant PP or not;
- (3) See the Major Developments Report:
 - one local group member said “*the policy would have been sufficient to turn down xxx application, had they wanted to*”; and
 - referring to pressure from Central Government for certain developments - so at one time wind farms - now housing; and this is influencing approach to “*major development*” on appeals and call-ins;
 - suggested decision-makers wanted more guidance on tests if something is “*major development*”.

Some other points (2)

R (Mevagissey PC) v Cornwall Council [2013]

EWHC 3684 (Admin)

- (i) “exceptional” means “rarity”
- *“Where an application is made for a development in an AONB, the relevant ... planning decision-makers are required to take into account and weigh all material considerations. However ... the NPPF places the conservation of the landscape and scenic beauty of an AONB into a special category of material consideration: as a matter of policy paragraph 115 requires it to be given “great weight”, and paragraph 116 of the NPPF requires permission for a major development such as this in an AONB to be refused save in exceptional circumstances and where it can be demonstrated the proposed development is in the public interest. In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. The committee may of course depart from the guidance ..., but ... the Planning Committee certainly gave no reasons for doing so ...”*

Some other matters (3)

- ***Franks v Secretary of State for Communities & Local Government*** [2015] EWHC 3690 (Admin), Ouseley J said the following:

“25. To my mind, the duty to give great weight to conserving and enhancing the landscape, natural and scenic beauty of the AONB necessarily feeds through to how one should respond to development which fails to conserve or enhance the AONB.

...

*29. I am in agreement what Hickinbottom J held in **R (Mevagissey Parish Council) v Cornwall Council** [2013] EWHC 3684 (Admin), that paragraph 116 was one way, perhaps not the only way, ordained by the NPPF in which great weight could be given to the objective in paragraph 115 and therefore to any harm which a major development was assessed to do.”*

Some other matters (4)

- (3) **Wealden v SSCLG** [2017] EWCA Civ 39 per Lindblom LJ:
- *“63 The policy requires the exercise of planning judgment. The decision-maker must consider whether there are “exceptional circumstances” justifying the granting of planning permission for the development in question, and whether granting permission would be “in the public interest”. The three bullet points do not exclude other considerations relevant to those questions. The first requires the decision-maker to consider the “need for the development”, including “any national considerations”—for example, the considerations of national policy for housing need and supply. The second bullet point does not refer specifically to alternative sites. It refers to the “cost” and “scope” for development “elsewhere outside the designated area”, and to the possibility of meeting of the need for the development “in some other way”. In many cases, this will involve the consideration of alternative sites. But the policy does not prescribe for the decision-maker how alternative sites are to be assessed in any particular case. It does not say that this exercise must relate to the whole of a local planning authority’s administrative area, or to an area larger or smaller than that. This will always depend on the circumstances of the case in hand. The third bullet point requires the decision-maker to consider potential harm in the three respects referred to—again, always a matter of planning judgment”*

Some other matters (5)

- **Wealden**
 - PP sought for 103 dwellings, 42 of them to be provided as affordable housing, and the provision of 10 hectares of “suitable alternative natural green space” (“SANG”) and public open space, on land at Steel Cross, a small settlement to the north of Crowborough in AONB;
 - upheld view of the Inspector that such a development met the tests of “*exceptional circumstances*” and “*public interest*”, for this development in the AONB to be approved.
 - That conclusion being set in the inspector’s broader assessment of housing needs in the district.
 - In considering the factors referred to in the second bullet point of para. 116 of NPPF (2012), he was entitled to take into account the objectively assessed needs for market and affordable housing.
 - “*The policy allowed him a broad discretion in making each of the planning judgments required, in the particular context in which those judgments had to be made.*”

Some other matters (6)

- In work for clients I have reviewed appeal decisions/call-ins on “*major developments*” in designated areas since NPPF (2012)
- Any patterns?
 - (i) Generally applications for 30 houses or less have not been seen as major development with applications for more housing than this seen as “major”. There are though exceptions to this rule of thumb on housing. Not surprising as assessment of whether something is “*major development*” is, of course, not just based on the number of houses proposed but must also look at the particular characteristics of the site in issue and its impact in the local area. Thus a number of the appeal decisions carefully examine issues such as the proportion of the overall settlement/area in issue that the proposed development would constitute and the wider impact of the same on the area.
 - (ii) below 10 houses almost never seen as “*major development*” – see Lindblom in ***Field Forge*** re 6 houses ... but could be ...

Some other matters (7)

- (iii) Non-housing – no discernible patterns:
 - APP/N2525/A/11/2164661: Inspector decides 2 wind turbines was not “*major development*”;
 - APP/W0340/W/3157428: fly fishing training facility and an underground rifle range with associated facility building at the Royal Berkshire Shooting School was regarded as “*major development*”;
 - APP/D3830/W/16/3151730: 5MW solar array on a 15.1 ha site was regarded as major development;
 - Erection of new storage and warehousing buildings exceeding 1000 sq m of floorspace was regarded as major development.
 - APP/X2600/A/13/2210509: A pet incinerator including the installation of a 200 litre fuel tank was found not to be major;
 - See ***Cherkley*** above re golf course development not major;
 - APP/X2220/W/18/3194604: see above – water bottling plant “*major*”

Some other matters (8)

- APP/A1530/A/13/2195924: PP for ‘The Stour Valley Visitor Centre at Horkesley Park’ comprising a country park, art and craft studios (The Chantry), public gardens, a central building complex to provide an indoor display ring, ‘Suffolk Punch Breeding Centre’, entrance building, shop, café, ‘Field to Fork’, ‘Farming through the ages’, Active Learning, ‘Nature Watch’, and retained greenhouse as a demonstration nursery and gardens, an ‘Energy Centre’, main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision”.
 - Inspector: *“the proposed development would include the erection of 8,950 m² of new buildings and the change of use of some 42 ha of agricultural land to country park. It is intended to attract more than 300,000 visitors every year from across the region and more specifically from China. It would by any measure be a major development ... However, the new buildings would occupy the site of the redundant nursery, outside the AONB ... They would form the major part of the new development. While there would be the creation of the Chinese garden, the erection of fencing and the change of use of land within the AONB, these are relatively minor elements of the scheme in terms of development. The proposal cannot with any factual accuracy be described as major development in the AONB, so in my view ¶116 of the Framework cannot be invoked”*.
 - The Secretary of State agreed that it was not major development in the AONB (see the Secretary of State’s decision letter at paragraph 17).

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