

Recent Cases on the NPPF

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Topics

- Presumption in favour of sustainable development
- AONB
- Heritage
- Housing Land Supply

The Presumption in Favour of Sustainable Development

- Familiar topic for litigation in relation to the first NPPF, including *Hopkins Homes v SSCLG* [2017] 1 WLR 1865
- Already been controversy and litigation

Tilted Balance and the “most important policies”

- NPPF 11(d) gives rise to the “tilted balance”
- What are the “most important policies”?
- Considered in *Wavendon Properties* [2019] EWHC 1524 (Admin)
- Decision of Dove J
- Application for development of up to 203 dwellings, refused by LPA
- SoS then disagreed with Inspector as to whether there was 5YHLS
- SoS’s reasons for departing from the Inspector’s conclusions were not adequate

Wavendon Properties

- Specific discussion of “most important policies for determining the application”
- Developer argued that did not have to be all of the most important policies which were out of date
- Secretary of State said: take a global view of the most important policies. Not enough simply to say that one of the most important policies was out of date
- Decision-maker must (i) consider which were the most important policies, (ii) determine which of them are out of date, (iii) consider holistically whether the most important policies were out of date

Paul Newman New Homes Ltd v SSHCLG

- Decision of Sir Duncan Ouseley [2019] EWHC 2367 (Admin)
- Followed decision of Dove J in *Wavendon*
- Considered question of whether a single policy being out of date can mean that the most important policies can be out of date
- Answer: yes

Peel Investments (North) Ltd v SSHCLG

- Decision of Dove J [2019] EWHC 2143 (Admin)
- Expiration of plan period does not *ipso facto* make a policy out of date
- Older policies are capable of being afforded continuing weight (NPPF 213)
- Dove J said that Lord Carnwath JSC in *Hopkins Homes* was not “identifying a legal principle that when a plan’s end date has been passed its policies are out-of-date in the terms of the policy of the Framework”

Green Lane Chertsey (Developments) Ltd v SSHCLG

- Decision of HHJ Gore QC [2019] EWHC 990 (Admin)
- Appeals against dismissal of five planning applications; three of which gave rise to challenges
- Even if a party does not identify the tilted balance in its appeal documentation, an Inspector can be expected to be aware of the tilted balance, and give reasons if disapplying it

Further consideration of NPPF 11

- Very helpful summary of the position by Holgate J in *Monkhill Ltd v SSHCLG* [2019] EWHC 1993 (Admin)
- Application for residential development and change of use of Longdene House, Hedgehog Lane, Haslemere
- Much of the application site was in the AONB
- Appeal dismissed
- Challenge based on the meaning of NPPF 11(d)(i) and NPPF 172

NPPF 11(d)

where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date⁷, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Fifteen propositions about NPPF 11 and 12

- Holgate J set out 15 (!) propositions about NPPF 11 and 12 at para. 39
 1. NPPF 11 does not displace PCPA s.38(6)
 2. A proposal according with up to date development plan, taken as a whole, should be granted PP without delay
 3. Failure to comply with up to date development plan means refusal unless material considerations indicate otherwise
 4. If no relevant development plan policies, grant PP subject so s.38(6) unless (i) or (ii) satisfied
 5. If there are relevant policies, but out of date, grant unless (i) or (ii) satisfied
 6. If either (i) or (ii) satisfied, then the presumption in favour of sustainable development does not apply; this is a matter of planning judgment

Fifteen propositions about NPPF 11 and 12

7. If more than one Footnote 6 policy is engaged, presumption in favour overcome, where individual or cumulative application of those policies produces clear RfR
8. Cannot rely on tilted balance in (ii) if a (i) case – Footnote 6 policies are prioritised
9. Consider limb (i) before limb (ii)
10. The application of a Footnote (i) policy has to provide a clear RfR; engagement of the policy is not enough
11. Only the factors within Footnote 6 are to be considered for (i)
12. If all relevant planning considerations have to be weighed in Footnote 6 policy (e.g. GB; habitats), no justification for applying limb (ii)

Fifteen propositions about NPPF 11 and 12 (and one about NPPF 172)

13. If other types of Footnote 6 policy provide a clear reason, then still necessary to have regard to all other material considerations, but do not apply tilted balance
14. If Footnote 6 policies do not provide a clear reason for refusal, then still apply (ii)
15. Also apply (ii) if no Footnote 6 policies engaged

There are slightly shorter list of principles (only 8!) at para. 45

NPPF 172 on the AONB can fall within (i), even if not major development

Heritage

- Heritage cause of a fair amount of litigation in relation to first NPPF; made easier for decision-makers after *Jones v Mordue* [2016] 1 WLR 2682
- Recent consideration of heritage in new NPPF in *LB of Tower Hamlets v SSHCLG* [2019] EWHC 2219 (Admin)
- Question: whether the correct interpretation of paragraphs 193 and 196, read in their context, permit an inspector to have regard to non-specific but likely future development proposals which, if they were implemented, would deliver a public benefit that could in principle outweigh the harm to the significance of a designated heritage asset.
- Answer: yes. Benefits do not have to be certain to be material, and the issue is one of remoteness.

Housing Land Supply

- It was not necessary to take into account an emerging Housing Land Supply Statement which was not a completed assessment and had not been considered by senior officers: *R (Chilton PC) v Babergh DC* [2019] EWHC 280 (Admin)
- A 5-year housing land supply does not mean that a decision-maker cannot take into account the policy objective of significantly boosting the supply of homes: *Canterbury CC v SSHCLG* [2019] EWHC 1211 (Admin).

Relevance of Previous Version of NPPF?

- “The current version of the NPPF should be capable of being understood and applied without needing to make textual comparisons with the 2012 version” (*Monkhill Ltd*, para. 41)
- Cf *Peel Investments* para. 49: cases on the 2012 NPPF can be relevant to question of whether policies are out of date under the 2018 NPPF

Thank you for listening

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