

NPPF Case Law Update: Housing

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Scope

- Covering Court cases on section 5 of the NPPF “*Delivering a sufficient supply of homes*”
- Chapter 5: paras 59 – 79 and includes:
 - Para 59: “*the Government’s objective of significantly boosting the supply of homes*”.
 - Paras 61 – 64: Dealing with affordable housing.
 - Paras. 67 – 72: Identifying land for homes.
 - Paras. 73 – 76: Maintaining supply and delivery – including at para. 73 “*Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement ...*”.
 - Paras 77 – 79: rural housing.

The cases

1. Para. 59: ***Cron dall PC v SSHCLG*** [2019] EWHC 1211 (Admin);
2. Para. 73:
 1. ***Tewkesbury BC v SSHCLG*** [2019] P.T.S.R. 2144;
 2. ***Peel Investments (North) Limited v SSHCLG*** [2020] JPL 279;
 3. ***Eastleigh BC*** [2019] EWHC 1862 (Admin);
3. Para. 79: ***City & County Bramshill Ltd v SSHCLG*** [2019] EWHC 3437 (Admin);
4. Annex 2 Glossary: ***Flynn v LB Southwark*** [2019] EWHC 3575 (Admin).

Para. 59: *Crondall*

- ***Crondall*** better known as a case on habitats and the fall-out from the ridiculous decision of the CJEU in ***People over wind and Sweetman v Coillte Teoranta***.
- But one of the grounds also focussed on the interpretation of para. 59 of the NPPF.
- Short but important point established at [108] “[The Inspector] entitled to conclude, as he did, that the policy objective of significantly boosting the supply of homes contained in paragraph 59 did not cease to apply when housing land supply in excess of five years could be established”.

Para 73: Tewkesbury BC (1)

- FACTS: scheme for 40 dwellings. One issue on appeal was could LPA show a 5YLS.
- Inspector rejected LPA's case that an oversupply of housing land since the start of the development plan period should be counted in calculating 5YLS, he considered that oversupply from previous years could not be "banked" so as to reduce the housing target in future years. He concluded there was no 5YLS and that the presumption in paragraph 11 of the NPPF thus applied, but he ultimately refused PP.
- LPA sought – despite winning appeal – to JR Inspector's findings on 5YLS on basis that important point of interpretation of the NPPF arose;
- Claim dismissed on jurisdictional grounds: "*in the particular circumstances of a decision in relation to a section 78 planning appeal, where the successful party wishes to bring a judicial review in relation to an issue of planning policy interpretation with which it disagrees, having lost that particular battle but won the war in relation to the outcome of the appeal, I do not consider that the principles in relation to dealing with such an academic judicial review are engaged*"

Para 73: Tewkesbury BC (2)

- NB para. 14: “... Mr Tim Buley QC, on behalf of the [SSHCLG], contends that, as the inspector observed, the NPPF and the PPG are completely silent on the issue of whether or not any oversupply should be taken into account when calculating the five-year requirement. Since the task of the court is one of textual interpretation of existing policy, and not the creation of policy by filling gaps where policy might have been created, there is, in the present case, simply no policy to interpret. He submits that there are a number of potential alternative approaches which might be taken by any policy-maker in respect of the treatment of oversupply, but that it is not the job of the court to select which policy approach should be taken so as to fill what is an accepted gap in the defendant's national policy. In the absence of any text to interpret, the court has no task of interpretation to perform; since the NPPF is silent and there is no guidance in the PPG, Mr Buley submits that the matter of the treatment of any oversupply is left to the decision-taker based on the particular facts of any given case” (emphases added).

Para 73: Peel Investments

- 2 recovered appeals for up to 600 houses in Salford.
- C alleges Inspector erred in finding LPA was able to demonstrate a 5YLS for the purposes of para. 73 because it was incorrect for the to rely purely upon a mathematical quantification of the HLS; as there was a qualitative housing land supply shortfall in terms of the significant deficit in the number of larger family aspirational homes, as well as in terms of the provisions of affordable housing.
- Court rejected this [81] “*The requirement to demonstrate a deliverable five-year housing land supply is one which is purely quantitative. It involves a calculation of the deliverable number of units within the five-year time period, and nowhere in the text of the policy pertinent to how the five-year housing land supply is to be assessed is there any suggestion that the qualitative nature of that supply (including its mix of house type or tenure) has any part to play in determining whether there is a qualifying five-year housing land supply available to a local planning authority*”.
- But “[t]hat is not to say that those qualitative issues are not relevant to the planning balance.”
- Subject to an appeal to Court of Appeal ...

Para 73: *Eastleigh BC*

- If no 5YLS NPPF fn 7 deems relevant policies to be out-of-date;
- But NPPF in this regard is a “*one way consideration*” on 5YLS.
- Inspector not *required* to take into account the fact that there is a 5YLS in deciding what weight to give to policies in a Development Plan (in that case countryside policies).
- Weight to be attached to fact of 5YLS for Inspector subject to ***Wednesbury***.
- Failure to give any weight to fact of 5YLS in assessing weight to be given to relevant policies not irrational, was not required to increase weight to these policies because there was a 5YLS.

Para 79: *City & Country*

- Para 79 “*Planning policies and decisions should avoid the development of isolated homes in the countryside ...*”.
- Considers this and the exceptions and earlier Court of Appeal cases of **Braintree v SSCLG** [2018] 2 P&CR 9 and **Dartford v SSCLG** [2017] PTSR 737.
- (1) Rejects argument that there is a PDL exception [28].
- (2) Rejects argument that the number of intended houses proposed can remove the application of para. 79(!!).
- There is an outstanding appeal ...

Annex 2: Flynn

- Dove J. para. 4 “[a]ffordable housing is a portmanteau term which comprises a number of potential kinds of tenure. It is a term which is defined in annex 2, the Glossary, to the National Planning Policy Framework”
- Portmanteau? - a large travelling bag !



Thank you for listening
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