

The Presumption In Favour of Sustainable Development

David Blundell QC

The Cases: Take Five

- 5 key cases of significance on the current NPPF, all first instance:
 - *Wavendon Properties Ltd v. SSHCLG* [2019] PTSR 2077 (Dove J)
 - *Monkhill Ltd v. SSHCLG* [2020] PTSR 416 (Holgate J)
 - *Peel Investments (North) Ltd v. SSHCLG* [2020] PTSR 503 (Dove J)
 - *Paul Newman New Homes Ltd v. SSHCLG* [2020] PTSR 434 (Sir Duncan Ouseley)
 - *Gladman Developments Ltd v. SSHCLG* [2020] EWHC 518 (Admin) (Holgate J)

Case 1: *Wavendon* – easy as 1, 2, 3

- **Facts:** outline application for 203 dwellings – parties on appeal agreed no 5 year housing land supply, SSHCLG recovered jurisdiction and disagreed.
- **Argument:** does para 11(d) mean that *every one* of the most important policies must be up-to-date before the titled balance is disengaged?
- **Findings:** no. 3 key stages to analysis under Art 11(d):
 1. Establish which policies most important for determining application;
 2. Examine each to decide if out-of-date (apply NPPF and *Bloor Homes*);
 3. Form overall judgment whether “as a whole” out-of-date.

Case 2: *Monkhill* - the asymmetric tilted balance

- **Facts:** 28 dwelling in grounds of former country house, most of site in AONB / remainder in area of great landscape value.
- **Argument:** a policy cannot fall in para 11(d)(i) unless expressed in language whose application may provide a clear reason for refusal (here, NPPF/172).
- **Findings:** Holgate J summarised the meaning and effect of paras 11 and 12:
 - Presumption does not displace s38(6) PCPA 04;
 - Relationship between limb (i) and limb (ii) (and fn6);
 - Relationship between limbs (i) and (ii) and s70(2) TCPA 90 and s38(6) PCPA 04;
 - “ineluctable consequence” is asymmetry in the tilted balance.
- NB: comprehensive summary at [39]; useful mini-summary at [45].

Case 3: *Peel* – what does “out-of-date” mean?

- **Facts:** Appeal A, 600 dwellings, marina; Appeal B, residential.
- **Argument:** saved UDP policies out-of-date once the plan period had ended?
- **Findings:** no. Dove J carried out review of 2012 NPPF cases on out-of-date policies:
 - Whether policies were out-of-date for NPPF was question of interpretation of planning policy, especially NPPF paras 11(d) and 213;
 - Nothing in NPPF required policies to be treated as out-of-date after end of plan period – contrary was true, see para 213;
 - *Bloor* applied – question of fact, or fact and judgement;
 - End of plan period relevant but not dispositive;
 - Lord Carnwath in [63] of *Hopkins Homes* laying down no legal principle;
 - 2012 Regulations did not require this result.

Case 4: *Paul Newman* – trigger happy

- **Facts:** non-determination of application for 50 homes in the countryside.
- **Argument:** can a single DP policy be the “basket” of policies for para 11(d)?
- **Findings:** yes, in principle. Sir Duncan Ouseley examines the “triggers” in para 11(d):
 - “where there are no relevant [DP] policies” was “quite clear” – where 1+ policies exist, trigger does not apply:
 - 1 policy suffices;
 - No requirement that the policies be up-to-date – just relevant;
 - “most important ... out-of-date” was “reasonably clear” – not out of date just because in time-expired DP, agreed with *Wavendon*.
- Language difference between 2012 para 14 and 2018 para 11(d) intentional.
- Right to interpret 2018 NPPF on its own.

Case 5: *Gladman* – back to basics

- **Facts:** 2 appeals: 120 dwellings, 240 dwellings. No 5 year supply for either.
- **Argument:** are policies of the DP to be ignored when applying the tilted balance in para 11(d)(ii)?
- **Findings:** no:
 - Still need to consider any relevant DP policies under para 11(d)(ii);
 - Still need to consider weight, not prescribed by NPPF;
 - Have regard e.g. to nature and extent of shortfall, reasons for it and prospects of it being reduced;
 - Para 11(d)(ii) operates in 3 scenarios: (1) no relevant DP policies, (2) most important DP policies out-of-date, (3) housing shortfall = deemed out-of-date;
 - Fn7 deems out-of-date – still must have regard and determine weight.

Questions?

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
🌐 Landmark Chambers