

The Interpretation of Planning Policy



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Overview

- Planning policy: who does what?
- General principles of interpretation
- Interpreting development plan policy
- Interpreting the NPPF
- Some practical tips

Who Does What?

- Officer Reports may have to decide what policy means
- Planning Inspectors may need to give a view on what policy requires
- The interpretation of policy is ultimately a matter for the Court: *Tesco Stores Ltd v Dundee CC* [2012] PTSR 983
- Views of the author of the policy can be relevant: *R (Watermead Parish Council) v Aylesbury Vale DC* [2018] PTSR 43; *East Staffordshire BC v SSCLG* [2018] PTSR 88
- Application of policy to the facts is matter for decision-maker
- Distinction between the two? *Wiltshire Council v SSHCLG* [2020] PTSR 1409

General Principles of Interpretation

- Avoid over-legalism: *Tesco v Dundee* – planning policy not like statute or contract
- Over-interpretation may be the wrong interpretation: *Braintree DC v SSCLG* [2018] 2 P&CR 9
- Avoid over-complication, and quasi-mathematical concepts; planning is a flexible process: *East Staffordshire v SSCLG*
- Policy exists to shape practical decision-making: *Canterbury CC v SSCLG* [2018] EWHC 1611 (Admin)
- Query relevance of legislative meaning: *Fordent Holdings Ltd v SSCLG* [2013] 2 P&CR; *Aston v SSCLG* [2014] 2 P&CR 10

Interpreting Development Plan Policy

- The object of the interpretation is the policy text; the Supporting Text / Reasoned Justification can be relevant to interpretation but is not policy: *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567
- Was policy made by reference to national policy?
- Is policy seeking to achieve one of the Objectives or Strategic Aims?
- Engaging in “forensic archaeology” is discouraged: *Phides Estates (Overseas) Ltd v SSCLG* [2015] EWHC 827 – what does the policy say (without looking at the underlying evidence documents)
- Don’t forget the Glossary!

Interpreting the NPPF

- Because of *Tesco v Dundee*, there is a well-established body of case law on interpreting the NPPF:
 - <https://www.landmarkchambers.co.uk/resources/the-nppf-a-digest/nppf-digest-home/> (the 2018/19 versions)
 - <https://www.landmarkchambers.co.uk/resources/the-nppf-a-digest-of-decisions/nppf-home/> (the 2012 version)
 - *Interpreting the NPPF: The New National Planning Policy Framework* (Bath Publishing: 2018)

Interpreting the NPPF (2)

- Well-established principles for, eg
 - Presumption in favour of sustainable development (*Monkhill Ltd v SSHCLG* [2020] PTSR 416; *Gladman Developments Ltd v SSHCLG* [2021] EWCA Civ 104)
 - Retail *R (Asda Stores Ltd) v Leeds CC* [2021] EWCA Civ 32
 - Green Belt (*Redhill Aerodrome Ltd v SSCLG* [2015] PTSR 274)
 - Valued landscape (*CEG Land Promotions II Ltd v SSHCLG* [2019] PTSR 353)

Some Practical Tips

- Is it necessary to give a concluded view on the point of interpretation?
- What would your overall view be on the merits of the application if you reached a different view on the point of interpretation?
- What the wording of the policy; how does it fit with the apparent purpose of the policy?
- Could your interpretation be explained to a Judge?
- Does the PPG provide any guidance?
- Is your approach consistent with how the Council has previously interpreted the policy?

Thank you for listening

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