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Resurgent or Receding? The Development Plan in 2020

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Overview: The Fall and Rise of the Development Plan

- 2011/12: consultation on the NPPF
- 2012 – 2014: NPPF and the brave new world
- 2015 – 2017: Who rules the roost?
- 2017 – present: The resurgent development plan

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NPPF and the brave new world

- Step-change in planning decision-making
- 2012 - NPPF and the brave new world
 - “Hands off our Land” - Telegraph runs 100 articles says NPPF risks “undermining the safeguards that have protected the countryside for almost 70 years”
- 2012-2014 – Supremacy of the NPPF



Supremacy of the NPPF

Year or Quarter	Major dwellings ¹					
	appeals decided	number of dwellings decided	appeals allowed ²	number of dwellings allowed ²	% of appeals allowed ²	% of dwellings allowed ²
2010/11	637	29,276	238	13,218	37%	45%
2011/12	495	27,726	221	13,233	45%	48%
2012/13	421	31,987	200	21,830	48%	68%
2013/14	530	33,770	278	21,961	52%	65%
2014/15	628	41,892	300	22,755	48%	54%
2015/16	851	55,014	374	34,416	44%	63%
2016/17	898	56,637	339	28,444	38%	50%
2017/18	814	30,007	332	15,810	41%	53%
2018/19 ^p	684	28,036	257	11,273	38%	40%



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NPPF Vs Development Plan

- 2015 – Tensions explored
 - *Crane v SSCLG* [2015] EWHC 425 (Admin)
- 2016 – Primacy of the development plan reasserted
 - *Gladman v Daventry* [2016] EWCA Civ 1146
- 2017 – 2020 – Equilibrium
 - *Hopkins Homes v SSCLG* [2017] UKSC 37

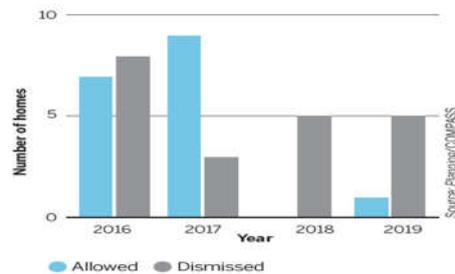
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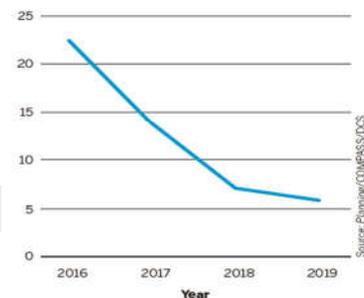
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The resurgent development plan

APPEALS FOR 400+ HOME SCHEMES ON 'UNPLANNED' SITES IN ENGLAND ALLOWED/DISMISSED 2016-19



APPEALS FOR 200+ HOME SCHEMES IN ENGLAND ALLOWED 2016-19



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The Development Plan - Basic Principles

- The plan-led system of planning control operates in the public interest by promoting the coherent development of a planning authority's area, allowing for development to be directed to the most appropriate places (*Gladman Developments v Daventry DC* [2016] EWCA Civ 1146 at [6]).
- Local Planning Authorities are required to produce development plan documents that identify the strategic priorities for the development and use of land in their area and policies to deliver those priorities (Ss. 13-19 PCPA 2004)
- The development plan is a mandatory relevant material consideration when determining applications for planning permission (70(2) of the Town and Country Planning 1990).



The Development Plan - Basic Principles

- Section 38(6) of the 2004 Act creates a statutory presumption that development control decisions will be taken in accordance with the development plan (*Hopkins Homes* at [37])
- The practical application of the statutory presumption under section 38(6) requires the decision-maker to identify any relevant provisions in the development plan and then properly to interpret them (*City of Edinburgh* at 1459D).
- Without determining whether development accords with the development plan the decision-maker will not be in a position to give the development plan its statutory priority (*R (Hampton Bishop Parish Council)* [2014] EWCA Civ 878 at [28] and [33]).



Construing the Development Plan – Basic Principles

- Read as a whole
- Not as a statute
- Policies should be interpreted objectively, in accordance with the language used, read in its proper context.
- The context includes:
 - The overriding objectives of the plan
 - The specific objectives to which the policy is directed
 - Other development plan policies
 - Surrounding facts and materials
 - Supporting text
- Should not be construed so as to negate the plan's spatial strategy



Construing the Development Plan – Examples

- *Gladman v Canterbury* [2019] EWCA Civ 669
 - The policies in the development plan formed a suite of policies for housing development which left out none of the locations where such developments might be expected.
 - Failure to recognise the inherent conflict with the development plan resulted in the grant of planning permission being quashed.
- *R (Corbett) v Cornwall Council* [2020] EWCA Civ 508
 - There was no hierarchy of policies in the development plan.
 - Whilst as a matter of principle breach of a single policy might mean conflict with the plan as a whole that was not the case here.
 - The policies in the plan pulled in different directions. A judgement is required to determine accordance with the plan as a whole.



The Framework – Basic Principles

- The basis for issuing the NPPF is statutory. In relation to plan making this power is express and in relation to decision taking it is implied (*Hopkins Homes* at [5] and [19]).
- The NPPF cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme (*Hopkins Homes* at [21])



The NPPF and the Development Plan

- The NPPF itself has as a core principle that “the planning system should be genuinely plan led (NPPF [15])
- *Gladman v Daventry* [2016] EWCA Civ 1146

“The mere age of a policy does not cause it to cease to be part of the development plan... The policy continues to be entitled to have priority given to it [by statute]”

“significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan- led approach at all”



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The Development Plan and the Tilted Balance

- The fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the NPPF and thus whether it is out of date (*Gladman v Daventry* [2016] EWCA Civ 1146).
- *Wavendon Properties v SSHCLG* [2019] EWHC 1524 (Admin) – identify which policies are most important and then consider whether that ‘basket of policies’ is out of date
- Where the most important policies are out of date, the development plan retains its statutory force, but “the focus shifts to other material considerations” *Hopkins* at [84]
- Even when carrying out the tilted balance, development plan policies should be taken into account and weighed in that balance (*Gladman v SoS* [2020] EWHC 518 (Admin) at [81]-[112] and *Crane*)

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Key Points

- The NPPF does not displace the statutory primacy of the development plan, even where the most important policies are out-of-date.
- The age of a policy is not relevant *per se* to whether it is out of date or up to date. What matters is whether it is deemed out of date (because of HLS) and/or whether it is consistent with the framework.
- Even when the tilted balance applies, conflict with the development plan *may* be a sufficient reason for refusing permission.
- An “excessively narrow focus” on the NPPF creates opportunities for cross-examination and can render a decision unlawful and result in the permission being quashed (*Gladman v Daventry* at [36])

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Case Study: Aylesbury Vale Appeals

- 5 appeals, 2017-19
- 700+ dwellings
- All won on the basis of conflict with the development plan



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Case Study: Aylesbury Vale

- AVDLP 2004 - 2011
- No saved policies relating to the spatial strategy, settlement boundaries or the supply of housing
- But, policy GP.35: The design of new development proposals should respect and complement:
 - a) the physical characteristics of the site and the surroundings;**
 - b) the building tradition, ordering, form and materials of the locality;
 - c) the historic scale and context of the setting;**
 - d) the natural qualities and features of the area; and**
 - e) the effect on important public views and skylines.**

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Case Study: Aylesbury Vale

- Where development would cause landscape harm / harm to character of the area: it would conflict with GP35
- GP35 was not out of date, because it was consistent with the NPPF
- Conflict with that single policy meant the development was contrary to the development plan, read as a whole
- That was enough to justify the refusal of planning permission

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Case Study: Aylesbury Vale

- 2018/19 NPPF, the tilted balance is triggered where:
 - (i) There are no relevant development plan policies
 - (ii) Policies which are most important for determining the application are out of date (eg. where there is no 5 yr HLP)
- GP35 was the most important policy for determining the application, because it was one of the few relevant policies that had been saved
- *Paul Newman Homes Ltd v SSHCLG* [2019] EWHC 2367 (Admin):
Could one up-to-date policy in a time expired plan prevent the application of the tilted balance? Yes: One relevant development plan policy, which is not out of date is sufficient to prevent it. "Although that policy may exist in a time-expired plan as a saved policy, it is a development plan policy".

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Case Study: Camberwell Union

- Major Central London Mixed Use Development
- New “cultural quarter”
- 13 Blocks
- 499 Residential units (as amended)
- 4,404m² of commercial, retail, and leisure space at ground level



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Case Study: Camberwell Union

Developer accepted in XX [IR122-124] that:

- All relevant development plan policies were up to date and were an effective strategy for achieving sustainable development
- Because of the loss of industrial land the development was in conflict with the Council’s strategic employment policies
- The development would therefore conflict with the adopted and effective strategy for bringing land forward at a sufficient rate to address objectively assessed need over the plan period



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Case Study: Camberwell Union

Developer nevertheless sought to argue

- That the development accorded with the development plan read as a whole.
- That accordance with emerging policy attracted limited weight but was a reason to permit the scheme



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Case Study: Camberwell Union

Other Issues:

- Sought to apply a strained interpretation of the density and design policies in the development plan (40% exceedance of top end density range)
- Agreed in XX that the design of the development was not driven by the policy context but by other (unspecified) factors



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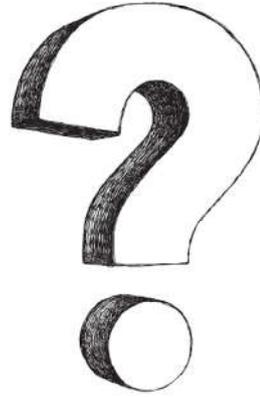
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Questions?

If you would like to contact us after the seminar please feel free to do so at:

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