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RURAL PLANNING UPDATE

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Scope of Paper

- Consider recent judicial decisions with direct relevance to those practising in rural areas.

Braintree BC v SSCLG [2018] EWCA Civ 610



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- NPPF §55:
- “Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances ...”





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The Application

- erection of two detached single-storey dwellings on the sites of two agricultural buildings;
- Outside a village boundary in the emerging local plan;
- Village had limited facilities and services;
- LPA maintained that the houses were 'new isolated homes'.



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The Court of Appeal Decision

- N.B. §17 of the judgment reiterated high hurdle for legal challenges to Inspectors' decisions:
- *"The court will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance (see Lord Carnwath's judgment in [Suffolk Coastal District Council](#), at paragraph 25). Nor will it engage in – or encourage – the dissection of an inspector's planning assessment in the quest for such errors of law (see my judgment in [St Modwen Developments Ltd. v Secretary of State for Communities and Local Government \[2017\] EWCA Civ 1643](#), at paragraph 7). Excessive legalism in the planning system is always to be deprecated (see my judgment in [Barwood Strategic Land II LLP v East Staffordshire Borough Council \[2017\] EWCA Civ 893](#), at paragraphs 22 and 50)."*





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The Purpose of NPPF55

- *“it indicates to authorities, in very broad terms, how they ought to go about achieving the aim stated at the beginning of paragraph 55: “[to] promote sustainable development in rural areas”. It does not set specific tests or criteria by which to judge the acceptability of particular proposals. It does not identify particular questions for a local planning authority to ask itself when determining an application for planning permission. Its tenor is quite different, for example, from the policies governing the protection of the Green Belt, in paragraphs 87 to 92 of the NPPF. The use of the verb “avoid” in the third sentence of paragraph 55 indicates a general principle, not a hard-edged presumption.” (judgment §28)*





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Isolated Homes?

- The Court held that the word “isolated” related to geography of a site: *i.e.* new dwellings that would be “isolated” in the sense of being separate or remote from a settlement;
- That is a matter of planning judgment (§31)
- In the context of NPPF55, isolated dwellings would not – in general – achieve the aim of sustainable development.
- (see judgment §29)



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Further Guidance on NPPF55

- The NPPF contains no definitions of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population.
- No requirement for a village to have a settlement boundary;
- NPPF55 does not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach.
- Whether a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker.
- 2nd sentence of NPPF55 acknowledges that development in one village may "support services" in another. It does not stipulate that, to be a "village", a settlement must have any "services" of its own, let alone "services" of any specified kind. (see judgment §32)



Key Messages



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- NPPF55 is a general statement of policy, rather than a series of prescriptions or hurdles to overcome;
- NPPF55 is to be read fairly broadly as supporting development in rural areas which maintain existing services and the vitality of villages;
- NPPF55 is concerned with locational isolation of residential development rather than remoteness from services. If it were otherwise, it would be impossible to allow development which would support services in another.

Valued Landscapes

- A common issue = does the site comprise part of a 'valued landscape' which is protected by NPPF109.
- More recent issue = is NPPF109 a 'restrictive policy' that can displace the tilted planning balance?



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The Legal Test of Value

- *Stroud DC v SSCLG* [2015] EWHC 488 (Admin)
- Demonstrable physical attributes beyond mere popularity.
- ‘Out of the ordinary’

Assessment of Value

- No standard approach, nor does the NPPF or PPG provide guidance;
- Landscape professionals tend to use the factors in Box 5.1 GLVIA3.

The Tilted Balance: On or Off?

- The tilted balance is displaced where *“specific policies in this Framework indicate development should be restricted”*: NPPF14, 2nd bullet, 2nd indent.
- Fn9 to NPPF14 provides a non-exhaustive list of “restrictive policies”:
- *“For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”*



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- Essence of the debate: is NPPF109 a ‘restrictive policy’ *per* Fn9 to NPPF14?
- If it is, then the tilted balance can be switched off.
- Differing approaches by the SoS:
 - Leckhampton (Ref 3001717). Held that NPPF109 was a restrictive policy;
 - Decision challenged by disappointed developer;
 - Lewis J held that the claim was unarguable





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- Inspector's decision in Harrogate (Ref 3160792) held that NPPF109 was a restrictive policy;
- Appellant challenged decision, but held to be unarguable on the papers & renewed permission hearing;
- BUT more recently:
 - SoS Decision at Widdrington (Ref: 3158266) held that NPPF109 was NOT a restrictive policy (see DL43);
 - May 2018 SoS consented to judgment where Inspector disappplied the tilted balance;
 - So SoS's current view is that it would be **unlawful** to find that NPPF109 is a restrictive policy!



Lessons



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- Conflicting SoS and judicial approaches to the interaction between NPPF109 and Fn9;
- Issue likely to be short-lived given the exclusion of valued landscapes from the closed list of restrictive policies in the draft NPPF.

Valued Landscapes and Temporary Effects



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- *Preston New Road Action Group v SSCLG* [2018] EWCA Civ 9 – challenge to SoS fracking decision;
- NPPF109 is a broad statement of national policy;
- NPPF109 does not compel a decision-maker to find conflict with it when the harmful effects of development on a “valued” landscape would be reversed or mitigated.
- The policy is not framed in terms of preventing *any* harm at all to such landscape.
- When applied in the making of a planning decision, it requires from the decision-maker a planning judgment on the question of whether, in the circumstances, the general policy objective of “protecting and enhancing” such landscapes would be offended or not. This is matter of planning judgment
- (see §37 – 41 of the judgment)



Baynham v SSCLG

[2017] EWHC 3049 (Admin)



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- Application for change of use of a barn to single dwellinghouse;
- The barn was located on a site within the **green belt**;
- Adjoined a detached house but had its own access, and was used for storage and as a workshop.
- The house and barn were now in separate ownership.
- The inspector held that the proposal did not fall within the proviso in the National Planning Policy Framework NPPF90 that re-use of a building was not inappropriate development.
- Conflict with NPPF79 to prevent urban sprawl, and would extend domestication of the land; domestic paraphernalia such as garden furniture would appear around the dwelling, failing to counteract the inappropriate introduction of a new domestic use into the **green belt**.





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- Court held as follows:
 - No requirement to consider PPG2 in order to understand the terms of the NPPF;
 - Wrong to conclude that the re-use of an existing building is ‘in principle’ inappropriate development. The Inspector did not take that approach;
 - 2 questions posed by NPPF90:
 - Does the proposed development fall within the categories of development that are ‘in principle’ not inappropriate development?
 - Does the proposal conflict with the purposes of including land in the green belt?





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Visual Impact and Openness

- Now appears to be settled law that the visual aspect of green belt openness can be taken into account: see *Turner v SSCLG* [2016] EWCA Civ 466 and *Samuel Smith v North Yorks CC* [2018] EWCA Civ 489;
- In *Sam Smith*, which concerned an extension to an existing quarry, CofA held that:
 - Visual impact was a relevant factor in interpreting the concept of openness;
 - It would be wrong in law to equate openness with the absence of built development. Visual impact must be considered; BUT
 - The "openness" of the **green belt** in para.90 was not synonymous with the concept of no physical change, otherwise the policy would be unworkable. Thus, it is possible to conclude that a reduction in openness nonetheless 'preserves' openness within the meaning of the NPPF.



People Power

- *R. (on the application of Holder) v Gedling BC* [2018] EWCA Civ 214;
- Part of a long-running dispute about wind turbines in Nottinghamshire;
- Issue concerned 2015 WMS, which said that LPAs should not grant pp unless:

“following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.”



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- Issue was how to assess whether the concerns of local people had been ‘fully addressed’;
- Claimant contended that all planning issues had to be ‘resolved’ or ‘eliminated’;
- Court disagreed:
 - What constitutes the local community is a matter of planning judgment;
 - *“the natural meaning of the relevant phrase in the last sentence of the Statement is that a local planning authority can find the proposal acceptable if it has sufficiently addressed the planning impacts identified through consultation with the relevant local community to the extent that it can properly conclude, in the exercise of its planning judgment, that the balance of opinion in the local community is likely to be in favour of the proposal.”* (§22 judgment)





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Inspectors' Decisions

- *Cheshire East Council v SSLCG* [2018] EWHC 1524 (Admin)
- Challenge to grant of pp for 10 houses outside settlement boundary;
- Context:
 - LPA had a deliverable 5 year housing supply;
 - Recently adopted Local Plan (2017)
- Challenge on basis that Inspector gave insufficient reasons and misinterpreted the development plan.



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- The judge (Lang J) held:
 - Court had to at least start from the presumption that specialist planning inspectors will have understood the policy framework;
 - Emphasised limited scope of the Court in planning challenges;
 - Inspector entitled to give positive weight to the delivery of market housing even where supply exceeded 5 years.
 - NB the Inspector concluded that *“the targets set out in the neighbourhood plans and indeed the Development Plan as a whole, should not be viewed as maxima and therefore a means of resisting sustainable development. This would be contrary to the underlying objectives of the Framework and the need to continually seek to boost significantly the supply of housing.”*



Key Messages



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- The Courts will take a benevolent approach to Appeal Decisions and start on the basis that Inspectors understand the relevant policy context;
- Even where there is a 5YS, there remains a continuing obligation to grant residential pps.



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