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THE NEW NPPF: WHAT'S AHEAD?

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RTPI NE

CURRENT Tilted Balance



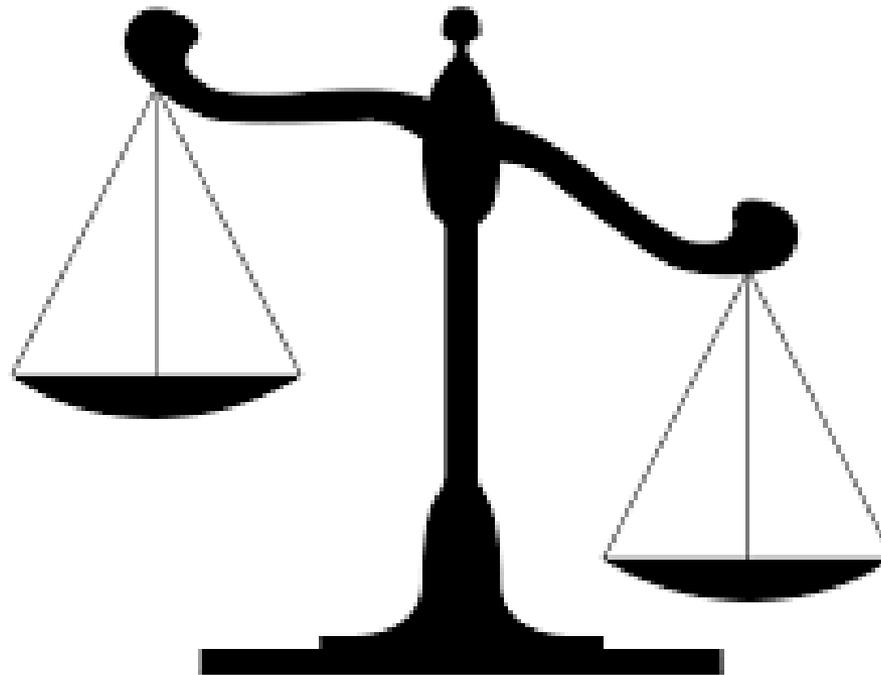
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For **decision-taking** this means (paragraph 14):

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits**, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted (footnote 9)

CURRENT Tilted Balance

Tilted balance



Benefit

Harm



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How to get into the tilted balance:

Trigger 1: Absence of 5 year housing land supply

Trigger 2: The plan is inconsistent with the NPPF

Can be other examples dependent on the facts

CURRENT Tilted Balance

Trigger 1



Suffolk Coastal v Hopkin Homes [2017] UKSC 37

- Where the LPA do not have a 5 year housing land supply the tilted balance is engaged
- Only definite way into the tilted balance – i.e. no planning judgment to be exercised
- That applies irrespective of whether there is conflict with a made neighbourhood plan

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Trigger 1



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Written Ministerial Statement on Neighbourhood Plans

Applies where:

- i. LPA have a 3 year supply
- ii. Within 2 years
- iii. NP allocates sites

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Trigger 1



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Richborough Estates and others v Secretary of State for Housing, Communities and Local Government [2018] EWHC 33

[45] The reality is that, as set out above, paragraph 49 continues to apply as a trigger for the tilted balance in accordance with paragraph 59 of *Hopkins Homes* in the Supreme Court. **The effect of the WMS and NPPG is that when assessing the tilted balance, significant weight should be given to the NDP if the three criteria contained in the WMS and NPPG apply.** That is not an amendment to paragraph 49, or for that matter paragraph 14.

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How to get into the tilted balance:

Trigger 1: Absence of 5 year housing land supply

Trigger 2: *The plan is inconsistent with the NPPF*

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Trigger 2



Inconsistent with the NPPF

NPPF 215:

In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to **their degree of consistency with this framework** (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

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Trigger 2



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Out of date has no temporal component

Gladman Developments Limited v Daventry District Council

[2016] EWCA Civ 1146

[40(iii)] 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.

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Trigger 2



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Daventry (continued)

ii) *The weight to be given to particular policies in a development plan, and hence the ease with which it may be possible to find that they are outweighed by other material considerations, may vary as circumstances change over time, in **particular if there is a significant change in other relevant planning policies or guidance dealing with the same topic.** As Lord Clyde explained:*

*“If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. **One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance**” (p. 1458E).*

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For **decision-taking** this means (paragraph 14):

- approving development proposals that accord with the development plan without delay; and
- where the **development plan is absent, silent or relevant policies are out-of-date**, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted (footnote 9)

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For **decision-taking** this means (paragraph 11):

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, **or the policies which are most important for determining the application are out-of-date**, granting permission unless:
 - the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 7); or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

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Trigger 1



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75. For applications which include housing, paragraph 11d of this Framework will apply if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer), or where the Housing Delivery Test indicates that delivery of housing has been substantially below the housing requirement over the previous three years.

Effectively the Suffolk Coastal judgment preserved

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Trigger 2



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208. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Daventry trigger preserved

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New trigger



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211. The Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018. For the purpose of paragraph 75 in this Framework, substantial under-delivery means where the Housing Delivery Test results published in:

- a) November 2018 indicate that delivery was below 25% of housing required over the previous three years;
- b) November 2019 indicate that delivery was below 45% of housing required over the previous three years;
- c) November 2020 and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

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Footnote 9



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For **decision-taking** this means (paragraph 14):

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - **specific policies in this Framework indicate development should be restricted** (footnote 9)

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Footnote 9



Current footnote 9:

***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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Footnote 9



Current footnote 9:

Suffolk Coastal v Hopkin Homes [2017] UKSC 37

14 ... These are said to be examples. Thus the list is not exhaustive. Further, although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies.

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Footnote 9



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Coulson J's judgment in *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin):

28 Secondly, I think that it is appropriate to give the word “restricted” in Limb 2 of paragraph 14 a relatively wide meaning, to cover any situation where the NPPF indicates a policy that cuts across the underlying presumption in favour of development

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Footnote 9



NPPF 109

109. The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;

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New footnote 7:

The policies referred to are those in this Framework relating to sites protected under the Birds and Habitats Directives and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, within a National Park (or the Broads Authority) or defined as Heritage Coast; irreplaceable habitats including ancient woodland; aged or veteran trees; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 55); and areas at risk of flooding or coastal change. **It does not refer to policies in development plans.**

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Easier to get in as it preserves the existing triggers and adds a new one (i.e. the housing delivery test)

Easier to stay in (footnote 7 narrower in scope than footnote 9)

Delivery



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On 5th March 2018, in her key policy address on housing, the Prime Minister stated that developers have a 'perverse incentive' to hoard land once it had been approved for development to achieve higher profit margins. She further stated that developers should amend their stance and 'do their duty to Britain'.

Delivery



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On 8th March 2018, Dr Liam Fox suggested on Question Time that until developers have built out a scheme, they should be refused the right to get further planning permissions (what about shell companies?)

Delivery



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On 13th March 2018, Planning Minister Dominic Raab stated that he is 'personally very keen' on imposing financial penalties on developers who fail to deliver affordable housing promised in their section 106 agreements, as this seems to be a reason why we are facing a lack of affordable housing.

Delivery



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78. To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a **planning condition providing that development must begin within a timescale shorter than the relevant default period**, where this would expedite the development without threatening its deliverability or viability. For major housing development, **local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start.**

Delivery (CURRENT)



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Footnote 11:

To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. **Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years,** for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

Delivery (CURRENT)



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St Modwen Developments Ltd v SSCLG [2017] EWCA Civ 1643:

38. ... This does not mean that for a site properly to be regarded as "deliverable" it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years.

Delivery (NEW)



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Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Small sites, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). **Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.**

Annual Position Statements



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76. A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates all the recommendations of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

Annual Position Statements



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Annual position statement

- Voluntary
- The LPA must engage with developers, land promoters, land owners, infrastructure providers, upper tier authorities (county), and for cross boundary sites with neighbouring LPAs
- LPAs are encouraged to set up what is to be called ***“an assessment and delivery group”*** from those who contribute to the SHLAA - which looks very similar to what used to be called a SHLAA Panel.
- The LPA will have to produce ***“an engagement statement”*** and submit it to the Planning Inspectorate (PINS) detailing an overview of the engagement process.

Annual Position Statements

Annual position statement

- Stakeholders are to be encouraged to provide “challenge” to the LPAs position assessment.
- But when this cannot be achieved the Planning Inspectorate will adjudicate over the issues, considering the evidence for both sides and then make recommendations about likely site delivery.
- Unclear how this will occur (written, oral roundtable, cross-examination)

Neighbourhood Planning

14. Where a neighbourhood plan that has recently been brought into force (footnote 9) contains policies and allocations to meet its identified housing requirement, the adverse impact of allowing development that conflicts with it is likely to significantly and demonstrably outweigh the benefits where:

- a) paragraph 75 of this Framework applies; and
- b) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement), and its housing delivery was at least 45% of that required over the previous three years.

Neighbourhood Planning



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Land at Breach Avenue, Southbourne

Appeal Reference: APP/L3815/W/17/3173380

34 dwellings outside of the settlement boundary with recently made
Neighbourhood Plan

Neighbourhood Planning

Policy 1 of the Southbourne NP:

The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan.

Neighbourhood Planning



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Policy 1 of the Southbourne NP:

*The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan. **Development proposals outside the Settlement Boundary will be required to conform to development plan policy in respect of the control of development in the countryside.***

Neighbourhood Planning



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DL12:

I agree with the appellant that the policies in question do not directly presume against development outside of settlement boundaries.

DL 18:

The silence of NP Policies 1 and 2 on the question of development outside of settlement boundaries is a not a positive point in favour of the appeal proposal.

DL51:

However, I have found that the proposal would not conflict with the policies of the NP ...



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Thank you

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