



10 May 2017

PRESS SUMMARY

**Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and anor (Respondents)
Richborough Estates Partnership LLP and anor (Respondents) v Cheshire East Borough
Council (Appellant) [2017] UKSC 37**
*On appeals from [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410
(Admin)*

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Carnwath, Lord Hodge, Lord Gill

BACKGROUND TO THE APPEALS

These appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework (NPPF), as well as the NPPF’s relationship with the statutory development plan. Part 2 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to prepare a “development plan”. In preparing “local development documents” authorities must have regard to national policies and advice issued by the Secretary of State, pursuant to section 19(2). Section 38(6) of the 2004 Act and section 70(2) of the Town and Country Planning Act 1990 provide for the development plan to be taken into account in the handling of planning applications.

The NPPF was published on 27 March 2012. Paragraph 14 of the Framework deals with the “presumption in favour of sustainable development”, and includes the ‘tilted balance’ provision: that where the development plan is silent or policies out-of-date, permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the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”. Paragraph 49 adds that: “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”.

In *Suffolk Coastal* the council refused planning permission for a development of 26 houses in Yoxford, upheld by the inspector on appeal. The inspector considered which local policies were “relevant policies for the supply of housing” within the meaning of paragraph 49 of the NPPF. The High Court held that he had erred in thinking that paragraph 49 only applied to “policies dealing with the positive provision of housing” and so quashed his refusal. Its decision was confirmed by the Court of Appeal. In *Richborough Estates* the council failed to determine the application, and Richborough Estates’ appeal was allowed by the inspector. The council succeeded in the High Court on the basis that the inspector erred in treating one of the local policies as a relevant policy under paragraph 49 and in seeking “to divide the policy, so as to apply it in part only”. That decision was reversed by the Court of Appeal.

JUDGMENT

The Supreme Court unanimously dismisses both councils’ appeals. Lord Carnwath gives the lead judgment, with which Lord Neuberger, Lord Clarke and Lord Hodge agree. Lord Gill gives a concurring judgment, with which Lord Neuberger, Lord Clarke and Lord Hodge agree.

REASONS FOR THE JUDGMENT

The Secretary of State’s power to issue national policy guidance such as the NPPF derives, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the

planning system. This is reflected both in specific requirements and more generally in his power to intervene in many aspects of the planning process [19-20]. The policy-making role should not, however, be overstated: the NPPF itself makes clear that in respect of the determination of planning applications (by contrast with plan-making) it is not more than “guidance” for the purposes of section 70(2) of the 1990 Act. It does not displace the primacy of the statutory development plan [21].

The correct approach to the interpretation of a statutory development plan was discussed by the Supreme Court in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 [23]. It is important that the role of the court is not overstated: in *Tesco Stores* Lord Reed identified the interpretation of the word “suitable” as the short point to determine, and further recognised that some policies in the development plan may be expressed in broader terms and not require the same level of legal analysis [24]. These are statements of policy – whether in a development plan or in a non-statutory statement such as the NPPF – and must be read in that light; they are not statutory texts [74]. Lord Gill adds that the NPPF expresses general principles applied by more specific prescriptions. These must always be interpreted in the overall context of the guidance document [75]. Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. Their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence [25].

Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. However, it is important to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy [26]. Lord Gill describes the proper role of the courts as interpreting a policy or the NPPF where its meaning is contested, while that of the planning authority is to apply the policy or guidance to the facts of the individual case [72, 73].

The primary purpose of paragraph 49 of the NPPF is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14 [54]. Paragraph 14 – unlike paragraph 49 – is not concerned solely with housing policy and needs to work for other forms of development covered by the development plan. For example, whether a relevant policy for the supply of employment land becomes out-of-date is a matter of planning judgment [55]. Housing policies deemed out-of-date under paragraph 49 must also be read in that light – and it is not necessary to label other policies as out-of-date merely in order to determine the weight to be given to them under paragraph 14 [56].

Paragraph 49 appears in a group of paragraphs dealing with the delivery of housing, with paragraph 47 providing the objective of boosting the housing supply [76, 80]. In that context the words “policies for the supply of housing” indicate the category of policies with which we are concerned: the word “for” simply indicates the purpose of the policies in question. There is no justification for substituting the word “affecting” which has a different emphasis [57, 82]. Although this can be regarded as adopting the ‘narrow’ meaning, it should not be seen as leading to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. The important question is not how to define the individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47 [59].

On both appeals the Supreme Court reaches the same result as the Court of Appeal [62, 86]: in *Richborough Estates* the inspector erred in treating policy NE.2 as a “policy for the supply of housing” under paragraph 49, but that did not detract materially from the force of his reasoning [63]. In *Suffolk Coastal* the inspector’s approach was open to criticism because his categorisation of SP 19 and SP 27 was inappropriate and unnecessary, rather than erroneous as the Court of Appeal held. It nevertheless gave rise to an error of law insofar as it may have distorted his approach to paragraph 14 [65, 68].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <http://supremecourt.uk/decided-cases/index.html>