

Case Name: *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government & Anor* [2020] EWHC 518 (Admin) (06 March 2020)

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Commentary: The High Court has dismissed two linked statutory review challenges brought by Gladman Development Limited ('Gladman') to two Planning Inspector appeal decisions in Corby and Uttlesford and issued an important judgment on the interpretation and application of the "tilted balance" in para. 11(d) of the NPPF 2019. At the rolled-up hearing, permission on all four grounds was refused by the High Court.

Gladman argued that the 2 Planning Inspectors had misinterpreted paragraph 11(d)(ii) of the NPPF by taking into account development plan policies when carrying out the "titled balance" in considering whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of doing so, when assessed against the policies in the NPPF taken as a whole. Instead, Gladman contended that the decision-makers should have adopted a 2 stage approach firstly carrying out the presumption in favour of sustainable development "titled balance" exercise under para.11(d)(ii) NPPF disregarding the development plan before going on secondly to apply the presumption in favour of the development plan s.38(6) PCPA 2004 balancing exercise taking into account relevant development plan policies. In both planning appeals, the "tilted balance" had been triggered pursuant to footnote 7 to para.11 of the NPPF as the relevant local planning authority in each case was unable to demonstrate a 5-year housing land supply.

Importantly, the High Court determined, applying established policy interpretation principles, that para 11(d)(ii) NPPF does not require development plan policies to be excluded from consideration in the "tilted balance" exercise. The High Court agreed with the SSHCLG and the LPAs submissions that there was no legal justification for requiring the tilted balance in paragraph 11(d)(ii) and the s38(6) PCPA 2004 balance to be carried out in 2 stages and it is a matter for the decision-maker, having had regard to the relevant development plan policies and other material considerations, whether to apply the two balances together or separately.

As to footnote 7 to para.11 NPPF (i.e. the shortfall in the requirement for a 5 year supply of housing land trigger), the High Court held that its effect was simply to deem certain policies to be out of date triggering the titled balance exercise in para 11(d) NPPF whereas whether these policies were in fact out-of-date and, if so, in what respects and how much weight to be attached to them remains a matter to be assessed by the decision maker in their planning judgment.

In the Corby appeal, Gladman also argued that the Inspector had erred in law in giving the economic benefits of house-building and occupation reduced weight in the planning balance because they are benefits of all housing development. The High Court concluded that it was legitimate for a decision maker to take into account the presence or absence of a unique quality about a development's benefits and that, if a decision-maker does so, it is for them to determine the weight to be attached to the presence or absence of that quality in their

planning judgment.

In giving its judgment, the High Court also made some important general points. First, in interpreting planning policy, the High Court reiterated that the meaning of policies must be considered objectively, having regard to the full range of circumstances in which they may be applied, and not through the lens or prism of a particular party (e.g. developer) which has been unsuccessful in a planning decision. Second, the High Court also reminded parties and advocates of the Courts' previous warnings against excessive legalism in bringing legal challenges, especially in relation to alleged misinterpretations of planning policy which are often thinly disguised challenges to the application of the policy. Third, the Claimant had filed a witness statement exhibiting other Inspector decision letters argued that the errors alleged in this legal challenge were prevalent amongst Inspectors. The High Court agreed with the SSHCLG and LPAs that such witness statement evidence was irrelevant to the issues before the High Court warning parties to future judicial review/statutory review proceedings that such witness statement evidence should not be filed in future challenges and reminded practitioners of the general principle that evidence in judicial review/ statutory review challenges should be limited to the material which was before the decision maker when making the decision in question.

Case summary prepared by Paul Arnett