

Case Name: *CEG Land Promotions II Ltd v Secretary of State for Housing Communities And Local Government* 2018 EWHC 1799 (Admin) (18 July 2018)

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Commentary: The Court upheld an Inspector's decision letter which had been challenged on the Inspector's approach to "valued landscape" under paragraph 109 of the NPPF firstly on whether the wider landscape can be considered and secondly on whether the Inspector had "double counted" the harm.

The Court held that the inspector was correct to conclude that there would be "the irrevocable loss of part of a valued landscape" even though the appeal site was not itself "valued landscape" but formed part of a wider "valued landscape": "It would be bizarre if the way in which the red line was drawn, defining the site on whatever basis was appropriate, and which need have nothing to do with landscape issues, crucially affected landscape evaluation. It would be equally bizarre to adopt a wholly artificial approach to landscape evaluation where, in most cases, a development site is but part of a wider landscape. In my judgment, the Inspector, in the case before me now, has analysed the issue very well and come to the entirely correct conclusion."

The Court also held that the Inspector had not "double counted" the effects on landscape by taking into account the breach of paragraph 109 of the NPPF separately to the relevant local plan policies. Ousley J. made the following observations on double counting and the weight to be given to Local Plan and NPPF policies:

"Of course, when judging a "tilted balance" under [14] which requires harm and benefit to be measured against the Framework policies, greater weight can rationally be given to harm which breaches its policies than to harm which only breaches Local Plan policies, or to put it another way, greater weight can be given to those policies than to other Local Plan policies. After all, s38(6) means that Local Plan policies which are inconsistent with the Framework still provide the statutory basis for the decision. But the weight given to the "other material considerations" means that those which accord with the Framework are weightier.

However, once a Local Plan policy and the harm arising is given its due weight because of the fullness to which it reflects the obligation in [109] of the Framework to produce such policies, then to give the policy, or the harm under it, greater weight because of the Framework policy, is to use the Framework policy twice over: once to give weight to the Local Plan policy because of the Framework and second to give weight to the Framework whose weight has already been reflected in the weight given to the Local Plan policy. That would be as irrational as double-counting harm;"

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Case summary prepared by Town Legal LLP