

**Case Name:** *Cheshire East Council v Secretary of State for Housing Communities & Local Government & Anor* [2018] EWHC 2906 (Admin) (01 November 2018)

**Full case:** [Click Here](#)

**Commentary:** The dismissal of a claim by Cheshire East Council, pursuant to Section 288 of the Town and Country Planning Act 1990, seeking an order to quash the decision to grant permission for 29 dwellings.

This case concerns the application of the policies in the 2012 NPPF.

The Claimant argued that the Inspector, in granting the permission, misunderstood the NPPF in relation to the circumstances when the presumption in favour of granting permission, known as the 'tilted balance' in para 14, is to be applied. Further, the inspector should not have asked the Claimant to provide robust, up to date evidence to support the deliverability of the housing supply and failed to provide reasons for its decision.

It was held that there was no error of law in the Inspector's application of the policy framework. In applying the framework, the key question for the Inspector to answer was whether the Council had demonstrated a 5-year supply of housing with a realistic prospect of being delivered. The inspector could not be certain of this; the number of housing units with a realistic prospect of being delivered lay somewhere within a range - it was either marginally above or slightly below five years and it was not possible to be more precise. On this basis, the Inspector adopted a precautionary approach, taking the worst-case position within the range and applying the tilted balance.

It was held that this precautionary approach is not an impermissible additional test but an application of judgement to answer the central question of whether the Council has demonstrated a five-year supply, within the context of a policy imperative to significantly boost the supply of housing. The Inspector applied the tilted balance following their conclusion that the Council had not demonstrated a five-year supply of deliverable housing and gave adequate reasons for its decision.

*Case summary prepared by Amy Bennett*