

**Case Name:** *Peel Investments (North) Ltd v Secretary of State for Housing Communities And Local Government & Anor* [2019] EWHC 2143 (Admin) (02 August 2019)

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

**Commentary:** The High Court has dismissed a legal challenge by a developer to a Secretary of State recovered appeal decision refusing planning permission for a scheme for up to 600 homes, a marina and other development in Worsley, Salford. Importantly, the High Court considered: (i) when development plan (DP) policies can be out-of-date for the purposes of para. 11(d) of the revised NPPF and (ii) the correct approach to considering whether there is a 5 YHLS for the purposes of the para.73 of the revised NPPF.

The developer's legal challenge was brought on 10 grounds all of which were either refused permission or rejected by the High Court. As to headline issue (i) above, a number of the grounds of challenge claimed that the Secretary of State had erred in deciding that the relevant DP policies (particularly the key green wedge/green gap policy) were not out-of-date. The developer argued that where a DP had passed the end of a plan period, all the saved policies in the DP were, as a matter of law, out-of-date and therefore the 'titled balance' in para. 11d(ii) of the revised NPPF applies. The developer's argument was hinged on the provision in Reg.5 (1)(a)(i) of the 2012 Local Plan Regulations and observations made by the Supreme Court at para.63 of the Hopkins Homes judgment. In response to these submissions, the Secretary of State and the LPA argued that whether a DP policy is out-of-date is a question of fact and judgment as observed by Lindblom J in the Bloor Homes case concerning the original NPPF. The High Court rejected the Claimant arguments concluding that there was nothing in the revised NPPF which required expired DP policies to be automatically treated as out-of-date. On the contrary, the High Court referred to para. 213 of the revised NPPF which specifically contemplated that older DP policies which were consistent with the NPPF should be afforded continuing weight. The High Court also endorsed the Bloor Homes approach to determining whether a DP policy is out-of-date for the purposes of the revised NPPF confirming that it is a question of fact and judgment for the decision-taker. When considering whether a DP policy was out-of-date for the purposes of the revised NPPF, the High Court indicated that while the expiry of a plan period and/or the passage of time may be relevant to the exercise that they were not, in and of themselves, determinative of the question with the exercise to be governed by an assessment of the DP policy's consistency with the NPPF and the factual circumstances in which the DP policy was being applied. As to headline issue (ii) above, the High Court considered whether there was a qualitative element to the NPPF requirement for LPAs to demonstrate a 5YHLS. While the LPA could demonstrate a 13 + YHLS, it was dominated by city centre apartments whereas there was an unmet need for family and affordable housing. The High Court rejected this argument of the developer concluding that the 5YHLS requirement in the revised NPPF was a purely quantitative requirement with the qualitative nature of the supply (i.e. its mix of type or tenure) playing no part in determining whether LPAs could demonstrate a 5 YHLS albeit that qualitative supply issues may be relevant to the planning balance.

This case is a useful clarification of when policies can be out-of-date for the purposes of para.

11(d) of the revised NPPF and confirmation that the requirement in para.73 of the revised NPPF for LPAs to demonstrate a 5 YHLS is a quantitative and not a qualitative exercise.

*Case summary prepared by Paul Arnett*