

Case Name: *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 104 (03 February 2021)

Full case: [Click Here](#)

Commentary: The Court of Appeal has dismissed an appeal by Gladman Development Limited against a High Court judgment in March 2020 which dismissed the legal challenges to two Inspector appeal decisions refusing permission for housing schemes in Corby for 129 dwellings and in Uttlesford for 240 dwellings. Both of these appeals had triggered the “tilted balance” in paragraph 11(d)(ii) of the NPPF as neither LPA could demonstrate a 5 YHLS meaning that the most important policies for determining the applications were deemed ‘out-of-date’. Importantly, the Court of Appeal’s judgment reaffirms the primacy of the development plan and provides helpful guidance on the application of the tilted balance and its interaction with the relevant statutory duties for decision taking.

The appeal concerned 3 issues, which were: (1) whether a decision-maker is required to take into account the relevant policies of the development plan when applying the tilted balance; (2) whether it is necessary for decision makers to apply the tilted balance and the statutory duty in section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA”) (i.e. that the determination must be made in accordance with the development plan unless material considerations indicate otherwise) separately and sequentially in a two-stage approach; and (3) whether the tilted balance includes the exercise in paragraph 213 of the NPPF which requires development plan policies pre-dating the NPPF to be given due weight by decision-takers according to their degree of consistency with the NPPF.

In relation to issue (1), the Court of Appeal endorsed the High Court’s findings on this point and interpreted the tilted balance in paragraph 11(d)(ii) as not excluding the taking into account and weighing of development plan policies in the tilted balance.

In relation to issue (2), the Court of Appeal concluded that there was nothing to prevent a decision-maker adopting an approach in which the application of the tilted balance is incorporated into the decision-making exercise under section 38(6) PCPA in one all-encompassing stage. If a decision-maker carries out a single combined exercise, the Court of Appeal reiterated that they must keep in mind the statutory primacy of the development plan and the statutory requirement to have regard to other material considerations under section 38(6) PCPA and must make the decision, as the statutory duty requires, in accordance with the development plan unless material considerations indicate otherwise. The Court of Appeal considered that this single exercise, if carried out by a decision-maker (albeit it is not mandated) is not to merge the two presumptions (i.e. the statutory presumption in favour of the development plan in section 38(6) PCPA and the NPPF presumption in favour of sustainable development in para NPPF 11(d)(ii)) but to acknowledge the existence and status of both presumptions and recognise that they can be lawfully applied together.

In relation to issue (3), the Court of Appeal concluded that the policy in paragraph 213 of the NPPF may properly be taken into account in the tilted balance exercise and it is not, in principle, of relevance only to the weighting of development plan policies under the statutory duty in section 38(6) PCPA.

This is a very helpful Court of Appeal decision for decision-makers clarifying important issues on the application of the tilted balance in the NPPF and its interaction with the statutory presumption in favour of the development plan in section 38(6) of the PCPA. It is also another reminder that national planning policy in the NPPF is not to be interpreted in an overly-legalistic way.

For a helpful discussion of this case and the tilted balance policy objectives generally, please see Simon Ricketts' recent blog post: <https://simonicity.com/2021/02/06/tilt/>

Case summary prepared by Paul Arnett