

**Case Name:** *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities And Local Government* [2021] EWCA Civ 15 (12 January 2021)

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**Commentary:** The Court of Appeal has dismissed the challenge of the Appellant, Paul Newman New Homes Limited, against the High Court's judgement to uphold an Inspector's decision to refuse outline planning permission for a residential development of 50 homes on land north of Leighton Road, Soulbury.

The Appellant made the appeal on two grounds; that the High Court Judge erred in construing paragraph 11d of the 2018 NPPF and erred in agreeing with the Inspector's construction of Policy GP.35 ("GP.35") of Aylesbury Vale District Council's Local Plan. The High Court Judge held that the Inspector had correctly identified the relevant policies and those consistent with the NPPF.

In respect of the construction of paragraph 11d, the Inspector found that the Council had a five-year housing supply, so footnote 7 to paragraph 11d was irrelevant to the determination of the planning application, and that the presumption in favour of the development under paragraph 11d did not apply. The Inspector therefore applied section 38(6) of the Planning and Compulsory Purchase Act 2004, that an application for planning permission must be determined in accordance with the local development plan unless material considerations indicate otherwise. She concluded that the housing and economic benefits of the proposal did not outweigh the harm that was found. The Appellant argued that paragraph 11d should have been interpreted by reference to paragraph 14 of the 2012 NPPF that in the absence of relevant or up to date development plan policies, the balance was tilted in favour of planning permission being granted.

GP.35 sets out the factors which the design of new development proposals should take into account including the physical characteristics of the site and surroundings and the historic scale and context of the setting. The Inspector's view was that the proposed development conflicted with GP.35 in that it would unnaturally extend the settlement, encroach on the countryside and harm its rural character and appearance. The Appellant argued that GP.35 was not relevant at the stage where outline planning permission was sought as it was only concerned with issues of details which arise at the reserved matters stage.

The Court of Appeal held that the High Court was correct in considering paragraph 11d on its own as the consultation documents and process did not support a different interpretation. It agreed with the High Court that in a case that involves a housing application, "there is no need to restrict the concept of relevance to policies that are specifically targeted at the type of development under consideration...A general development control policy may be capable of having a real role to play in the outcome of an application."

The Court of Appeal also held that the High Court Judge and Inspector had acknowledged that parts of GP.35 were more relevant to a reserved matters application but this did not

mean that the Inspector was wrong in deciding that aspects of the policy were relevant in determining whether the development could be achieved as "If, for example, any development on the site, however, structured, would block out an important historic view, the local planning authority ought to be able to refuse the development in principle, because it would be too late to address that problem at the reserved matters stage".

*Case summary prepared by Lida Nguyen*