

Case Name: *Dorchester Living Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 3223 (Admin) (13 December 2024)

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Commentary:

This was a claim under section 288 of the Town and Country Planning Act 1990 ("the **1990 Act**") by Dorchester Living Limited ("the **Claimant**"), challenging a decision ("the **Decision**") of a planning inspector ("the **Inspector**") appointed by the Secretary of State for Levelling Up, Housing and Communities to grant planning permission to Richborough Estates and Lone Star Land Limited ("the 1st and 2nd **Interested Parties**") for the erection of up to 230 dwellings, creation of new vehicular access to Camp Road and all associated works with all matters reserved apart from means of access to Camp Road ("the **Development**") at Heyford Park ("the **Appeal Site**") in Cherwell District Council's ("the **LPA**") administrative area.

The Claimant challenged the Decision on four grounds, but permission to bring the challenge under section 288 of the 1990 Act was granted by Mould J on Ground 4 only:

Ground 4: a contention that the Inspector misinterpreted and misapplied NPPF para 67 in determining the housing requirement by including a figure from the Cherwell Partial Review 2020 ("PR"), which provided for Cherwell to meet some of Oxford's unmet housing needs.

Facts:

The Claimant is the developer and promoter of Heyford Park which comprises redevelopment of the former RAF Upper Heyford allocation for 1,600 houses, set out in policy PV5 of the LPA's development plan. The Development sits next to, but outside the boundary of, the Upper Heyford allocated site.

In this case Mrs Justice Lieven focuses on the approach adopted by the Inspector in respect of the Appeal Site and notes the unusual complication in this case is that Cherwell's housing need figures are set out in two Development Plan documents, The Cherwell Local Plan 2015 ("the **CLP**") and the Partial Review (the "**PR**") which was adopted in 2020. The CLP sought to deliver 22,840 homes between 2011 and 2031 through policy BSC1, a figure arrived at to meet Cherwell's own needs. The PR was a review of the CLP expressly to meet a share of Oxford's unmet housing needs, and made provision for an additional 4,400 dwellings in Cherwell, again to meet Cherwell's housing needs and was not a geographically limited policy within the area of Cherwell.

At the Inquiry the LPA argued for Oxford's unmet need to be assessed "separately", but the 1st Interested Party argued that the 5 year housing land supply requirement should be the aggregate of the local housing need and the housing requirement in the PR in

which case there was no 5 year housing land supply and the tilted balance should apply. The Inspector agreed with the 1st Interested Party.

The Inspector held that because there was no 5 year housing land supply, NPPF paragraph 11(d) applied and there was a tilted balance. The Inspector allowed the Development on the basis that the harm did not significantly and demonstrably outweigh the benefits.

The version of the NPPF that was relevant at the time of the Decision was that published in December 2023. Paragraph 67 included a new sentence that had not been present in previous iterations to the effect that where strategic policy-making authorities should establish a housing requirement figure for their whole area which shows the extent to which their identified housing need can be met over the plan period. *"The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment"*.

Paragraph 77 of the 2023 NPPF stated *"In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing.... The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old."*

It is important to note that a new version of the NPPF was published on 16 December 2024 and it includes fundamental changes to housing land supply policies.

Outcome:

Mrs Justice Lieven observed that *"The NPPF should be interpreted by considering the proper context and the planning objectives it seeks to achieve"* and that *"the NPPF is not a statute and interpretation should not be undertaken as if it was"*.

In deciding the case Mrs Justice Lieven is clear that the development plan as a whole had established Cherwell's housing requirements in two parts *"those that arose from Cherwell's own needs in the CLP, and those from Oxford's unmet needs which had to be met within Cherwell in the PR"* and finds that it became part of Cherwell's needs for the purposes of the planning regime.

Mrs Justic Lieven held that it would not be reading the NPPF as a whole to have reference to the single requirement in paragraph 67, but when applying paragraph 77 to determine that there were two requirements not capable of being aggregated.

The Inspector's decision was found to be lawful in respect of the issues considered and the Claimant's application under section 288 of the 1990 Act was dismissed.

Case summary prepared by Gregor Donaldson