

**Case Name:** *Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 32

**Full case:** [Read here](#)

**Commentary:** This was an appeal against an order of Holgate J (as he then was) which dismissed Mead Realisation Ltd.'s application for statutory planning review under s.288 of the Town and Country Planning Act 1990 of the decision of the inspector appointed by the first respondent (the Secretary of State for Housing, Communities and Local Government) to dismiss its appeal of the refusal of the second respondent (North Somerset Council) of planning permission for up to 75 dwellings.

The proposed development site is located on a "High Probability (3a)" floodplain. One of the three reasons for refusal of permission by North Somerset Council ("the Council") in July 2022 was that the proposal was contrary to government policy for the "sequential test" for flood risk at paragraph 162 of the National Planning Policy Framework and to the related policy in the local development plan ("the North Somerset Core Strategy"). On appeal before the inspector, the Council relied on guidance on the application of the sequential test that had been published in the PPG in August 2022.

Paragraph 162 of the NPPF set out that development should not be allocated or permitted if there are "reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding." There was no definition of what was meant by "reasonably available sites" in the NPPF. However, definitions were included in the PPG published in 2022 and in Policy C3 the North Somerset Core Strategy published in 2017.

The 2022 PPG on flood risk at Paragraph 7-028 does offer such a definition:

*'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.*

*These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.*

*The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications."*

The North Somerset Core Strategy Policy CS3, published in 2017, provided that, for the purposes of the sequential test:

2. A site is considered to be 'reasonably available' if all of the following criteria are met:

- The site is within the agreed area of search.
- The site can accommodate the requirements of the proposed development.
- The site is either:
  - a) owned by the applicant;
  - b) for sale at a fair market value; or
  - c) is publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty.

After setting out the relevant sections on flood risk in the NPPF, PPG and the North Somerset Core Strategy, as well as relevant sections of the Inspector's decision letter, the Court then considered the grounds of appeal brought by Mead.

There were two main issues for the Court of Appeal to resolve:

- Whether Holgate J wrongly held that the PPG can "amend" the NPPF (ground 1); and
- Whether the judge wrongly held that the inspector properly treated the PPG as "elucidating" the NPPF (ground 2).

### Ground 1

Counsel for Mead Realisations submitted that the PPG could not amend the NPPF, only amplify or elucidate its policies. It was subservient to the NPPF and could not rewrite its policies or insert additional requirements or restrictions, or constrain the broad concept of "reasonably available sites" that had been NPPF policy for some ten years. The stability of the NPPF would be undermined if it could be amended by mere guidance published without warning or consultation.

The Court of Appeal rejected this argument. As the Inspector and Holgate J recognised, there was no incongruity between the PPG guidance and the 'open textured' language of the NPPF policy at paragraph 162. The guidance does not exceed the ambit of policy. The Court of Appeal also agreed with Holgate J that, in any event, there is no legal principle that prevents national policy in the NPPF being amended or altered by guidance in the PPG. They have an equivalent legal status, as both are statements of national policy issued by the Secretary of State when exercising his general power to do so as the minister with overall responsibility for the planning system. The PPG is not, as Counsel for Mead suggested, a 'rival corpus of policy', but instead promotes greater predictability and consistency in various aspects of the planning decision-making and plan-making processes. The passages from judgments on which counsel for Mead

relied to suggest that PPG was subservient to the NPPF and incapable of amending it, when read in proper context, were easily distinguished from the facts of this appeal, and so did not suggest a different outcome for ground 1.

### Ground 2

Counsel for Mead Realisations submitted that Holgate J was wrong to conclude that the inspector treated the guidance in the PPG as merely “elucidating” the relevant policy of the NPPF at paragraph 162. The inspector wrongly understood the PPG’s position in the “hierarchy” of policy and guidance. This meant that he wrongly stated in his decision letter that while the proposed development initially accorded with the Core Strategy and NPPF, the publication of the PPG made it clear that part of the relevant section of the Core Strategy was “now inconsistent” with the NPPF. Counsel for Mead suggested that the Inspector had understood the PPG as “rigidly defining” the concept of “reasonably available sites” and set out “binding criteria” or “requirements” that must be satisfied if a site was to be considered “reasonably available”.

This argument was given short shrift by the Court of Appeal. The Inspector did not find that the PPG had amended or altered NPPF policy. On the contrary, as set out at paragraph 23 of his decision letter, the guidance had “clarified” the policy. The Court of Appeal agreed with Holgate J’s conclusion that the Inspector had committed no error of law when finding that the criteria in Core Strategy policy were out-of-date because they were inconsistent with the NPPF read together with the PPG. His exercise of planning judgment was lawful throughout his decision letter, while his conclusions reflected a “proper understanding and faultless application of the policy in paragraph 162 of the NPPF and the guidance in paragraph 7-028 of the PPG, and of policy CS3 of the core strategy.”

### Overall Conclusion

As both grounds of challenge were rejected by the Court, the appeal was dismissed.

*Case summary prepared by Gregor Donaldson*