



Easter Term
[2017] UKSC 37

*On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and
[2015] EWHC 410 (Admin)*

JUDGMENT

**Suffolk Coastal District Council (Appellant) v
Hopkins Homes Ltd and another (Respondents)
Richborough Estates Partnership LLP and another
(Respondents) v Cheshire East Borough Council
(Appellant)**

before

**Lord Neuberger, President
Lord Clarke
Lord Carnwath
Lord Hodge
Lord Gill**

JUDGMENT GIVEN ON

10 May 2017

Heard on 22 and 23 February 2017

LORD CARNWATH: (with whom Lord Neuberger, Lord Clarke, Lord Hodge and Lord Gill agree)

Introduction

1. The appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework (“NPPF”), which is in these terms:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

2. The Court of Appeal observed that the interpretation of this paragraph had been considered by the Administrative Court on seven separate occasions between October 2013 and April 2015 with varying results. The court had been urged by all counsel “to bring much needed clarity to the meaning of the policy”. Notwithstanding the clarification provided by the impressive judgment of the court (given by Lindblom LJ), controversy remains. The appeals provide the opportunity for this court not only to consider the narrow issues of interpretation of para 49, but to look more broadly at issues concerning the legal status of the NPPF and its relationship with the statutory development plan.

3. Both appeals relate to applications for housing development, one at Yoxford in the administrative area of the Suffolk Coastal District Council (“the Yoxford site”), and the other near Willaston in the area of Cheshire East Borough Council (“the Willaston site”). In the first the council’s refusal of permission was upheld by the inspector on appeal, but his refusal was quashed in the High Court (Supperstone J), and that decision was confirmed by the Court of Appeal. In the second, the council failed to determine the application, and the appeal was allowed by the inspector. The council’s challenge succeeded in the High Court (Lang J), but that decision was reversed by the Court of Appeal, the judgment of the court being given by Lindblom LJ. Both councils appeal to this court.

Planning applications

7. Provision is made in the 1990 and 2004 Acts for the development plan to be taken into account in the handling of planning applications:

1990 Act section 70(2)

“In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.”

2004 Act section 38(6)

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Unlike the development plan provisions, these sections contain no specific requirement to have regard to national policy statements issued by the Secretary of State, although it is common ground that such policy statements may where relevant amount to “material considerations”.

8. The principle that the decision-maker should have regard to the development plan so far as material and “any other material considerations” has been part of the planning law since the Town and Country Planning Act 1947. The additional weight given to the development plan by section 38(6) reproduces the effect of a provision first seen in the Planning and Compensation Act 1991 section 54A. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the equivalent provision (section 18A of the Town and Country Planning (Scotland) Act 1972) was described by Lord Hope (p 1450B) as designed to “enhance the status”

11. NPPF is divided into three main parts: “Achieving sustainable development” (paragraphs 6 to 149), “Plan-making” (paragraphs 150 to 185) and “Decision-taking” (paragraphs 186 to 207). Paragraph 7 refers to the “three dimensions to sustainable development: economic, social and environmental”. Paragraph 11 begins a group of paragraphs under the heading “the presumption in favour of sustainable development”. Paragraph 12 makes clear that the NPPF “does not change the statutory status of the development plan as the starting point for decision making”. Paragraph 13 describes the NPPF as “guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications”.

12. Paragraph 14, which is important in the present appeals, deals with the “presumption in favour of sustainable development”, which is said to be “at the heart of” the NPPF and which should be seen as “a golden thread running through both plan-making and decision-taking”. It continues:

“For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% ... to ensure choice and competition in the market for land. ...;
- identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

16. This group of provisions provides the context for paragraph 49, central to these appeals and quoted at the beginning of this judgment; and in particular for the advice that “relevant policies for the supply of housing” should not be considered “up-to-date”, unless the authority can demonstrate a five-year supply of deliverable housing sites.

17. Section 12 is headed “Conserving and enhancing the historic environment” (paragraphs 126 to 141). It includes policies for “designated” and “non-designated” heritage assets, as defined in the glossary. The former cover such assets as World Heritage Sites, Scheduled Monuments and others designated under relevant legislation. A non-designated asset is one “identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest”. Paragraph 135 states:

requirements (such as in section 19(2) of the 2004 Act relating to plan-preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute (see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140-141). Even if there had been a pre-existing prerogative power relating to the same subject-matter, it would have been superseded (see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583, para 48). (It may be of interest to note that the great *Case of Proclamations* (1610) 12 Co Rep 74, which was one of the earliest judicial affirmations of the limits of the prerogative (see *Miller* para 44) was in one sense a planning case; the court rejected the proposition that “the King by his proclamation may prohibit new buildings in and about London ...”.)

21. Although planning inspectors, as persons appointed by the Secretary of State to determine appeals, are not acting as his delegates in any legal sense, but are required to exercise their own independent judgement, they are doing so within the framework of national policy as set by government. It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than “guidance” and as such a “material consideration” for the purposes of section 70(2) of the 1990 Act (see *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

Law and policy

22. The correct approach to the interpretation of a statutory development plan was discussed by this court in *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said:

“The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it.

read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any “suitable site” within or linked to the existing centres (para 5). The short point was the meaning of the word “suitable” (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, “logically prior” to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692; [2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678, para 30 per Lady Hale.)

26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy; and not to elide the two.

29. At that time, it seems to have been assumed that if a policy were deemed to be “out-of-date” under paragraph 49, it was in practice to be given minimal weight, in effect “disapplied” (see eg *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), para 72 per Lewis J). In other words, it was treated for the purposes of paragraph 14 as non-policy, in the same way as if the development plan were “absent” or “silent”. On that view, it was clearly important to establish which policies were or were not to be treated as out-of-date in that sense. Later cases (after the date of the present decisions) introduced a greater degree of flexibility, by suggesting that paragraph 14 did not take away the ordinary discretion of the decision-maker to determine the weight to be given even to an “out-of-date” policy; depending, for example, on the extent of the shortfall and the prospect of development coming forward to make it up (see eg *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), para 71 per Lindblom J). As will be seen, this idea was further developed in Lindblom LJ’s judgment in the present case.

The Yoxford site

30. In September 2013 Suffolk Coastal District Council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant, Hopkins Homes Ltd (“Hopkins”), appealed to an inspector appointed by the Secretary of State. He dismissed the appeal in a decision letter dated 15 July 2014, following an inquiry which began in February and ended in June 2014.

31. The statutory development plan for the area comprised the Suffolk Coastal District Local Plan (“SCDLP”) adopted in July 2013, and certain “saved” policies from the previous local plan (“the old Local Plan”) adopted in December 1994. Chapter 3 SCDLP set out a number of “strategic policies”, including:

i) Under the heading “Housing”, Policy SP2 (“Housing numbers and Distribution”) proposed as its “core strategy” to make provision for 7,900 new homes across the district in the period 2010-2027. In addition, “an early review” to be commenced by 2015 was to identify “the full, objectively assessed housing needs” for the district, with proposals to ensure that these were met so far as consistent with the NPPF. A table showed the proposed locations across the district to make up the total of 7,900 homes.

ii) Under the heading “The Spatial Strategy”, Policy SP19 (“Settlement Policy”) identified Yoxford as one of a number of Key Service Centres, which provide “an extensive range of specified facilities”, and where “modest estate-scale development” may be appropriate “within the defined physical limits” (under policy SP27 - “Key and Local Service Centres”). Outside these

The appeal site formed part of an area of Historic Parkland (related to an 18th century house known as "Grove Park") identified by the council in its Supplementary Planning Guidance 6 "Historic Parks and Gardens" (SPG) dated December 1995.

34. In his decision-letter on the planning appeal, the inspector identified the main issues as including: consideration of a five years' supply of housing land, the principle of development outside the defined village, and the effects of the proposal on the local historic parkland and landscape (para 4). He referred to paragraphs 14 and 49 of the NPPF, which he approached on the basis that it was "very unlikely that a five years' supply of housing land could now be demonstrated" (paras 5-6). There had been a debate before him whether the recent adoption of the local plan meant that its policies are "automatically up-to-date", but he read the comments of the examining Inspector on the need for an early review of housing delivery as indicating the advantages of "considering development in the light of other up-to-date policies", whilst accepting that pending the review "relevant policies for the supply of housing may be considered not to be up-to-date" (para 7).

35. He then considered which policies were "relevant policies for the supply of housing" within the meaning of paragraph 49 (paras 8-9). Policy SP2 "which sets out housing provision for the District" was one such policy and "cannot be considered as up-to-date". Policy SP15 relating to landscape and townscape "and not specifically to the supply of housing" was not a relevant policy "and so is up-to-date". For the same reason, policy SP19, which set the settlement hierarchy and showed percentages of total proposed housing for "broad categories of settlements", but did not suggest figures or percentages for individual settlements, was also seen as up-to-date; as was SP27, which related specifically to Key and Local Service Centres, and sought, among other things, to reinforce their individual character.

36. Of the saved policy AP4 he noted "a degree of conflict" with paragraph 215 of the Framework "due to the absence of a balancing judgement in Policy AP4", but thought its "broad aim" consistent with the aims of the Framework. He said: "these matters reduce the weight that I attach to Policy AP4, although I shall attach some weight to it". Similarly, he thought Policy AP13 consistent with the aims of the Framework to "recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment" (para 10).

37. In relation to the proposal for development outside the defined village limits, he observed that the appeal site was outside the physical limits boundary "as defined in the very recently adopted Local Plan". He regarded the policy directing development to within the physical limits of the settlement to be "in accordance with

development, taking account of its three dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework.” (paras 31-32)

40. Hopkins challenged the decision in the High Court on the grounds that the inspector had misdirected himself in three respects: in short, as to the interpretation of NPPF paragraph 49; as to the status of the limits boundary to Yoxford; and as to the status of Policy AP4. The Secretary of State conceded that the inspector had misapplied the policy in paragraph 49. Supperstone J referred to the approach of Ouseley J in the *Barwood Land* case, with which he agreed, preferring it to that of Lang J in the *William Davis* case. He accepted the submission for Hopkins that the inspector had erred in thinking that paragraph 49 only applied to “policies dealing with the positive provision of housing”, with the result that his decision had to be quashed (paras 33, 38-41). He held in addition that this inspector had wrongly proceeded on the basis that the village boundary had been defined in the recent local plan, rather than in the earlier plan (para 46); and that he had failed properly to assess the significance of the heritage asset as required by paragraph 135 of the Framework (para 53). On 30 January 2015 Supperstone J quashed the decision. The council’s appeal to the Court of Appeal failed. It now appeals to this court.

The Willaston site

41. The Crewe and Nantwich Replacement Local Plan, adopted on 17 February 2005 (“the adopted RLP”) sought to address the development needs of the Crewe and Nantwich area for the period from 1996 to 2011. Under the 2004 Act, it should have been replaced by a Local Development Framework by 2008. This did not happen. As a consequence, the policies were saved by the Secretary of State by Direction (dated 14 February 2008).

42. Crewe is identified as a location for new housing growth in the emerging Local Plan, which is the subject of an ongoing examination in public and subject to objections, as are some of the proposed housing allocations. At the time of the public inquiry in June 2014, the emerging Local Plan was understood to be over two years from being adopted. Richborough Estates Partnership LLP (“Richborough”) in August 2013 applied to Cheshire East Borough Council for permission for a development of up to 170 houses on land north of Moorfields in Willaston. The council having failed to determine the application within the prescribed period, Richborough appealed. Willaston is a settlement within the defined urban area of Crewe, but for the most part is physically separate from the town. As a consequence there is open land between Willaston and the main built up area of Crewe, within which open land the appeal site lies.

out-of-date housing requirements, though policy NE.4 also has a wider purpose in maintaining gaps between settlements.”

46. He considered the application of the Green Gap policy, concluding that there would be “no significant harm to the wider functions of the gap in maintaining the definition and separation of these two settlements” (para 95). His overall conclusion was as follows:

“101. I conclude that the proposed development would be sustainable overall, and that the adverse effects of it would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no specific policies in the NPPF that indicate that this development should be restricted. In such circumstances, and where relevant development plan policies are out-of-date, the NPPF indicates that permission should be granted unless material considerations indicate otherwise. There are no further material considerations that do so.”

47. The council’s challenge succeeded before Lang J, who quashed the inspector’s decision by an order dated 25 February 2015. In short, she concluded that the inspector had erred in treating policy NE.4 as a relevant policy under paragraph 49, and in seeking “to divide the policy, so as to apply it in part only” (para 63). Richborough’s appeal was allowed by the Court of Appeal with the result that the permission was restored. The council appeals to this court.

The Court of Appeal’s interpretation

48. Giving the judgment of the court, Lindblom LJ referred to the relevant parts of the NPPF and (at para 21) the three competing interpretations of paragraph 49:

i) *Narrow*: limited to policies dealing only with the numbers and distribution of new housing, and excluding any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority’s area.

ii) *Wider*: including both policies providing positively for the supply of new housing and other policies, or “counterpart” policies, whose effect is to restrain the supply by restricting housing development in certain parts of the authority’s area.

either in a general way - for example, by preventing development in the countryside or outside defined settlement boundaries - or with a more specific planning purpose - such as protecting the character of the landscape or maintaining the separation between settlements.” (para 34)

51. Whether a particular policy of a plan was a relevant policy in that sense was a matter for the decision-maker, not the court (para 45). Furthermore

“46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is ‘out-of-date’ should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied ...”

52. In relation to the Yoxford site, the court agreed with Supperstone J that the inspector had wrongly applied the erroneous “narrow” interpretation. Policies SP 19, 27 and 29, were all relevant policies in that they all “affect the supply of housing land in a real way by restraining it” (paras 51-52). The court also agreed with the judge that the inspector had been mistaken in assuming that the physical limits of the village had been established in the 2013 plan (para 58); and also that he had misapplied paragraph 135 relating to heritage assets (para 65). In that respect there could be no criticism of his treatment of the impact of the development on the local landscape, but what was lacking was

“... a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a ‘heritage asset’, and, crucially, the ‘balanced judgment’ called for by paragraph 135, ‘having regard to the scale of any harm or loss and the significance of the heritage asset’.” (para 65)

53. In respect of the Willaston site, the court disagreed with Lang J’s conclusion that policy NE.4 was not a relevant policy for the supply of housing. The inspector had made no error of law in that respect, and his decision should be restored (paras 69-71).

Paragraph 49

57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words “policies for the supply of housing” appear to do no more than indicate the category of policies with which we are concerned, in other words “housing supply policies”. The word “for” simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word “affecting”, which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so *affect* their operation. But that does not make them policies *for* the supply of housing in the ordinary sense of that expression.

58. In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as “out-of-date” to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

59. This may be regarded as adopting the “narrow” meaning, contrary to the conclusion of the Court of Appeal. However, this should not be seen as leading, as the lower courts seem to have thought, to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed.

60. The Court of Appeal was therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph 14. However, it was wrong, with respect, to think that to do so it was necessary to adopt a reading

policies failed to meet the objectives set by paragraph 47 of the NPPF. The inspector rightly recognised that they should be regarded as “out-of-date” for the purposes of paragraph 14. At the same time, it provides a useful illustration of the unreality of attempting to distinguish between policies for the supply of housing and policies for other purposes. Had it mattered, I would have been inclined to place in the housing category policy SP2, the principal policy for housing allocations. SP 19 (settlement policy) would be more difficult to place, since, though not specifically related to housing, it was seen (as the commentary indicated) as a “planning tool” designed to differentiate between developed areas and the countryside.

65. Understandably, in the light of the judicial guidance then available to him, the inspector thought it necessary to make the distinction, and to reflect it in the planning balance. He categorised both SP 19 and SP 27 as non-housing policies, and for that reason to be regarded as “up-to-date” (see para 35 above). Under the Court of Appeal’s interpretation this was an erroneous approach, because each of these policies “affected” the supply of housing, and should have been considered out-of-date for that reason. On my preferred approach his categorisation was not so much erroneous in itself, as inappropriate and unnecessary. It only gave rise to an error in law in so far as it may have distorted his approach to the application of paragraph 14.

66. As to that I agree with the courts below that his approach (through no fault of his own) was open to criticism. Having found that the settlement policy was up-to-date, and that the boundary had been approved in the recent plan, he seems to have attached particular weight to the fact that it had been defined in “the very recently adopted Local Plan” (para 37 above). I would not criticise him for failing to record that it had been carried forward from the previous plan. In some circumstances that could be a sign of robustness in the policy. But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed its supposed status as an “up-to-date” policy under paragraph 49 to give it added weight. It is true that he also considered the merits of the site (quite apart from the plan) as providing a “strong and definite boundary” to the village (para 20). But I am not persuaded that this is sufficient to make it clear that the decision would have been the same in any event.

67. I do not, however, agree with the Court of Appeal’s criticisms of his treatment of the Heritage Asset policy. Paragraph 10 of his letter (summarised at para 36 above) is in my view a faithful application of the guidance in paragraph 215 of the Framework. That does not, and could not, suggest that even “saved” development plan policies are simply replaced by the policies in the Framework. What it does is to indicate that the weight to be given to the saved policies should be assessed by reference to their degree of consistency with the Framework. That is what the

73. In my opinion, the same distinction falls to be made in relation to guidance documents such as the Framework. In both cases the issue of interpretation is the same. It is about the meaning of words. That is a question for the courts. The application of the guidance, as so interpreted, to the individual case is exclusively a planning judgment for the planning authority and the inspectors.

74. The guidance given by the Framework is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development (paras 6-10) and to apply those principles by more specific prescriptions such as those that are in issue in these appeals.

75. In my view, such prescriptions must always be interpreted in the overall context of the guidance document. That context involves the broad purpose of the guidance and the particular planning problems to which it is directed. Where the guidance relates to decision-making in planning applications, it must be interpreted in all cases in the context of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, to which the guidance is subordinate. While the Secretary of State must observe these statutory requirements, he may reasonably and appropriately give guidance to decision-makers who have to apply them where the planning system is failing to satisfy an unmet need. He may do so by highlighting material considerations to which greater or less weight may be given with the over-riding objective of the guidance in mind. It is common ground that such guidance constitutes a material consideration (Framework, para 2).

76. In relation to housing, the objective of the Framework is clear. Section 6, "Delivering a wide choice of high quality homes", deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is "to boost significantly the supply of housing". To that end it requires planning authorities (a) to ensure *inter alia* that plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.

84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.

85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply. The decision-maker must next turn to the general provisions in the second branch of paragraph 14. That takes as the starting point the presumption in favour of sustainable development, that being the “golden thread” that runs through the Framework in respect of both the drafting of plans and the making of decisions on individual applications. The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will “significantly and demonstrably” outweigh the benefits of the proposal. Whether the adverse impacts of a grant of permission will have that effect is a matter to be “assessed against the policies in the Framework, taken as a whole”. That clearly implies that the assessment is not confined to environmental or amenity considerations. The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to “specific policies in the Framework” cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.

86. Although my interpretation of the guidance differs from that of the Court of Appeal, I have come to the same conclusions in relation to the disposal of these cases. I agree with Lord Carnwath that in the Willaston decision, notwithstanding an erroneous interpretation of policy NE.2 as being a policy for the supply of housing, the Inspector got the substance of the matter right and accurately applied paragraph 14. I agree too with Lord Carnwath, for the reasons that he gives (at para 68), that in the Yoxford decision the Inspector made a material, but understandable, error. I would therefore dismiss both appeals.