

Gladman appeal fails in High Court

The High Court has dismissed a bid by land promoter Gladman to overturn two appeal decisions that blocked its plans to build 360 homes in Essex and Northamptonshire in a ruling that gives primacy to development plan policies and clarifies that, where a local authority lacks a five-year housing land supply, grants of permission should not be 'automatic'.

London's Royal Courts of Justice: NPPF tilted balance clarified. Pic: Getty Images

The case concerned appeal decisions regarding applications by Gladman to build 240 homes in Uttlesford and 120 homes in Corby. Both applications were refused permission by the councils concerned on the basis that the proposals conflicted with relevant local development plan policies.

There were shortfalls in housing land supply in both authorities and Gladman argued that the 'tilted balance' in favour of sustainable development in such cases, a principle enshrined in the National Planning Policy Framework (NPPF), should have proved decisive.

The 'tilted balance' states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

However, in a decision that clarifies the law, Mr Justice Holgate rejected Gladman's arguments that the tilted balance should have been applied without taking into account development plan policies that were deemed to be out of date due to the housing land shortfalls.

The provisions of the NPPF, he ruled, remain subordinate to the principle established by statute that, when considering planning applications, first regard must be had to the terms of development plan policies.

In the first case, a planning inspector refused to grant Gladman planning permission for 120 dwellings on land off Southfield Road, near the village of Gretton, Northamptonshire.

In his August 2019 decision, the inspector noted that Corby Borough Council had sufficient housing land to last 4.6 to 4.8 years, somewhat short of the five-year target set by the NPPF.

He found, however, that the proposal conflicted with a development plan policy to focus housing growth on Corby. There were also concerns about increased traffic movements generated by the project and its accessibility to services and facilities.

The inspector found that the need to boost housing land supply in the area was "not the be all and end all" and that the adverse impacts of the proposal significantly and demonstrably outweighed its benefits. The shortfall in housing land supply was "not significant" and the council was actively working towards achieving a five-year supply.

The scheme, the inspector found, would "conflict with the development plan's over-arching locational strategy" and "perpetuate unsustainable travel from a relatively poorly served and inaccessible village".

The tilted balance in favour of the development, he concluded, did not overcome the requirement to take a development plan-led approach to site selection in the area.

The second case concerned Gladman's proposal to build 240 homes off Station Road, Flich Green, Essex.

In his September 2019 decision letter, the inspector noted that housing land supply in the area stood at only 3.29 years and that the shortage was "severe".

Given that scarcity, he found that development of countryside beyond the existing boundaries of the village was, in both the short and longer-term, "inevitable", and he gave significant weight to the socio-economic benefits of the scheme.

He accepted that relevant development plan policies should be given "reduced weight" in light of the housing land shortfall, but found that the benefits of the proposal did not indicate that Gladman's appeal should be determined otherwise than in accordance with the development plan.

The proposal site was in the open countryside and the inspector found that it would conflict with Uttlesford District Council's development plan in that it would cause unacceptable harm to the area's character and appearance.

Dismissing Gladman's challenge to the inspectors' rulings, Mr Justice Holgate said: "Section 38(6) of the Planning and Compulsory Purchase Act 2004 lays down the legal principle that the decision on a planning application is to be governed by the development plan, read as a whole, unless other material considerations indicate otherwise."

The policies in the NPPF, including the tilted balance, "do not have the force of statute" and "have to be understood in the context of the development plan-led system," he added.

"Moreover, the NPPF cannot and does not purport to displace or distort the primacy given by the presumption in Section 38(6) to the statutory development plan."

The judge acknowledged that a shortfall in housing land supply may render development plan policies out of date, but emphasised that that does no mean that they must be afforded no weight in the planning process.

"When a decision-maker judges that development plan policies are out of date, it is still necessary for him to consider the weight to be given to that conclusion and the relevant development plan policies bearing upon the proposal," he added.

He rejected Gladman's arguments that the tilted balance is "intended simply to overcome" either conflicts with development plans as a whole or the failure by such plans to deliver sufficient quantities of new housing.

There were, he added, a "number of flaws" in the developer's argument that its interpretation of the NPPF was "justified in order to provide a solution for the problem of development plans which are not 'working' or which are not delivering sufficient housing development."

The tilted balance, the judge concluded, "does not automatically lead to the grant of planning permission. Instead (it) involves the balancing of competing interests, but with the tilt towards granting permission.

"That exercise may or may not result in planning permission being granted. But there is nothing about the nature of that policy or the assessment that it requires which would justify the exclusion of development plan policies from the tilted balance."

Other grounds of challenge to the inspectors' decisions were rejected by the judge as "wholly unarguable".

Speaking after the judgment was handed down, Victoria Hesson, managing director of Gladman Developments said: "Whilst obviously disappointed by the judgment, our wider concern remains that the presumption in favour of sustainable development is now substantially weaker than it was when the Framework was first introduced and applied.

"Many applicants, including us here at Gladman, have begun to avoid the appeals system as it is now extremely difficult to assess your chances of success even where the presumption in favour of development is engaged."