

Five-year land supply: clarity at last?

If there is no five year supply of housing available, the weight to be given to restrictive development policies should be judged against the need for development within the area, explain Martha Grekos and Antonia Frangakis the Supreme Court's ruling on paragraph 49 of the NPPF

On 10th May 2017, the Supreme Court handed down what is now a relatively well-publicised judgment in the joined appeals of Suffolk Coastal District Council v Hopkins Homes Ltd & Richborough Estates Partnership LLP v Cheshire East Borough Council [2017] UKSC 37.

The appeals turned on the proper interpretation of paragraphs 14 and 49 of the National Planning Policy Framework ("NPPF") and particularly the meaning of 'relevant policies for the supply of housing,' which should not be considered up to date where a council cannot show a five-year housing supply.

The Supreme Court disagreed with the approach taken by the Court of Appeal, which was to read a wide interpretation into the wording so that it included policies for the general protection of the countryside, including for example Green Belt policy and policies for the conservation of AONBs and National Parks. The Supreme Court has rejected a broad interpretation of paragraph 49 of the NPPF and, instead, confined the relevant policies to those by which 'acceptable housing sites are to be identified and the five-year supply target is to be achieved'.

The judgment has narrowed this approach, holding that the wording applies only to policies which set out how housing sites are to be identified and the five year supply target is to be achieved. It has clarified that Green Belt policy (amongst others) should not be considered out of date simply because the Council could not demonstrate a five-year supply of housing. This seems sensible in light of the clear intention under the NPPF to protect Green Belt land, and brings us back to a less legalistic approach to wording in the NPPF. It reminds us there is no need to read into the wording or over-complicate what should be inferred; the phrase "relevant policies for the supply of housing" are those which relate to housing.

The Supreme Court also reiterated that plan-making and decision-making should be set against paragraph 14 of the NPPF, i.e. that there is a pre-

sumption in favour of sustainable development, save where there are adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole, or where specific policies in the NPPF indicate development should be restricted.

Set against this, the decision asserts the importance, and statutory footing, of the local plan over the NPPF in the decision-making process. This may lead developers looking to develop in the Green Belt to locate other policies on which they may be able to place weight in the absence of a five-year housing land supply.

Thus, whilst the Supreme Court considered that paragraph 49 of the NPPF should have a narrow meaning, in the absence of a five-year housing land supply, it has a wider effect in the planning balance set by paragraph 14. In practice, therefore, whilst restrictive development policies such as those relating to the environment and amenity remain relevant, if there is no five year supply of housing available, the weight to be given to them should be judged against the need for development within the area, which remains the preserve of planning judgement. The justices were keen to stress that the 'rigid enforcement' of such policies often frustrates national housing objectives.

While this may feel like a step backwards for some developers, many will welcome the certainty the decision has now provided, and local authorities will no doubt appreciate the sentiments expressed regarding their statutory local plans. By the same token, however, if, having applied the tilted balance, local planning authorities decide against granting planning permission, we may see a proliferation of appeals by developers in search of a different outcome from the Secretary of State.

If the outcome of this judgment is to hinder residential development it may set the tone for developers to look to appeal refusals through other avenues. Of course, this is only one of many hurdles as in reality the determination of planning



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applications is relatively subjective and can be influenced by any one of a number of factors. It also needs to be remembered that the presumption in favour of sustainable development, this 'golden thread', under paragraph 14 is subject to material considerations, which can be as wide-ranging as a local planning authority may decide.

