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Kevin Bishop
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01 December 2017

Dear Kevin Bishop,

Town and Country Planning Act 1990
Appeal by Mr Richard Brandram-Jones
Site Address: Land Adj Millditch Cottage, Sellack Boat, Kings Caple, Herefordshire, HR1 4UB

Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

I refer to the judgment of 15 November 2017 (copy attached), concerning the interpretation of the term "isolated homes in the countryside" within paragraph 55 of the NPPF ("the Framework").

The Inspector appointed to determine this appeal has asked me to write to you to ask whether, in light of this judgment, your Council wishes to make any comments as to whether this judgment has any bearing on the appeal.

I would be grateful for your written response within 7 days of the date of this letter. A similar letter has been sent to the appellant, and the appellant should be copied into your response.

Yours sincerely,

Jenni Ball
Jenni Ball

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Neutral Citation Number: [2017] EWHC 2743 (Admin)

Case No: CO/1207/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 November 2017

Before :

MRS JUSTICE LANG DBE

- -

Between :

BRAINTREE DISTRICT COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT **(2) GREYREAD LIMITED** **(3) GRANVILLE DEVELOPMENTS LIMITED**	**Defendants**

- -
- -

Ashley Bowes (instructed by **Sharpe Pritchard**) for the **Claimant**
Gwion Lewis (instructed by the **Government Legal Department**) for the **First Defendant**
John Dagg (instructed under the **Direct Access Scheme**) for the **Second and Third Defendants**

Hearing date: 24 October 2017

- -

Approved Judgment

Mrs Justice Lang :

1. The Claimant ("the Council") applied under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant, made by an Inspector on his behalf, on 3 February 2017, in which he allowed an appeal by the Third Defendant against the Council's refusal of planning permission.

2. The Third Defendant applied for planning permission to erect two detached single-storey dwellings on land east of Lower Green Road, Blackmore End, Wethersfield, Essex (hereinafter "the appeal site"). Previously there had been two agricultural buildings on the appeal site, which had been demolished.

3. On 4 March 2016, the Council refused planning permission. Its reasons for refusal were that the appeal site lay within an area of countryside beyond any defined settlement boundaries, and the development failed to accord with policies in the Council's Core Strategy and Local Plan Review and planning principles in the National Planning Policy Framework ("NPPF") at 49, 55 and 111. Policy RLP2 of the Braintree District Local Plan Review stated that new development was to be confined to areas within town development boundaries and village envelopes. Outside of those areas, countryside policies applied. Policy CS5 of the Council's Core Strategy stated that development outside town development boundaries and village envelopes was to be strictly controlled to uses appropriate to the countryside, in order to protect and enhance landscape character and biodiversity, geodiversity and amenity of the countryside. Policy CS7 of the Core Strategy stated that future development was to be in accessible locations to reduce the need to travel.

4. The Inspector (Mr K. Williams BA MA MRTPI) held a site visit and determined the appeal by way of written representations. He found that, on the most favourable analysis, deliverable housing sites fell well below the 5 year supply required by NPPF 47, and so the provisions of NPPF 49 were engaged. Policies CS5 and RLP2 were to be treated as out-of-date when applying NPPF 14. He concluded that permission should be granted in accordance with the Framework's presumption in favour of sustainable development. His key finding, for the purposes of this application, was in paragraph 9 of the Appeal Decision ("AD"):

> "9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan's approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers."

5. Collins J. granted permission on the papers on 15 May 2017.

Ground of challenge

6. The sole ground of challenge was that the Inspector misunderstood and therefore misapplied NPPF 55 by not appreciating that, when considering the policy against granting planning permission for "new isolated homes in the countryside unless there are special circumstances", the meaning which should be given to the term "isolated homes" was "homes which were remote from services and facilities".

7. The Defendants submitted that, when applying NPPF 55, the word "isolated" should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". They submitted that the Inspector correctly understood and applied the term "isolated homes" in his decision.

Legal and policy framework

(i) Applications under section 288 TCPA 1990

8. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

9. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

10. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

11. The Court should respect the expertise of Inspectors, and at least start from the presumption that they will have understood the policy framework correctly. 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: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [25].

12. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v*

Secretary of State for the Environment (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

(ii) Decision-making

13. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "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."

14. The NPPF is a material consideration for these purposes, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: see NPPF 11 to 13. It must be exercised consistently with the statutory scheme giving primacy to the development plan, and not displace or distort it: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].

15. In *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed), rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. He said:

> "18. … 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. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that, in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. They are intended to guide the decisions of planning authorities, who should only depart from them for good reason.

> 19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 659, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

16. In *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, the Supreme Court accepted that these principles also applied to the interpretation and application of national policy in the NPPF (per Lord Carnwath at [23]; per Lord Gill at [72] – [74]).

(iii) National Policy

17. NPPF 6 explains that the purpose of the planning system is to contribute to the achievement of sustainable development. NPPF 7 summarises the three dimensions to sustainable development: economic, social and environmental.

18. NPPF 17 sets out the core land-use planning principles which should underpin decision-taking. They include the principle that planning should:

> "take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;"

19. NPPF 28 sets out the policies to support economic growth in rural areas, including promoting the retention and development of local services and community facilities in villages.

20. NPPF 55 provides:

> "55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or

- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or

- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or

- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:

    - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;

    - reflect the highest standards in architecture;

    - significantly enhance its immediate setting; and

    - be sensitive to the defining characteristics of the local area."

21. The Planning Practice Guidance ("PPG") states:

> "How should local authorities support sustainable rural communities?
>
> .....
>
> A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
>
> Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence.....
>
> The [NPPF] also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions

> will vary from urban to rural areas [NPPF Part 4 Promoting Sustainable Transport para 34]"

Conclusions

22. The Claimant submitted that NPPF 55 had to be interpreted in the context of national policy on rural development which enjoined decision takers to support the rural economy by supporting local services and facilities within it: see NPPF 28 and 55, and the PPG. According to the PPG, housing had an "essential" role to play in ensuring the vitality of those facilities and services. Housing should therefore be located where it would "enhance or maintain" them. Housing which did not enhance or maintain those facilities or services by reason of being "isolated" from them should be avoided unless there are "special circumstances". Thus, in applying NPPF 55, and considering whether proposed development amounted to "new isolated homes in the countryside", it was irrelevant that the development was located proximate to other residential dwellings. The key question was whether it was proximate to services and facilities so as to maintain or enhance the vitality of the rural community.

23. In my judgment, the Claimant's submission was incorrect. The sentence in NPPF 55 guiding local authorities to avoid granting planning permission for "new isolated homes in the countryside unless there are special circumstances" should be "interpreted objectively in accordance with the language used, read … in its proper context" (per Lord Reed in *Tesco Homes* at [18]).

24. The word "isolated" is not defined in the NPPF. I agree with the Defendants' submission that "isolated" should be given its ordinary objective meaning of "far away from other places, buildings or people; remote" (Oxford Concise English Dictionary).

25. The immediate context is the distinction in NPPF 55 between "rural communities", "settlements" and "villages" on the one hand, and "the countryside" on the other. This suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physical.

26. As to the broader context, in my judgment, NPPF 55 seeks to promote the economic, social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles of "recognising the intrinsic character and beauty of the countryside" and "supporting thriving rural communities within it" (NPPF 17). The Claimant's analysis of the policy context is far too narrow in scope.

27. The policy in favour of locating housing where it will "enhance or maintain the vitality of rural communities" is not limited to economic benefits. The word "vitality" is broad in scope and includes the social role of sustainable development, described in NPPF 7 as "supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations". The Claimant's restriction of an "isolated home" to one that is isolated from services and facilities would deny policy support to a rural home that could contribute to social sustainability because of its proximity to other homes.

28. NPPF 55 cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them. The PPG advises that "all settlements can play a role in delivering sustainable development in rural areas", cross-referencing to NPPF 55, "and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided….". Moreover, in rural areas, where public transport is limited, people may have to travel by car to a village or town to access services. NPPF 17 penultimate bullet point identifies as a core planning principle to "actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable". But as the PPG states, NPPF 29 and 34 recognise that the general policy in favour of locating development where travel is minimised, and use of public transport is maximised, has to be sufficiently flexible to take account of the differences between urban and rural areas. The scale of the proposed development may also be a relevant factor when considering transport and accessibility. As Mr Dagg rightly pointed out, the policy in NPPF 17 in favour of focusing development in locations which are or can be made sustainable applies in particular to "significant development".

29. For these reasons, I agree with the Defendants that the Claimant was seeking to add an impermissible gloss to NPPF 55 in order to give it a meaning not found in its wording and not justified by its context.

30. The First Defendant drew my attention to *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141 in which Lewison LJ said, at [15], in relation to para. 55 of the NPPF:

> "… the definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that a new dwelling within that curtilage will not be an 'isolated' home."

31. Although the context in that case was quite different, my conclusion is consistent with Lewison LJ's observations.

32. In AD 8 & 9, the Inspector correctly applied NPPF 55 by concluding that, since the proposed new homes would be located on a road in a village where there were a number of dwellings nearby, it would not result in "new isolated homes in the countryside".

33. The undisputed evidence before the Inspector was that Blackmore End was a village, which had linear development extending along several roads. There was a dispersed pattern of development along Lower Green Road (the location of the appeal site). Lower Green Road was a road leading out of the village, heading north. There were dwellings immediately to the south and north of the appeal site. There was also a dwelling to the west, on the other side of the road.

34. It was common ground that the appeal site was to be treated as outside any village envelope, and therefore within the countryside. Until 2014, no settlement boundary

existed for Blackmore End, in common with some other villages in this rural district. A settlement boundary was introduced in 2014 in the Site Allocations and Development Management Policies document, which was an interim measure whilst the new Local Plan was prepared, but it was never formally adopted as part of the development plan. In June 2016, a draft Local Plan was published for consultation, which included the same or very similar settlement boundary, but it only had the status of an emerging plan. In both documents, the settlement boundary (referred to as a "village envelope") was drawn around the two main clusters of housing in the centre of the village, excluding development, such as Lower Green Road, located on the edge of the village. This was a material consideration for planning purposes.

35. It was agreed that the village of Blackmore End had very limited facilities and amenities, comprising a village hall, public house and playing field. Blackmore End was within the parish of Wethersfield. Wethersfield village was about 2 miles away, and it had a post office, village store, public house, a nursery and pre-school. The village of Sible Hedingham, identified as one of five "Key Service Villages" in the draft Local Plan was about 4 miles away. In assessing accessibility, the Inspector concluded, at AD 14:

> "It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas."

36. Under the sub-heading "The Overall Balance and Sustainable Development", the Inspector said:

> "16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the buildings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the tests set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework's presumption in favour of sustainable development."

37. When the Inspector referred to "the minor economic benefit … from developing the site and the economic activity of those occupying the dwellings", he was referring, first, to the economic benefit of providing local builders etc. with work at the appeal site, and, second, to the economic benefit of two new households who would be likely to use businesses in the surrounding area (e.g. for services to their homes and shopping etc.). This was a point expressly raised in the Appellant's case, which the Inspector was entitled to accept. In my view, it was obvious that households would be likely to use services in the surrounding area to some extent. I cannot agree with the Claimant's submission that the Inspector made no finding on this point or that there was insufficient evidence of such use to enable him to do so.

38. In conclusion, I consider that the Inspector correctly interpreted NPPF 55, and applied it properly to the facts and matters which arose in this appeal. Therefore the Claimant's application is dismissed.