
PLANNING APPLICATIONS

06/2018/0884

06/2019/1244

06/2020/1002

AND IN THE MATTER OF THE TITLED BALANCE

ADVICE NOTE

1. We are jointly instructed by Gerald Gornall, Seddon Homes Limited and Story Homes Limited in relation to a common and overlapping issue in respect of a proposed approach by Preston City Council (“the LPA”) to planning applications which are close to the point of determination by the LPA.
2. The most recent advice from officers in respect of the correct approach to the application of the planning balance is encapsulated in the following passage in the report submitted by the Director of Development and Housing in respect of application 06/2020/1002:-

“The assessment as to whether it is appropriate to engage the titled balance in Paragraph 11(d) of the Framework is comprised of three stages. First, the most important policies for determining the application must be identified. Second, those policies must be assessed to ascertain whether or not they are out-of-date. Thirdly the

basket of policies must be looked at to determine, in the round, [sic if] it is out-of-date thereby engaging the tilted balance.

The most important policies for determining this planning application are considered to be:

Central Lancashire Core Strategy

Policy 1: Locating Growth

Policy 4: Housing Delivery

Preston Local Plan 2012-2026 (Site Allocations & Development Management Policies)

Policy EN1: Development in the Open Countryside

Core Strategy Policy 1 and Policy EN1 are relevant to the principle of the development proposed. Policy 4 is housing-related and contains the housing requirement figure for Central Lancashire. It has been accepted earlier in this report that Core Strategy Policy 4 is out of date. However, whilst the minimum housing requirement of Policy 4 is out-of-date, it does not follow that other parts of Policy 4 and other most important policies for determining the application are out-of-date. Policy 4 also seeks to ensure, in locations that are in line with Policy 1, that at least 70% of new housing developments are located on brownfield sites. Therefore whilst Policy 4 is, on the whole, considered to be out-of-date, this part of Policy 4 is not considered to be out-of-date.

Core Strategy Policy 1 promotes the spatial strategy for growth across Central Lancashire. For Preston this means focussing growth and investment in the main urban area (comprising the Central Preston Strategic Location and adjacent inner city suburbs), the Cottam Strategic Site, the North West Preston Strategic Location and Key Service Centre of Longridge. Policy 1 does not unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology Policy 1 is therefore not out-of-date.

Policy EN1 restricts development which takes place in the open countryside to that needed for the purposes of agriculture and forestry (or other appropriate uses), the re-use of existing buildings and infill with groups of buildings, as well as development permissible in other policies contained within the Local Plan (namely Policies HS 4 and HS 5). Given the local housing need in Preston (250 net additional homes per annum) is currently substantially below the housing requirement contained in Policy 4 (507 net additional homes per annum), it is clear that more than sufficient land has been allocated in the Current Local Plan to meet the local housing need. Policy EN1 does not unreasonably constrain the ability of Preston to accommodate its local housing calculated by way of the standard methodology. As a consequence, the rural settlement boundaries do not to be reconsidered at this time and remain relevant and up-to-date. Policy EN1 is therefore not out-of-date.

Accordingly the tilted balance is not engaged.“

[POR at end of section 3.6 under the heading Planning Balance].

3. The reasoning of the report is in our view erroneous, and the conclusions flawed.

4. **'Out of date'**

The correct approach to the meaning of “out-of-date” has been authoritatively dealt with in the judgement of Dove J in the case of *Wavendon Properties Ltd v SSHCLG & Milton Keynes Council* [2019] 1524 (Admin) (*Wavendon*) including the reference to the three steps summarised above in the POR .

5. However, this seminal judgment was building upon and elucidating the of that phrase arrived at by Lindblom J (now Lindblom LJ) in the earlier case of *Bloor Homes Ltd v SSCLG* [2014] EWHC 754 (Admin) at §[45] - which applies equally to the position under NPPF(3) as NPPF(1) as the judgment of Dove J in *Wavendon* makes clear [see §[48]-[49]]. This fundamental meaning is obvious:-

“And if the plan does have relevant policies these policies may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now “out-of-date”.....And the question of whether relevant policies are no longer up-to-date will be either a matter of fact or perhaps a matter of both fact and judgment. “

6. If the matter is truly and properly reflected upon by the LPA the only sensible conclusion to be derived from application of this straightforward meaning is that the relevant policies are now “out-of-date”.

7. There is no disagreement in respect of which policies are “relevant” or should be included within the basket of “most important” policies for the purpose of determining whether the most important policies are “out of date”.

8. The foreword to the Central Lancashire Core Strategy identifies that *“It is a single strategy for Central Lancashire, and the Councils are committed to applying the policies consistently”*.
9. Within the Introduction at the beginning of the plan that it *“sets out the Central Lancashire authorities’ spatial planning proposals for the combined area of Preston, South Ribble and Chorley”*. This section concludes by saying that *“The policies contained in the Core Strategy will be taken together in determining planning applications and priorities for Central Lancashire. “*
10. In dealing with “Integration of Strategies” all of the wording of Policy MP warrants careful consideration by the LPA. In terms of the specific issue to which this Advice is addressed the wording of the policy is as follows:-
- “Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise-taking into account whether:*
- a) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or*
 - b) specific policies in that Framework indicate that Framework indicate that development should be restricted.”*
11. It should be obvious that the conclusion reached in the POR that Policy 4 as a whole is “out of date” means that the titled balance is engaged as a matter of proper interpretation of the wording of Policy MP of the Core Strategy itself.

12. Policy 4 is out of date and it is a relevant policy. For this reason alone the analysis in the POR is flawed. ¹However, the flaw in reasoning runs much deeper than this.

13. The Core Strategy is a plan for the area of the combined authorities in respect of which housing delivery and the spatial strategy is to be applied consistently. Policy 4 lies within Chapter 8 of the Core Strategy the strategic objectives for which include:-

13.1 “SO5 To make available and maintain within Central Lancashire a ready supply of residential development land over the plan period, so as to help deliver sufficient new housing of appropriate types to meet future requirements. This should be also be based on infrastructure provision, as well as ensuring that delivery does not compromise existing communities. “

13.2 “SO8 To significantly increase the supply of affordable housing and special needs housing particularly in places of greatest need such as in more rural housing such as in more rural areas.“

14. Policy 4 sets the overall housing requirement during the Core Strategy period. This minimum requirement is agreed to be out-of-date.

15. The balance of Policy 4 cannot conceivably be considered to be up-to-date or any part of it. This can be seen from the structure of the policy - all of which is concerned with monitoring and managing performance of the plan against that “out-of-date” minimum requirement figure that provides for the delivery of new housing in the plan area. Specifically:-

¹ This wording of the development plan - reflects the wording of §14 of NPPF 1 “ where relevant policies are out-of-date” as opposed to the revised wording of NPPF2 and 3 “ “ or the policies which are most important for determining the application are out-of-date” [see §11] .

15.1 Criterion (b) postulates review of housing delivery performance and postulates management actions in response to under performance;

15.2 Criterion (c) is concerned with managing the delivery of land capable of :-

“ providing a continuous forward looking 5 year supply in each district from the start of each annual monitoring period in each district from the start of each annual monitoring period and in locations that are in line with the Policy 1, the brownfield target (of 70% of all new housing) and suitable for developments that will provide the range and mix of house types necessary to meet the requirements of the Plan area.”

15.3 Criterion (d) is concerned with identification of further supply over the medium term (as seen in 2012) in Site Allocations Documents.

16. The analysis in the POR accepts that Policy 4 is out-of-date as a whole yet considers that it is partially up to date. With respect to the author if the policy is out-of-date as a whole it is out-of-date as a matter of sense.

17. Policy 4 is the policy in the Core Strategy which sets the policy framework for delivery of new housing and provides for the requirements. The provision of the minimum requirements are out-of-date. The assessment of whether this or any policy in the Core Strategy is out of date must be interpreted and applied consistently across the plan area. As has been seen this is set out in the plan itself.

18. The subsequent criteria within the policy take effect only against minimum requirements across the plan area set in criterion (a).

19. Policy 1 and EN1 of the Preston Local Plan 2012-26 (Site Allocations and Development Management Policies) are bound to that same requirement and

accordingly use of the standard method means that the spatial strategy within the Core Strategy is also out of date.

20. This is clear and obvious from the spatial strategy itself. Policy 1 by focussing development in Preston and South Ribble and significantly less to Chorley is at odds with application of the standard method across Central Lancashire. A policy which applies and is expressly committed to apply consistently across a plan area cannot be out-of-date in one part of the plan area and up-to date in another.

21. It must be accepted that the application of the standard method means that not only Policy 1 but also EN1 are out of date. Policy 1 sets the spatial strategy for the combined plan area.

22. This can be further illustrated and understood in Chorley as another part of the plan area. If the analysis that Policy 1 is up-to-date is examined in the Chorley context – then it becomes clear that a local authority which has major constraints (including and in particular Green Belt) does not have enough sites to comply with the locational hierarchy in Policy 1 of the Core Strategy.

23. The Preston Local Plan 2012-2026 (Site Allocations & Development Management Policies) and specifically policy EN 1 is inextricably tied into the same issue. It is an exercise within Policy 4 criterion (d) of the Core Strategy.

24. It seeks to “achieve the vision for growth as outlined in the Central Lancashire Core Strategy” [see Introduction §1.3]. This is the same spatial strategy.

25. Moreover, the context and relationship of this Part 2 Plan with the Part 1 comprising the Core Strategy is clear in terms of the wording of the document itself:-

“1.29 This Local Plan must be in general conformity with the strategic objectives of the adopted Core Strategy and seek to implement its strategic vision for Preston and wider Central Lancashire.” [emphasis added]

26. Policy EN1 is contained within chapter 8 and has 3 Core Strategy Objectives 2 of which are as follows:-

26.1 “SO16: To protect, conserve and enhance Preston’s places of architectural and architectural and archaeological value and the distinctive value and the distinctive character of its landscape.

26.2 “SO17: To maintain and improve the quality of Preston’s built and natural environment assets so that it remains a place with ‘room to breathe’ “

27. In terms of policy 4 aside from being inextricably linked to the wider point concerned with the spatial strategy - Policy EN1 also defines all countryside as open countryside and does not reflect the set objectives derived from the Core Strategy or reflect the advice in NPPF(3). Decisions contributing to and enhancing the natural environment should recognise *“the intrinsic character and beauty of the countryside”* [NPPF §170 at c)].

28. However, policy EN1 does not do this. It is not concerned with any distinctive value or character of a landscape under strategic objective SO16. Moreover, open countryside is clearly not relevant under strategic objective SO17 (environmental assets) which is picked up within policy EN2 concerned with Green Infrastructure.

29. Such a policy is not consistent with the NPPF (3) and as well as being out of date by reason of the matters previously discussed in terms of Policy 4 and Policy 1 this additional inconstancy with the NPPF shows the policy to be out of date in this additional respect and reduces the amount of weight that can be attached to EN1.

30. Conclusion and recommendation

30.1 For these reasons set out above the current advice provided to Members set out at §2 of this Advice Note above is entirely flawed;

30.2 Having regard to the matters set out in this Advice Note the Members should determine the applications on the basis that the most important policies in the development plan relevant to the determination of the applications to which this Advice Note relates are out-of-date such that the titled balance is engaged;

30.3 It is also necessary for the Members to be advised of the recommendation of officers on the basis that the titled balance is so engaged;

30.4 In so advising the Members on the proper application of the tilted balance, except for good reasons to the contrary, this should be done in a manner consistent with previous advice on the application of that tilted balance;

30.5 As set out above we consider that the Members would have been seriously misled if they concluded that the development plan was up-to-date on the basis set out in paragraph 2 of this Advice Note.

Paul. G. Tucker QC

Gary. A. Grant

**KINGS CHAMBERS
MANCHESTER-LEEDS-BIRMINGHAM**

30th November 2020