

Case Name: *Peel Investments (North) Ltd v Secretary of State for Housing, Communities And Local Government & Anor* [2020] EWCA Civ 1175 (03 September 2020)

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Commentary:

Appeals dismissed in the Court of Appeal in connection with two applications for outline planning permission submitted by Peel Investments (North) Limited for the construction of up to 600 and 165 homes respectively on land in West Salford known as the Worsley Greenway which lies within the area of Salford City Council.

The applications were refused by the Council in 2013 and 2017 respectively, the Secretary of State for Housing, Communities and Local Government dismissed Peel's appeal against the refusal and Dove J, sitting in the Planning Court, dismissed Peel's s.288 claim.

The two main issues arising in this appeal to the Court of Appeal were (1) the correct interpretation of the term "out-of-date" in paragraph 11d of the National Planning Policy Framework ("NPPF"), and (2) the proper application of policies contained within development plan documents which are time-expired and/or where there is a lack of policy in respect of the strategic issue of housing supply.

The appellant relied on Lord Carnwath's observation at paragraph 54 of Hopkins Homes: "in the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission". The respondent submitted that the correct approach as to whether a policy is out-of-date is as expressed by Lindblom J in Bloor Homes, namely whether the policy has been overtaken by events that have occurred since it was adopted, including a change of national policy. Lord Justice Baker agreed with the respondent on this and asserted that there is nothing in paragraph 11d of the 2018 NPPF, or its predecessor paragraph 14 of the 2012 Framework, to suggest that the expiry of the period of the plan automatically renders the policies in the plan out-of-date in every case.

The appellant also argued that a plan without strategic policies such as policies for housing supply should be regarded as out-of-date for the purposes of paragraph 11d and the tilted balance. Section 19(1B) and (1C) of the 2004 Act require a development plan document to have strategic policies, and paragraphs 17 and 20 of the NPPF specify what the strategic policies should encompass. The respondent submitted that it would be perverse to determine whether the policies were out-of-date by asking whether the whole plan would retrospectively pass the current statutory and policy tests for the adoption of a new plan. Lord Justice Baker agreed and did not accept the appellant's submission that a plan without strategic housing policies is automatically out-of-date for the purposes of paragraph 11d so as to engage the tilted balance.

In its third ground of appeal, the appellant asserted that the judge had erred in law in concluding that the Secretary of State correctly interpreted paragraph 11d by reference to paragraph 213 of the NPPF. Lord Justice Baker concluded that this argument overlooks the

fact that the inspector took into account a wide range of factors, including those raised on behalf of the appellant. Dove J noted in his judgment that the assessment of the inspector, adopted and acknowledged by the Secretary of State, addressed the issue of consistency with the NPPF and the question raised by the appellant whether the policy had been overtaken by the demise of the policies relating to housing supply, together with the current evidence in relation to housing need.

In its fourth and final ground of appeal the appellant asserted that Dove J had erred in basing his decision on the inspector's "erroneous and inconsistent" findings as to the impact of policy EN2 on the provision of housing. The respondent argued that there was nothing inconsistent in the inspector finding that the numbers of houses being built were exceeding the five-year supply whilst noting, and taking into consideration, deficiencies in the quality of the houses being constructed. The inspector was entitled to conclude that the policy was not impeding the delivery of homes, given that the Council was comfortably meeting its five-year housing land supply. This was a matter for planning judgment for the inspector and, in turn, the Secretary of State. Lord Justice Baker agreed with this.

Lord Justice Baker dismissed the appeals concluding that there was no error of law in the judgement at first instance. As a final comment he stated that "It seems to me that the key to interpreting paragraph 11d lies not in paragraph 63 of Lord Carnwath's judgment in Hopkins Homes but, rather, in paragraph 55, where he observed that, whether a policy becomes out-of-date and, if so, with what consequences are matters of pure planning judgment, not dependent on issues of legal interpretation".

Case summary prepared by Amy Fender