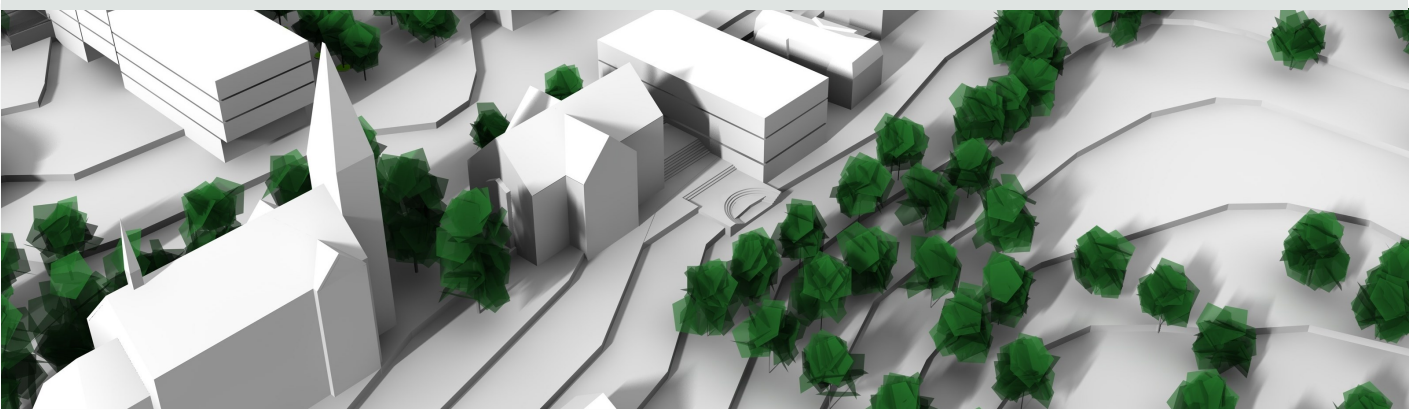


Town Planning: What does the landmark Supreme Court ruling on the NPPF mean for developers?



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For the first time since its publication in 2012, the Government's National Planning Policy Framework (NPPF) guidance has been subject to a ruling by the Supreme Court. The judgment provided much needed clarity on a long running debate concerning paragraph 49, which states that 'relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites'.

The Background

The debate about paragraph 49 was crystallised in two conflicting decisions by planning inspectors in separate appeals, with one inspector favouring a wide interpretation of 'relevant policies' to include all policies that influence housing development, and the other taking the view that only policies specifically concerned with housing supply are deemed relevant. These decisions were subsequently challenged and the Court of Appeal ruled that the definition of 'relevant policies' could include all policies that create or constrain land (such as green belt and countryside protection policies) for housing development (i.e. the wider interpretation).

Supreme Court Ruling

However, the Court of Appeal's ruling was itself challenged. As a result the much anticipated Supreme Court judgement last week ruled that the Court of Appeal was wrong and that 'relevant policies for the supply of housing' legally requires a narrow interpretation. As such, policies that are not specifically related to housing supply will not be deemed "out of date" where a local planning authority cannot demonstrate a five year housing land supply. However, the judgement goes further than this, emphasising that the absence of a five year housing land supply triggers NPPF paragraph 14 and the "presumption in favour of sustainable development". This means that restrictive policies will remain a relevant consideration; however, these policies will have reduced weight if a five year supply

cannot be demonstrated.

What does this mean?

Whilst it is early days, the Supreme Court ruling indicates that:

- If a Local Authority cannot demonstrate a five year housing land supply, only a narrow range of policies are out of date. However, the decision maker still needs to give weight to the lack of five year housing land supply against a wider range of policies.
- The weighting applied will be at the discretion of the decision maker, with differing approaches potentially being taken. Whilst the Supreme Court judgment is clear that restrictive non-housing supply related policies should carry reduced weight in the absence of a five year housing supply, local planning authorities could nonetheless seek to rely on such policies if they are minded to resist development, particularly in sensitive areas such as the Green Belt.
- Given the subjectivity involved in the decision making process, planning by appeal is still likely to continue as decision makers grapple with applying the appropriate weight to policies which would otherwise limit housing development.

For more information on this please contact **Andrea Herrick** or any other member of our nationwide planning team.