

**Case Name:** Paul Newman New Homes Ltd v Secretary of State for Housing Communities and Local Government & Anor 2019 EWHC 2367 (Admin) (06 September 2019)

**Full case:** [Click Here](#)

**Commentary:** A challenge to an Inspector's decision on grounds relating to the application of the tilted balance in paragraph 11 of the 2018 NPPF was dismissed. In deciding to dismiss the appeal against non-determination, the Inspector had found that the tilted balance did not apply due to the existence of a single relevant, up to date policy.

All of the policies in the local plan, including the policy in question, were saved from a time-expired plan. However, the Council could demonstrate a five-year housing land supply.

The Claimant argued that the Inspector's interpretation constituted a radical change from the 2012 Framework because the tilted balance was disapplied due to a single saved policy in a time-expired plan. If the 2012 Framework had been applied, the tilted balance would have triggered because the development plan would have been considered "silent" because it did not contain a body of policies sufficient for a determination of the acceptability of the application in principle (following the case law on the 2012 Framework).

The Court agreed with the Inspector's interpretation. Only a single relevant policy is sufficient to prevent the first trigger ("where there are no relevant development plan policies"). "Relevance" connotes no more than some real role in the determination of the application – there was no requirement that there should be a body of policy or policies sufficient for a determination of the acceptability of the application in principle.

The second trigger in paragraph 11d is that "the policies which are most important for determining the application are out-of-date". Following the relevant case law on the 2012 Framework, "out of date" did not mean time-expired policies but has different and wider connotations. The use of the plural "policies" in the Framework did not mean that a single up to date policy cannot suffice to block the second trigger.

The Court did not accept that paragraph 11d of the 2018 Framework should be interpreted as if it were in the language of paragraph 14 of the 2012 Framework. It was right to consider the 2018 Framework on its own as such a document should be construed in general without reference to previous policies or versions. The difference in language between the two versions must be intentional. The triggers would cover many of the same situations, but the focus was differently expressed.

*Case summary prepared by Susannah Herbert*