

Case Name: *Oxton Farm, R (on the application of) v Harrogate Borough Council & Anor* [2019] EWHC 1370 (Admin) (11 June 2019)

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Commentary: The High Court has upheld a decision by Harrogate Borough Council ('Council') to grant outline planning permission for a 22-unit residential development scheme in North Yorkshire. The High Court held that the reasons for the Council's decision, based on the recommendations in its officer's report, were sufficiently clear and it was legally open to the planning officer to recommend that outline permission be granted applying the 'tilted balance' in para. 11(d) NPPF, which was triggered not because of the lack of a 5 YHLS but because the LP policies most important for determining the application were considered out of date.

The JR was brought by an interested party (Oxton Farm) on 3 grounds all of which were unsuccessful. Ground 1 was that the Council failed to take into account the up-to-date 2018 ONS housing figures which demonstrated that the Council had a 7.48 YHLS. Ground 2 was that the Council erred in law by determining that it did not have a 5 YHLS and applying the 'tilted' balance in para. 11 NPPF. Ground 3 was that the Council failed to give sufficient reasons for departing from NPPF policy relating to the triggering of the tilted balance. As to Ground 1, the High Court concluded that ONS data was not a material consideration in relation to whether the most important LP policies for determining the application were out of date. As to Ground 2, the High Court concluded, on a fair reading of the officer's report as a whole, that: (i) the Council had a 5.02 YHLS; (ii) the 2009 LP policies most important for determining the application were out of date, being premised on an annual housing requirement of 390 dpa whereas the annual housing requirement was 669 dpa; and (iii) the tilted balance in para. 11 NPPF was triggered not because of the lack of a 5 YHLS (footnote 7 NPPF) but because the LP policies most important for determining the application were considered out of date (para. 11(d) NPPF). As to Ground 3, the High Court concluded that it was reasonable to infer, in the absence of contrary evidence, that the Council had adopted the reasoning in the officer's report which was known, adequate, and available to interested parties.

Comment: This case is a useful application of two important Court of Appeal authorities explaining how planning officers' reports should be interpreted. First, officers' reports ought not to be read with undue rigour, but with reasonable benevolence, bearing in mind that they are written for councillors with local knowledge (*R. (Watermead Parish Council) v Aylesbury Vale DC* [2017] EWCA Civ 152). Second, in examining the reasons given for a decision, it is a reasonable inference, in the absence of contrary evidence, that where the LPA agrees with the officer's recommendation that they have adopted the officer's reasoning (*R (Palmer) v Herfordshire CC* [2016] EWCA Civ 1061. This case is also a useful illustration of the paragraph 11(d) trigger for engaging the 'tilted balance' in the NPPF, the meaning of which was very recently considered by the High Court in the case of *Wavendon v SSHCLG & Milton Keynes Council* [2019] EWHC 1524 (Admin).

Case summary prepared by Town Legal LLP