

Case Name: *East Riding of Yorkshire Council v Secretary of State for Levelling Up, Housing and Communities & Anor* [2021] EWHC 3271 (Admin) (02 December 2021)

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Commentary:

This was an unsuccessful challenge by East Riding of Yorkshire Council of a planning inspector's decision to allow an appeal by Gladman Developments Limited and grant permission for 150 homes (25% affordable) on a site off West Field Lane, Swanland and 380 homes (25% affordable) on a site east of Mayfields, The Balk, Pocklington.

The Council had opposed the two proposals on the basis that it was able to demonstrate a five-year supply of housing land meaning that the tilted balance required by paragraph 11 d) of the NPPF did not apply. Shortly prior to the exchange of evidence in the appeal, the Council published its Housing Land Supply Position Statement which indicated that, using the housing requirement from the East Riding Local Plan, it could demonstrate exactly five years of housing land supply. However, the Position Statement observed that by the start of year two of the five-year housing land supply calculation, it would have been more than five years since the adoption of the Local Plan.

Footnote 37 of the NPPF provides that "where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance." In the light of this policy requirement, the Position Statement proposed an alternative "hybrid approach" to calculating the five-year housing land supply which deployed the local plan requirement from the East Riding Local Plan of 1,400 dwellings for the first year of the five-year housing supply calculation, and then four years using the housing requirement calculated using the standard method of 909 dwellings per annum. This gave rise to a lower requirement figure, so the calculation within the Position Statement demonstrated a 6.2 year supply using the hybrid approach.

By contrast, Gladman considered that national policy and guidance was clear that the five-year housing land supply should be based upon the local plan housing requirement for the full five-year period leading to a conclusion that the Council could not demonstrate a five-year supply. The inspector agreed and, applying the tilted balance, concluded that substantial weight should be given to affordable housing as a benefit of the proposals and moderate weight to general housing delivery. She took into account the adverse effects, which she accepted in respect of policy conflicts and the loss of best and most versatile agricultural land, but her overall conclusion was that these adverse effects would not significantly and demonstrably outweigh the benefits of the proposals and so the appeal was allowed.

The Council challenged the appeal decision on the basis that the inspector failed to provide proper reasons to distinguish two earlier appeal decisions which concerned

paragraph 48 of the NPPF (allowing local planning authorities to place weight on policies in emerging plans depending the status of their preparation) and that had she had misinterpreted paragraph 48 and acted irrationally. Dismissing the claim, the court held that the inspector had provided an adequate and accurate summary of the other appeal decisions and stated that they were materially different to the appeals before her which raised a different point on the basis of footnote 37. Further, the court concluded that it was neither irrational nor a misunderstanding of paragraph 48 for the inspector to conclude that there was a difference between the imminent adoption of a local plan housing requirement which had been found sound and the imminent use of a local housing need figure derived from the standard method.

Case summary prepared by Safiyah Islam