Case Name: *TV Harrison CIC v Leeds City Council* [2022] EWHC 1675 (Admin) (06 July 2022)

Full case: Click Here

Commentary: This High Court case concerned a judicial review challenge by a community interest company to Leeds City Council's decision to grant itself planning permission for the erection of 61 affordable dwellings on a site in Wortley. The site was a longstanding sports field used informally for recreational activity and sport. The Claimant succeeded on their first of four grounds, namely that the decision failed to take into account relevant local policy, and the grant of planning permission was quashed. The case emphasises the need to be robust in considering all relevant policy, and the different roles of the NPPF and development plan.

Policy N6 of the Leeds Unitary Development Plan states that "development of playing pitches will not be permitted unless (i) there is a demonstrable net gain to overall pitch quality and provision by part redevelopment of a site or suitable relocation within the same locality of the city, consistent with the site's functions; or (ii) there is no shortage of pitches in an area in relation to pitch demand locally...". Mr Justice Eyre agreed with the Claimant's interpretation that this wording should be interpreted as requiring a gain in both quality and provision.

Paragraph 99 of the NPPF contains a similar principle: "existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless: (a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or (b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location".

It should also be noted that the more recent Site Allocation Policy (which retained policy N6 of the LUDP) stated that "should a planning application for housing on an allocated site be submitted to the Council, it is acceptable in principle by virtue of it being allocated for that use in the Local Plan. However, each planning application is judged on its individual merits and where there are specific requirements that will need to be applied...". The specific requirements for the site were that "the development should provide new greenspace to extend the existing area of greenspace to the north and to create a green link across the site... The existing sports facilities should be relocated in Leeds and/or local improvements to existing facilities in the locality of the site should be provided".

The officer's report stressed that the proposal was wholly in accordance with the SAP. However, while it considered para 99 of the NPPF, it failed to expressly consider policy N6 at all. Importantly, it failed to include policy N6 on the list of policies said to be relevant to the proposal. The subsequent permission was subject to a condition which required submission of "details of the relocation of the existing sports facilities in Leeds

and/or local improvements to existing facilities in the locality of the site".

The Defendant alleged that the reference to para 99 of the NPPF and the site requirement of the SAP were sufficient, as they greatly overlapped with policy N6, and any difference between the two was "in wording and not substance". Mr Justice Eyre disagreed and held that the differences were in fact matters of substance, for the following reasons: (1) N6 requires net gain in both pitch quality and provision, whereas para 99 only requires equivalent provision; (2) N6 requires delivery "within the same locality" while para 99 just refers to delivery in a "suitable location"; (3) crucially, as part of the development plan, policy N6 has a different status to the NPPF. The Defendant must not only have regard to it, but is also obligated to determine the matter in accordance with the policy, unless it was in conflict with another policy which should be favoured, or material considerations suggest otherwise. While s38(5) of the Planning and Compulsory Purchase Act 2004 states that, where development plan policies conflict, the more recent policy is favoured, determining a conflict is a matter of planning judgment. He concluded that the Defendant was required to "grapple" with the policy, which they failed to do.

Mr Justice Eyre then considered s31(2A) of the Senior Courts Act 1981, and whether it was "highly likely" that the outcome would not have been substantially different if the Defendant had had regard to policy N6. He held he could not conclude such a high likelihood: if the Defendant had considered the policy, it may have led to a refusal, or at least a change in the conditions. Therefore the decision was quashed.

Case summary prepared by Jed Holloway