

NATIONAL PLANNING POLICY FRAMEWORK 2023

EMERGING CHERWELL LOCAL PLAN REVIEW 2040

ADVICE

1. I have been asked to advise Cherwell District Council (“CDC”) on the construction and the application of the National Planning Policy Framework (“NPPF”), as published in its revised form in December 2023. In particular, my advice is sought in respect of the construction of para.226 of the revised NPPF and whether the emerging Cherwell Local Plan Review 2040 is in a form which triggers a requirement to demonstrate a minimum of a four year rather than a five year supply of specific deliverable sites against either the housing requirement set out in strategic policies or against local housing need, where strategic policies are more than five years old.
2. On the face of it, para.226 of the NPPF is straightforward enough. The requirement to demonstrate a minimum of four years’ worth of housing (plus a buffer, if applicable) applies where a local planning authority has (a) submitted an emerging local plan for examination, (b) the emerging local plan has reached reg. 18 stage or (c) the emerging local plan has reached reg. 19 stage. CDC’s emerging local plan has reached reg. 18 stage. However, para.226 also includes a proviso (“the proviso”), after the reference to reg. 19. The proviso states “including both a policies map and proposed allocations towards meeting housing need”.
3. The first question which arises is as to what the proviso attaches; in particular, does it attach to the reference to an emerging local plan which has reached reg. 19 stage or does it also attach to and purport to apply to the reference to an emerging local plan which has reached reg. 18 stage and to an emerging plan which has been submitted. The former interpretation makes sense in that a reg. 19 local plan is required to be accompanied, as part of the proposed submission documents, with a “submission policies map” (see TCP (Local Planning) Regulations 2012, regs. 19 and 17). Moreover, by reg 22, the “submission policies map” is required to be submitted for examination as part of the “prescribed documents”. Reg. 18 however includes a requirement for a

local planning authority to give notice of “the subject of a local plan which the authority proposes to prepare” and for representations to be made in respect of it (see reg.18(1)). There is no requirement to prepare, notify or consult on any “policies map” at reg.18 stage. Indeed, there is no definition of a “policies map” within the 2012 regulations, as opposed to a “submission policies map” (reg.2, reg.17) and “adopted policies map” (reg.2, reg.9). Additionally, an emerging local plan which has reached reg 18 stage needs to comprise “the subject of a local plan” which it is proposed to prepare. As such, a plan which has reached reg,18 stage need not be and is not required to be a fully formed draft of a reg.19 plan or submission draft. Consistent with what is required at reg.18, a “policies map”, such as may be expected at reg.19 and is required to accompany a submission draft local plan is unlikely to be available and is certainly not required at reg.18. Thus, when considered in the context of, and to be consistent with, the underlying legislation in which para.226 of the NPPF is grounded, the correct interpretation of proviso included in para.226 is that it applies to emerging plans which have reached reg.19 stage rather than to emerging plans which have reached reg.18 stage. By reg.22, an emerging local plan which has been submitted for examination will always be accompanied by a submission policies map (see reg.22(1)(b)) as such to apply to proviso to the reference to an emerging local plan that has been submitted for examination would be superfluous.

4. However, if I am wrong in what is set out above and para.226 of the NPPF does require, to fall within its scope, an emerging local plan which has reached reg.18 stage to “include ... a policies map”, the issue then becomes what is required for a “policies map” to be “included” in an emerging local plan that has reached reg 18 stage. There is, as I have advised, no statutory definition within the 2012 Regulations or elsewhere in current legislation of the term “policies map” per se nor what such a map should show or include. Equally, there is nothing within the 2012 Regulations which prescribed what a policies map included in an emerging local plan which has reached reg.18 stage should or may include. Moreover, as I have advised above, an emerging plan which has reached reg.18 stage requires a local planning authority to give notice, etc. of “the subject of a local plan which the local planning authority propose to prepare ...”. As such, in my view, the form of any “policies map” which may be included

within a reg. 18 emerging plan is not prescribed and must be flexible, dependent on the form of the reg. 18 publication and what it contains.

5. In that context, the emerging local plan of which notification has been given by CDC under reg. 18 contains a series of plan, which show in geographic terms, the extent of some of the policies and policy allocations contained within it. These include “strategy maps” for the Banbury Area (p.140), for the Bicester Area (p.163), the Kidlington Area (p.186) and the Heyford Area (p.205). Maps are also included of Town Centre Areas of Change for Banbury, Bicester and Kidlington. Indicative Site Development Templates are included at Appendix 2 for sites identified In Core Policies 25 and 34. Appendix 4 includes indicative changes to green belt boundaries, consequential on policies of the reg.18 plan. Further plans illustrating the operation of policies in the reg. 18 plan are included in subsequent appendices.
6. In my view, taken together, the series of plans included in the reg. 18 draft of the emerging CDC local plan is sufficient to amount to a “policies map” for the purposes of reg. 18 stage of plan making. It may well be that this series of plans could be claimed not amount to an “adopted policies map”, as defined in the 2012 Regs or even a “submission policies map” as defined to form part of the suite of “proposed submission documents”. However, given the statutory requirement of what a plan at reg. 18 stage is to comprise, namely “the subject of a local plan which the local planning authority proposes to prepare”, in my view it is strongly arguable that what is included by way of maps in CDC’s reg. 18 emerging local plan would meet the policy requirement within NPPF para.226 for such a plan to “include ... a policies map ...”.
7. I have been provided by CDC with a copy of a written legal advice given by Sarah Reid KC and Constanze Bell, dated 11 January 2024. I understand that this advice was given to the appellant/appellants concerned with a planning appeal concerning proposed development at Heyford Park. I have considered that advice. I disagree with it and advise, for the reasons I have given, that para.226 NPPF is engaged, and that CDC is required to demonstrate a four-year housing land supply. For completeness, *if* the proviso within para.226 does apply to a reg. 18 stage local plan, there is no reason that a “policies map” may not be included physically in such a local plan. Given the status and state of advancement expected of a reg. 18 local plan, it is open to a local planning authority to present a policies map in such a way. Indeed, the NPPF at para.226 refers

to an emerging local plan that has reached reg 19 or reg 19 stage “including ... a policies map”. The language used in para.226 is consistent with the opportunity for any such policies map to be “included” within a reg.18 plan as opposed to being required to be a separate legal document. Moreover, Ms. Reid and Ms. Bell’s apparent advice that a policies map must always comprise a separate document from a local plan (whether adopted or emerging) tends to the type of inflexible technicality that is rarely found by courts now to be required. More generally, Ms. Reid and Ms. Bell conflate the requirements for an “adopted policies map” and a “submissions policies map” with the advice in para.226 concerning reg. 18 stage emerging plans. *If* (which I do not consider to be the case) para.226 requires a reg. 18 plan to include a “policies map”, there is nothing in the relevant legislation which requires that map to be of the same form or substance as an adopted or submission policies map.

8. I have additionally been asked to consider the housing requirement against which a four-year supply of specific deliverable sites is to be assessed for the purposes of NPPF para.226 and in particular whether the minimum of four years of supply is to be assessed against a four-year or five-year housing requirement. Notably, para.226 is silent on the point. It does not say that the minimum of four years supply is to be assessed by reference to five years of development plan housing requirements or local housing needs or four years. It is surprising that this has not been spelled out and I understand that the Government has indicated an intention to provide clarification shortly, presumably in the form of revised PPG or a further revision to the NPPF. In advance of that clarification, context and clear intention are importance in the interpretive exercise. Para.226 is required to be read and applied together with NPPF para.77. The policy contained in para.77 is well established and requires five years supply assessed against a five-year requirement (whether derived from a local plan or the standard method). It may be thought surprising if, when introducing para.226, the Secretary of State had intended to move away from an assessment against a five-year requirement at least without making that explicit and clear. Moreover, para.226 was introduced into national planning policy to provide greater protection to local planning authorities who are progressing with a new local plan; in many cases to move from four years supply measures against a five-year requirement would make the policy test more rather than less onerous for some local planning authorities. An interpretation

of para.226 which requires a minimum of four years of supply to be assessed against five years of the relevant housing requirement or local needs finds support in the reasoning given by Dove J. in *R (Richborough Estates Ltd.) v Secretary of State for Communities and Local Government* [2018] EWHC 33 (Admin) at para.42 and in particular, para.43. Although Dove J. was considering a different policy statement, the problems which arise in the introduction of an assessment by reference to a lesser period than five years in terms of the housing requirement remain relevant and applicable to the interpretation of para.226. For these reasons I consider that, as a matter of construction, para.226 requires the demonstration of a minimum of four years supply against a five years' worth of the relevant housing requirement or local housing need. Plainly, my advice in this respect will need to be considered if or when the anticipated clarification of the point is given by Government.

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