

RE: POLICIES MAP CHERWELL DC

ADVICE

1. I am asked to provide my opinion as to advice provided to Cherwell District Council (“the Council”) by Mr. Edwards KC, dated 30th January 2024¹. In that advice, Mr. Edwards KC’s overall conclusion is that,

“It is strongly arguable that what is included by way of maps in CDC’s (Cherwell District Council’s) reg.18 emerging local plan would meet the policy requirement within NPPF para.226 for such a plan to ‘include...a policies map’.”

2. As I set out in an opinion that I produced (with Miss Bell) in relation to an appeal at Heyford Park², I disagree. For the reasons set out therein, my opinion is that the Council has not produced a policies map in accordance with the requirements of NPPF226, and therefore remains an Authority that remains subject to the requirement to demonstrate a five – year housing land supply. My substantive reasons for so concluding are as set out in our first advice and are not repeated here. However. this advice should be read together with our previous advice. In this advice, I focus on the specific points made by Mr. Edwards KC.

(i) *Whether “the proviso” applies at Regulation 18 stage at all*

3. Paragraph 3 of Mr. Edwards KC’s advice queries whether the NPPF226 requirement “including both a policies map and proposed allocations towards meeting housing need” (“the proviso”) applies at the Regulation 18 stage at all.
4. It is a well-established principle that statements of policy should be interpreted objectively in accordance with the language used, read in its proper context (*Tesco Stores Ltd v Dundee CC* [2012] UKSC 13). In my opinion, both the wording and context of the policy support my conclusion that the proviso applies to an emerging

¹ The advice is actually dated 30th January 2023, but that is clearly a typographical error.

² Dated 11th January 2024

plan at all stages of plan making specified in the paragraph, including where a plan has reached Regulation 18 consultation stage.

The wording of paragraph NPPF226

5. First, the wording of the policy in NPPF226 is clear. The first clause in the sentence sets out the stage that the emerging plan must have reached to benefit from the policy. It does not distinguish between the different stages of plan making. To the contrary, it expressly refers to all plan making stages,

*“This policy applies to those authorities which have **an emerging plan that has either** been submitted for examination **or** has reached Regulation 18 **or** Regulation 19 (Town and Country Planning (Local Planning England) Regulations 2012) stage”*
(emphasis added).

There is then a comma, following which the proviso is set out,

“, including both a policies map and proposed allocations to meet housing need”
(emphasis added)

6. The proviso is therefore contained in a relative clause that gives additional information about the noun in the first clause. The grammar is such that, on a plain reading of the sentence, the proviso applies to “*an emerging plan*”. As set out above, the “*emerging plan*” is defined by the first clause as one that has reached “*either*” submission “*or*” Regulation 18 “*or*” Regulation 19 “*stage*”. Therefore, the requirement for a both a policies map and proposed allocations to meet housing need applies to “*an emerging plan*” that has “*either*” been submitted “*or*” has reached Regulation 18 “*or*” Regulation 19 stage.

The context to NPPF226

7. I note that the consultation draft of the NPPF contained different wording to that contained in the published NPPF. Paragraph 226 of the consultation draft provided,

*“...From the date of publication of this revision of the NPPF, for the purposes of changes to paragraph 61, for decision-taking, **where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) consultation which included both a policies map and proposed allocations towards meeting housing need, and the housing requirement as set out in strategic policies has become more than five years old in the extant plan, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing against their local housing need instead of a minimum of five years as set out in paragraph 75 of this document.**” (emphasis added)*

8. The government’s response to the consultation into the revised NPPF records that there was some confusion as to what this requirement/proviso would entail ³,

*“There were also some calls for clarity on exactly which plans would be eligible for this measure. **This included calls for clarity over whether a “policies map” was required at Regulation 18 stage, when the 2-year transition period would run from, and whether it would only apply to eligible plans where the local authority is proposing to change its housing requirement considering the wider changes.**” (Emphasis added).*

9. The government responded as follows,

*“To help further address concerns about interactions with other supply policies, we have made clear that the policy will apply to local plans at examination, Regulation 18, or Regulation 19 stage with a policies map and proposed allocations towards meeting housing need. **When an authority has an emerging plan that meets these requirements, the respective authority need only demonstrate a 4-year housing supply for decision making purposes.**” (Emphasis added)*

³ See Government response to the Levelling Up and Regeneration Bill: reforms to national planning policy consultation, and the section “Enabling communities with plans already in the system to benefit from changes”, Government Response to Question 16

The highlighted section above suggests that the intention was that the requirements (policies map and proposed allocations) are intended to apply to “*an emerging plan*” and do not, therefore, exclude plans at Regulation 18 stage. This was then reflected in the revised wording of the published NPPF, where the proviso was re-drafted as a relative clause. As set out above, this revised drafting makes it clear that the requirement for a policies map and proposed allocations to meet housing need applies to “*an emerging plan*” that has “*either*” been submitted “*or*” has reached Regulation 18 “*or*” Regulation 19 stage.

10. Mr. Edwards KC notes (in paragraph 3 of his advice) that there is no requirement, in legislation, for a policies map to be prepared at Regulation 18 stage. I do not think that this takes matters any further. NPPF226 is not prescribing what must happen at each stage of plan making. Instead, NPPF226 sets out what a LPA must do if it is to benefit from the policy within it (that is, to demonstrate a four as opposed to a five – year housing land supply).

11. As set out in my first advice, and as made clear in the *Jopling v Richmond upon Thames LBC*⁴ and *R (oao Bond) v Vale of White Horse DC*⁵, the policies map is a separate document to the Local Plan and is a LDD and not a DPD. That is why the Inspector, in examining a Plan, has no power to recommend Main Modifications to the policies map⁶. It is also why, in the *Vale of White Horse* case, the Court rejected the Claimant’s submission that revisions to a policies map must be made through the statutory procedure for amending a local plan. The Court confirmed that there are wider and more general powers within the PCPA that permit the Council to lawfully revise the policies map (see paragraph 58). These general powers include paragraph 26 (1) of the PCPA,

“*The local planning authority may **at any time** prepare a revision of a local development document*” (emphasis added)

⁴ [2019] EWHC 190 (Admin)

⁵ [2019] EWHC 3080 (Admin)

⁶ See *Jopling*, paragraph 16. This is now paragraph 6.6 of PINS “Procedure Guide for Local Plan Examinations”.

12. In short, whilst Mr. Edwards KC is right that there is no *requirement* to prepare, notify or consult on any policies map at the Regulation 18 stage, paragraph 26 (1) PCPA *empowers* the LPA to prepare a revision to its adopted policies map “*at any time*”. The LPA can therefore choose prepare a revision to its policies map when it carries out its Regulation 18 consultation.

13. Further, I am not clear why Mr. Edwards KC says that a policies map is “*unlikely to be available*” at Regulation 18 stage, or what evidential basis there is for the same. As the Court noted in *Jopling*,

“15 *The map is simply a geographical illustration or representation of policies themselves contained in the local plan upon which it is parasitic...*”

It is perfectly conceivable that, where policies are sufficiently advanced at Regulation 18 stage, a LPA might consider that including a policies map together with its Regulation 18 consultation would assist members of the public understanding geographical extent of its proposals, and could therefore be of value to the consultation process. By way of example, I am aware that Bradford, Trafford, West Sussex and, in Oxfordshire, the Vale of White Horse District and South Oxfordshire District, all included a draft policies map alongside their Regulation 18 Local Plan consultations⁷.

14. It is also to be remembered that the proviso in NPPF226 requires “*both*” a Policies Map “*and*” proposed allocations to meet housing need. However, there is no *requirement* for a local plan to make allocations to meet housing need at the Regulation 19 stage or at submission stage. Indeed, a LPA might choose to produce a Core Strategy that does not make any allocations, and subsequently produce a Site Allocations Plan containing its allocations to meet the identified housing need⁸. Clearly, the fact that there is no *requirement* to propose allocations to meet housing need at Regulation 19 stage does not mean that NPPF226 is *incapable* of applying at Regulation 19 stage (indeed, Mr. Edwards KC accepts that the proviso can apply at

⁷ See extracts from the relevant webpages provided to me by those that instruct me

⁸By way of example, this approach was taken by Rother District Council. See relevant webpage extract provided to me by those that instruct me.

the Regulation 19 and submission stage). However, if a particular plan is at Regulation 19 stage, but does not propose allocations to meet housing need, it will not benefit from the policy in NPPF226.

15. Equally, whilst there is no *requirement* to include a policies map or propose allocations to meet housing need at Regulation 18 consultation stage, if a LPA *chooses* not to, it will continue to be subject to the requirement to demonstrate a five – year housing land supply.
16. I consider this interpretation to be entirely logical and consistent with the government’s stated objective of “*rewarding local authorities at an advanced stage of plan making*”⁹. A LPA that has worked up proposals to meet housing need and produced a policies map to illustrate geographically the application of its proposed policies, and has consulted on the same, is at a more advanced stage in progressing a plan to meet its housing need than a LPA that has not. It is also of note that NPPF226 applies during a 2-year transitional period. This allows those more advanced LPAs time to progress their proposals through the Plan making stage to adoption. During that time, those LPAs with a sufficiently advanced plan will only be required to demonstrate a four – year supply of housing land.
17. On Mr. Edwards KC’s interpretation, however, all LPAs at Regulation 18 stage would benefit from the four – year transitional provision. It is hard to see why that should be the case. Consultation proposals at Regulation 18 stage can be very broad brush because, as Mr. Edwards KC notes, Regulation 18 only *requires* the LPA to give notification of the “*subject of a local plan which the LPA propose to prepare*” and invite representations as to what a local plan with that subject ought to contain (Regulation 18 (1)). As set out above, the government’s objective is to “*reward local authorities at an advanced stage of plan making*” and to allow them time to get their proposals to meet housing need in place (through the 2 – year transitional arrangements). The application of the proviso at the Regulation 18 stage achieves that objective, because it ensures that only those authorities that are at a sufficiently advanced stage can benefit from a less onerous requirement to demonstrate a four – year supply.

⁹ Ministerial Statement “The Next Stage in our Long Term Plan for Housing Update” 19th December 2023

18. Finally, in my opinion, an interpretation whereby a LPA could benefit from the policy in NPPF226 simply because a plan has reached Regulation 18 stage creates an illogical tension in respect of the operation of NPPF226. It would mean that a LPA that consulted on the broadest of proposals at Regulation 18 stage, with no policies map or proposed allocations to meet housing need, would only be required to demonstrate a four - year supply of housing land. However, if the same LPA then progressed the same plan to Regulation 19 consultation stage without meeting both limbs of the proviso (and both limbs of the proviso must be met to satisfy it)¹⁰, the LPA would be required to demonstrate a five – year supply. That is, the LPA would benefit from the four – year supply protection at Regulation 18 stage but would lose the four – year supply protection when its plan reached a more advanced stage. I do not see how that approach can possibly be right. It would also be a disincentive to LPAs progressing their plan making, which is the antithesis of the government’s stated objectives.

19. For all those reasons, and for the reasons set out in our first advice, I am firmly of the view that the proviso applies to an emerging plan at the Regulation 18 stage, as well as at the Regulation 19 stage and on submission. The proviso is clear. It requires both a policies map and proposed allocations to meet housing need. In the absence of either, that LPA’s plan making process is not sufficiently advanced to benefit from the transitional provisions in NPPF226, and the LPA will continue to be subject to a requirement to demonstrate a five – year housing land supply. That is the case in Cherwell DC for the reasons set out in my first advice, and below.

(2) What is required to satisfy the proviso?

(a) Can a policies map be included in the plan or is it a separate document?

20. At paragraph 7, Mr. Edwards KC sets out that if he is wrong and “*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***” (emphasis added).

¹⁰ I note Mr. Edwards KC accepts that the proviso “bites” at Regulation 19 stage and submission stage to determine whether a LPA can benefit from the four – year provision in NPPF226.

21. I disagree. A policies map cannot be “*included physically in a such a local plan*” because, as a matter of law, the local plan and the policies map are separate documents:

(a) The local plan itself is a DPD (Regulation 6) and includes documents of a description referred to regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b). Its preparation is therefore subject to the procedures in Part 6 of the Regulations.

(b) In contrast, “*any map*” that “*accompanies*” a relevant local plan¹¹ “*and which shows how the adopted policies map would be amended by the document, if it were adopted*” is to be prepared as a LDD (Regulation 5 (1)). LDDs are not subject to the requirements of Part 6 of the Regulations in respect of their preparation.

22. The characterisation of the policies map as a separate document is not, therefore, an “*inflexible technicality*” that Ms. Bell and I have devised (Mr. Edwards KC paragraph 7). It directly results from the operation of the legislation. It is a distinction that has been confirmed by the Court in both *Jopling* and *Vale of White Horse* (above and see our first advice).

23. The distinction between the local plan and the policies map also has real world implications. This is because, as set out above, the local plan itself is subject to the statutory procedures in Part 6 of the Regulations, including those relating to consultation, submission, examination, and adoption. A policies map is a LDD, so is not subject to those procedures. Thus, whilst the policies map is to be “*made available*” with the other submission documents prior to submission (in accordance with Regulation 19), and whilst a policies map is to be sent to the Secretary of State “*in addition to*” the DPD if the adoption of the local plan would result in changes to the adopted policies map (Regulation 22 and section 20 (3) PCPA), the Inspector cannot recommend Main Modifications to the policies map, because it is not a DPD and he/she does not have the power to do so. This is a point expressly recognised in PINS own Procedure Guide for Local Plan Examinations, which states,

¹¹ See the classes of document set out in Regulation 5 (a) and see also Regulation 5 (b)

“6.6. The policies map is not defined in legislation as a development plan document. This means that the Inspector has no powers to recommend MMs directly to it.”

Similar wording in an earlier iteration of this Guidance, and the Local Plan Inspector’s approach at examination that followed it, was endorsed as correct by the Court in the *Vale of White Horse* case (paragraphs 53 – 54).

24. Nor do I think that NPPF226 contemplates the policies map can be *“included in a reg 18 Plan”* as suggested by Mr. Edwards KC at paragraph 7. First, one can assume that the authors of national policy understood the distinction, in law, between a local plan (which is a DPD) and a policies map (which is a LDD, and subject to a different process).

25. In any event, I do not think that the wording of NPPF226 invites the conclusion that the Policies Map can be *“included in the Plan”*. To recap, it sets out that,

“This policy applies to those authorities which have an emerging plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 stage, including both a policies map and proposed allocations to meet housing need”
(emphasis added).

26. The words *“including ... a policies map”* need to be understood in their proper context (*Tesco* – above). As set out above, as a matter of law, the way that a policies map is “included” where an emerging plan is progressed through the plan making process is for the policies map to be produced as a separate LDD *“which accompanies”* the local plan (Regulation 5 (b)). The policies map is to be *“made available”* with the other submission documents prior to submission (Regulation 19) and is to be sent to the Secretary of State *“in addition to”* the DPD if the adoption of the local plan would result in changes to the adopted policies map (Regulation 22 and section 20 (3) PCPA). In examining the plan, the Inspector does not have power to suggest main modifications to the policies map, because it is a separate LDD, and not part of the DPD (above). In short, the legal framework is such that the policies map is a document that sits alongside the emerging local plan, and not within it.

27. Therefore, and put simply, whether an emerging plan has reached Regulation 18 consultation stage or Regulation 19 consultation stage or submission stage, for a LPA to benefit from the provisions of NPPF226, there is a requirement for a separate policies map. Cherwell did not include such a map when its emerging plan reached Regulation 18 stage, and it cannot therefore benefit from the four – year requirement in NPPF226.
28. Not only is the policies map a document that is distinct from the local plan in legal terms, but one can also readily understand why, as a matter of practicality, it is appropriate for it to be produced as a separate document that sits alongside the local plan. As we set out in our first advice, the requirement for a distinct, composite map, illustrating the geographical application of relevant policies across the LPA’s area is, presumably, to ensure that members of the public and interested parties are not required to cast around amongst various maps/plans/documents, dispersed through what might well be a very extensive and lengthy local plan, to understand how policies/proposed policies might apply and fit together across the LPA’s area, or how this might affect their interests. The requirement for a separate, composite map illustrating the geographical application of relevant policies across the LPA area, ensures that members of the public are not required to conduct a paper chase to locate pieces of a jigsaw, and slot these together themselves, to understand the geographical application of the policies of the plan.
29. For all those reasons, I disagree with Mr. Edwards KC that the various maps/plans/photographs, and/or other illustrative material dispersed within Cherwell DC’s Regulation 18 plan can be properly characterised as a policies map.

(b) What must a policies map contain?

30. At paragraph 4 of his advice, Mr. Edwards KC notes that there is no statutory definition of what a policies map might include at Regulation 18 stage, and,
- “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 Regulation 18 publication and what it contains”.*

31. I do not agree.

32. First, as set out above, the policies map is a separate document to the Local Plan.

33. Second, Regulation 9 of the 2012 Regulations sets out clearly what an adopted policies map is required to contain. We dealt with this in our first advice, but for ease of reference, I set it out again below,

Form and content of the adopted policies map

9.—(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority's area which must—

(a) be reproduced from, or be based on, an Ordnance Survey map;

(b) include an explanation of any symbol or notation which it uses; and

(c) illustrate geographically the application of the policies in the adopted development plan.

34. I appreciate that a policies map produced/included at Regulation 18 stage will not have reached the stage of adoption. However, as set out above, the policies map is to be prepared as a Local Development Document (Regulation 5). I do not think that the stage the process/preparation of that document has reached can affect the question of whether the document in question can properly be characterised as a policies map at all, or what it must contain to be so characterised. In that respect, I note that requirements in Regulation 9 are relatively straightforward, and simply ensure that the map is produced in a legible way that is fit for purpose. I cannot see why different criteria should apply to determining whether a document at an earlier stage of preparation is or is not a “policies map”.

35. I consider that the PPG supports my interpretation. It sets out that,

“The policies map should illustrate geographically the policies in the plan and be reproduced from, or based on, an Ordnance Survey map. If the adoption of a local plan would result in changes to a previously adopted policies map, when the plan is submitted for examination, an up to date submission policies map should also be

submitted, showing how the adopted policies map would be changed as a result of the new plan.” (Emphasis added)

The PPG sets out what a policies map “should” do, but it does not define this by reference to the stage plan making has reached, or by reference to the stage of preparation of the LDD itself.

36. Further, I think that Mr. Edwards KC’s interpretation is rather fraught with difficulty from a practical perspective. Essentially, if Mr. Edwards KC is correct, in every case where a housing application is made, the decision maker would need to carry out a trawl of the consultation document in question, identify all the plans and illustrative material within it, piece it all together, and come to a judgment as to whether there are sufficient pieces of the jigsaw that are also of an appropriate character, to conclude there is a policies map. Mr. Edwards KC has suggested no objective criteria (for example, by reference to legislation or policy) against which such an assessment could be conducted, either in respect of Cherwell, or elsewhere.
37. The difficulty is compounded for Cherwell, since, even taken together, the various maps, plans and photographs do not comprehensively illustrate geographically the application of the proposed policies in the plan (see e.g. paragraphs 16 – 19 of our first advice). This does not appear to be disputed. Indeed, Mr. Edwards KC goes no further than suggesting that these plans show the extent of “*some*” of the policies and policy allocations contained in the Regulation 18 consultation (paragraph 5).
38. The question then arises as to *how* or *why* the decision maker is supposed to form a judgment as to whether a suite of plans/illustrative material, which is accepted not to be comprehensive, is sufficient to constitute a policies map, or on *what basis* having regard to the relevant legislation and national policy. That is not a question grappled with in Mr. Edwards KC’s advice, which does not purport to calibrate the assessment that these plans are sufficient against any objective criteria. In short, it is unclear why the conclusion is then reached that what is available, which is not in any event comprehensive, is sufficient to constitute a policies map, what criteria have been applied to reach that judgment, or what basis any such criteria have.

39. In contrast, my interpretation of “policies map” is based on the clear, objective criteria set out in the 2012 regulations. As these criteria are set out in legislation, they can easily be understood, and can objectively applied by a decision maker to determine whether a LPA has included a “policies map” for the purposes of NPPF226. This supports my interpretation as to the correct interpretation of NPPF226 (above).

40. Cherwell’s incomplete jigsaw of maps, plans, and other illustrative material, dispersed within its Regulation 18 plan, do not meet the criteria in the 2012 Regulations for the reasons set out in paragraphs 16 – 19 of our first advice and above. In this respect I note that Mr. Edwards KC appears to accept that,

“It may well be that this series of plans could be claimed not to 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”.

41. For all those reasons I am firmly of the opinion that the series of plans, photographs, and illustrative material, dispersed across Cherwell’s Regulation 18 consultation plan, cannot properly be characterised as a policies map.

(4) Cherwell District Council’s own approach

42. Finally, Mr. Edwards KC’s advice does not deal with a point raised in our first advice relating to Cherwell DC’s own approach to this issue.

43. In our first advice, we noted that Cherwell DC’s own Regulation 18 consultation document expressly sets out that the plans and maps included in that document were considered to be distinct from those that would be contained in a policies map. We gave the example of Policy CP56 (page 127), which sets out that sites comprising LGS will be shown,

“on the policies map and Appendix 7”¹².

¹² Chapter 3 – Theme 3 – Building Healthy and Sustainable communities

44. There are numerous other examples. Some of these are set out below (emphasis added):

- Page 68 – Core Policy 32 refers to boundaries of the town centres etc,

*“defined on the Policies Map **and** by Appendix 10”.*

- Page 146 – Core Policy 65 refers to a Banbury Tramway Road Improvement being,

*“shown by Banbury Tramway Road Improvements map **and** on the Adopted Policies Map.*

- Page 148 – Core Policy 66 refers to green and blue infrastructure and assets in the Bicester area¹³,

*“ shown by maps in Appendix 6 **and** the Adopted Policies Map”.*

- Page 170 – Core Policy 73 refers to green and blue infrastructure and assets in the Bicester area,

*“shown by maps in Appendix 6 **and** the Adopted Policies Map”.*

- Page 195 – Core Policy 80 refers to Kidlington green and blue infrastructure,

*“shown on maps in Appendix 6 **and** the Adopted Policies Map.*

45. The Council’s own drafting therefore clearly illustrates that the Council envisaged that a separate policies map would be produced in addition to the material within the consultation document and its appendices (use of the word “*and*” in each of the examples above).

46. I consider that this demonstrates very clearly that the Council did not consider their Regulation 18 plan / consultation to include a policies map – the policies map is expressly contemplated to be a distinct document to the other plans referred to. To date, no such document has been produced.

¹³ Albeit this policy is actually referring to Banbury and Bicester

47. On the face of the Council's own Regulation 18 consultation document, drafted by the Council itself, the various maps, plans, and illustrative material within the Regulation 18 consultation plan do not constitute a policies map.

Conclusion

48. For the reasons set out in our first advice and herein, I remain firmly of the opinion that Cherwell DC does not meet the requirements of NPPF226. Cherwell DC remains an Authority that is subject to the national policy requirement to demonstrate a five – year housing land supply.

7th February 2024

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