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Neutral Citation Number: [2020] EWHC 954 (Admin)

Case No: CO/5006/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/04/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

THE QUEEN ON THE APPLICATION OF WILTSHIRE COUNCIL

Claimant

v

SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

Defendant

v

MR W HOWSE

Interested Party

- -

Mr Hashi Mohamed (instructed by **Wiltshire Council Legal Services**) for the **Claimant**
Mr Mark Westmoreland Smith (instructed by **Government Legal Department**) for the **Defendant**
Mr Peter Wadsley (instructed by **Thrings LLP**) for the **Interested Party**

Hearing dates: **2 April 2020**

- -

Approved Judgment

Mrs Justice Lieven :

1. This matter concerns an application for statutory review under s.288 of the Town and Country Planning Act 1990 of an appeal decision decided by an Inspector ("the Inspector") appointed by the Defendant, the Secretary of State for Communities, Housing and Local Government ("the Secretary of State"), dated 22 November 2019 ("the appeal decision") concerning land at Providence Cottage, Braydonside, Brinkworth, Wiltshire ("the site").

2. The Claimant and local planning authority is Wiltshire Council ("the Council"). The Interested Party, Mr Howse, appealed the decision of the Council to refuse planning permission dated 8 July 2019 ("the Council's decision") for the proposed new dwelling at the site. The appeal was determined by the Inspector following a written representations procedure.

3. The Claimant was represented before me by Mr Mohamed, the Secretary of State by Mr Westmoreland Smith, and the Interested Party by Mr Wadsley. I am very grateful to all of them for their assistance. The hearing was conducted by video link on Skype given the coronavirus pandemic.

4. The issue in the present case is whether the Inspector erred in her interpretation of the words "subdivision of an existing residential dwelling" in para 79(d) of the National Planning Policy Framework (NPPF). She applied those words to the subdivision of the residential planning unit where there were two separate buildings in residential use, and it was the second and separate building which was the subject of the application. The Council argues that in the context of para 79(d) the subdivision must be of one physical residential building and therefore the Inspector was wrong to apply the policy in the circumstances of the appeal before her.

5. On 15 January 2020 the Secretary of State indicated that he did not intend to contest the claim. Mrs Justice Lang granted permission to bring the proceedings on 3 February 2020. On 13 February 2020 Mr Justice Holgate ordered that the Secretary of State attend the hearing through counsel. Therefore, Mr Westmoreland Smith attended at the hearing, supporting Mr Mohamed's case, and the task of defending the decision letter fell on Mr Wadsley.

The Facts

6. The Interested Party made an application on 8 May 2019 to the Council. The description of the development is given as an 'Independent use of an annex'. The application sought permission to change the use of annexed accommodation from ancillary to independent residential accommodation. The red line on the application plan is around the annex building and a small surrounding area. The larger plot includes Providence Cottage and a fairly large area of land behind.

7. The factual position is that the site is outside the settlement boundary of the village. The principal building, Providence Cottage, is some 19 metres from the annex with a driveway running between the two. Planning permission was refused in 2014 for the

conversion of the garage/outbuilding on the site to be converted into a separate dwelling. The garage/outbuilding was subsequently adapted to provide an annex which, according to the Interested Party's planning consultant, forms an integral part of the single planning unit. It was this building which formed the subject of the 2019 application. I note at this point that there had been no planning application or grant of permission in respect of the use of the outbuilding as a residential annex. There is an email from a planning officer at the Council, Mr Croft, dated 15 January 2015 in which he says "*it would appear that the annexe forms an integral part of the residential planning unit, and accordingly use of the annexe, as described, does not constitute development for which planning permission is required.*" Mr Croft requested that a unilateral undertaking be entered into which would prevent the annex from being sold or rented separately or have a separate curtilage created. No such undertaking was entered into. Therefore, at the point the 2019 application was made, the annex was in residential use and the Council had accepted that was a lawful use which did not require permission.

8. The application for planning permission was made on 8 May 2019. On 30 May 2019 an Officer's Report ("OR") considered the application in detail and recommended refusal on the basis that the proposal did not accord with development plan policy. On 8 July 2019 the notification of refusal of planning permission was issued to that effect. The two material reasons for refusal included (1) that the proposal is contrary to local and national policy; and (2) the proposal would be located in a remote place from a range of services, employment opportunities and will not be well served by public transport, also contrary to local and national policy.

9. An appeal was lodged on 27 August 2019 by the Interested Party to the Inspectorate against the Council's decision to refuse planning permission. The appeal progressed by way of the written representations made. It was allowed by a decision letter dated 22 November 2019.

Decision Letter

10. The decision letter records the relevant policies in the Wiltshire Core Strategy (WCS) which I will set out below. DL4 states;

> *"the appeal site is a modest detached structure within the ground of Providence Cottage and provides residential accommodation as an annex, and therefore, comprises part of a planning unit that is in use as a dwelling house (class C3). It is proposed that the annex should become an independent dwelling such that there would be two Class C3 planning units."*

11. The Inspector then described the distance from the site to the village, being some 2km, and that the site would appropriately be described as being isolated (DL5). She found that the proposal did not meet the criteria in CS policy CP48.

12. At DL8 she referred to the NPPF being a material consideration and critically says at DL9-11:

> *9. Paragraph 79 of the Framework states that isolated homes in the countryside should be avoided save for 5 exceptions, one of which*

expressly refers to the subdivision of an existing residential dwelling. Given that these are deliberate exceptions to the normal approach to isolated dwellings, it is implicit that account had already been taken of the relatively poor accessibility that is likely to occur in such locations. In this regard I concur with the findings of the Inspector in a recent appeal to which I am referred.

10. *The Council consider that paragraph 79(d) would not apply to the appeal proposal as it relates to a detached residential annex rather than a physical component of the main house. However, I have not seen evidence to substantiate why such narrow interpretation would be applicable to the term 'dwelling' such that it would exclude the configuration of built form before me. The wording of paragraph 79(d) is not qualified by reference to what form the existing residential development must take, nor is it clear why that would be especially relevant to the principle of sub-division. The proposal would sub-divide the existing planning unit comprising a single dwelling and annex providing habitable residential accommodation into two dwellings. Therefore, I find that it would fall within the scope of the exception set out in paragraph 79(d).*

11. *Paragraph 21.3 of the Framework stipulates that due weight should be given to development plan policies that pre-date the Framework according to their degree of consistency with the Framework. Therefore, although policies CP48, CP60 and CP61 of the CS, amongst other matters, seek to restrict isolated residential development that heavily relies on the private car as the principal mode of transport, there is recent and express national policy that applies more directly to the circumstances of the appeal proposal. This limits the weight I can give to the CS policies as well as to decisions that refused similar development made prior to the introduction of paragraph 79(d).*

Policy Context

Wiltshire Core Strategy

13. Core Policy 1 and 2 of the Wiltshire Core Strategy (2015) sets out a settlement strategy across the county that seeks to direct a level of residential development proportionate to the scale of settlements within a hierarchy. Core Policy 2 provides for a strategy which sets out what is to be within and outside the defined limits of development. The CS seeks to direct most residential development to the principal settlements and market towns to focus development in settlements in areas with a good range of local facilities and better access to public transport.

14. Core Policy 48 goes on to set out the circumstances in which proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where they satisfy the criteria set out. The policy then goes on to state;

"Where there is clear evidence that the above uses are not practical propositions, residential development may be appropriate where it meets

the above criteria. In isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances, in line with national policy."

National Planning Policy Framework

15. Paragraphs 77-79 of the NPPF deal with "Rural Housing".

77. *In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilities this.*

78. *To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.*

79. *Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential dwelling; or

e) the design is of exceptional quality, in that it:

- is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

Legal Framework

16. By s.78(1)(a) where a local planning authority refuses an application for planning permission or grants it subject to conditions, the applicant may by notice appeal to the Secretary of State.

17. The principles on which a court should approach a challenge under s.288 are very well known. In Bloor Homes East Midlands Ltd v SSCLG (Admin) [2014] EWHC 754 (Admin) at 19) Lindblom J (as he then was) set out the principles to be applied in a s.288 challenge;

> *"The relevant law is not controversial. It comprises seven familiar principles:*
>
> *(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28).*
>
> *(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council and another v Porter (No. 2) [2004] 1 WLR 1953, at p.1964B-G).*
>
> *(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in Newsmith v Secretary of State for [2001] EWHC Admin 74, at paragraph 6).*
>
> *(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in Tesco Stores v Dundee City Council [2012] PTSR 983, at paragraphs 17 to 22).*

> *(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, South Somerset District Council v The Secretary of State for the Environment (1993) 66 P. & C.R. 80, at p.83E-H).*
>
> *(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58).*
>
> *(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137, at p.145).*

18. The present case turns on the correct interpretation of planning policy, namely para 79 of the NPPF. It is therefore important to have regard to what Lord Reed said in Tesco v Dundee CC in the Supreme Court at paras 17-21;

> *17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, Gransden & Co Ltd v Secretary of State for the Environment (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; Horsham DC v Secretary of State for the Environment (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of City of Edinburgh Council v Secretary of State for Scotland 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:*

"In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it."

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as "a proper interpretation" of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a "proper interpretation" of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in R (Raissi) v Secretary of State for the Home Department [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per

Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

20. The principal authority referred to in relation to this matter was the judgment of Brooke LJ in R v Derbyshire County Council, Ex p Woods [1997] JPL 958 at 967. Properly understood, however, what was said there is not inconsistent with the approach which I have described. In the passage in question, Brooke LJ stated:

"If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy."

By way of illustration, Brooke LJ referred to the earlier case of Northavon DC v Secretary of State for the Environment [1993] JPL 761, which concerned a policy applicable to "institutions standing in extensive grounds". As was observed, the words spoke for themselves, but their application to particular factual situations would often be a matter of judgment for the planning authority. That exercise of judgment would only be susceptible to review in the event that it was unreasonable. The latter case might be contrasted with the case of R (Heath and Hampstead Society) v Camden LBC [2008] 2 P & CR 233, where a planning authority's decision that a replacement dwelling was not "materially larger" than its predecessor, within the meaning of a policy, was vitiated by its failure to understand the policy correctly: read in its context, the phrase "materially larger" referred to the size of the new building compared with its predecessor, rather than requiring a broader comparison of their relative impact, as the planning authority had supposed. Similarly in City of Edinburgh Council v Scottish Ministers 2001 SC 957 the reporter's decision that a licensed restaurant constituted "similar licensed premises" to a public house, within the meaning of a policy, was vitiated by her misunderstanding of the policy: the context was one in which a distinction was drawn between public houses, wine bars and the like, on the one hand, and restaurants, on the other.

21. A provision in the development plan which requires an assessment of whether a site is "suitable" for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word "suitable", in the policies in question, means "suitable for the development proposed by the applicant", or "suitable for meeting identified deficiencies in retail provision in the area", is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed

Submissions

19. Mr Mohamed's submissions, supported by Mr Westmoreland Smith, are as follows. The starting point is that the meaning of "dwelling" within para 79(d) is a question of law, and as such a matter for the court. "Dwelling" is a word which takes its meaning from its context, and therefore limited assistance is to be drawn from other statutory contexts and the caselaw upon them. The context of the NPPF, and paras 77-79 in particular, points strongly to the exception in para 79(d) being narrowly construed. The use of the word "sub-division" combined with "dwelling" indicates that the sub-paragraph is concerned with one physical building. If the NPPF had intended to include the sub-division of a residential planning unit, or a residential plot, then it would have used different words. The purpose or intent of the NPPF strongly points in favour of the narrow construction because otherwise the policy could give rise to a proliferation of new dwellings in isolated rural locations, which is plainly contrary to the overall intention of the NPPF in respect of such locations.

20. Mr Mohamed points to a number of recent appeal decisions since the changes to the NPPF in July 2018 where Inspectors have taken the narrower approach to para 79(d). I have been taken to five appeal decisions in which para 79(d) has been in issue where a variety of different conclusions have been reached by the Inspectors involved. It is apparent that Inspectors have differed in their interpretation of the sub-paragraph rather than having just differed on its application to the facts of the case before them. Ultimately those decisions do not help me very much because the interpretation of the policy is a matter of law for the Court and the Inspectors' decisions do not show any clear indication of their approach to the policy. What is clear is that there is considerable confusion over what "dwelling" in para 79(d) means and there is an issue of law which needs to be determined.

21. Mr Westmoreland Smith supported these arguments. He pointed out that the consultation draft version of the 2018 NPPF had at para 79(d) used the word residential "property", but this had been changed in the final version to "dwelling". He said that this was to prevent larger curtilages being developed as a result of the policy change and there was a deliberate choice to focus on the building rather than the plot. He said that it had been the Secretary of State's intention that para 79(d) would apply to the subdivision of single houses, not wider residential properties or curtilages. He supported Mr Mohamed's submission that para 79 set out a series of exceptions to the policy of avoiding development of isolated homes in the countryside and, as such, the exceptions should be narrowly construed. He also points to the fact that "dwelling" is not the word used in the rest of chapter 5 of the NPPF, rather it refers to "homes" and therefore dwelling must have been meant to have a narrow definition.

22. Mr Wadsley argued that the word "dwelling" can have a variety of meanings, but generally means a home and he relies on *Miah v Secretary of State for Work and Pensions* [2003] EWCA Civ 1111. The Court of Appeal there was considering what was the "dwelling" for the purposes of assessing capital under the Jobseekers Allowance Act. Mr Miah and his family occupied two adjoining properties, and the issue was whether both should be disregarded. At [26] Ward LJ said;

> *If one approaches construction of the words literally, one notes that the word "dwelling" has been chosen, not, for example, "dwelling-house" nor "residential accommodation". "Dwelling" is defined by the Oxford*

> *English Dictionary as "Place of residence; dwelling-place, habitation, house". "Dwelling-place" is "A place of abode", whereas "Dwelling-house" is "A house occupied as a place of residence, as distinguished from a house of business, warehouse, office, etc." Because the single word is expanded into a phrase "dwelling occupied as the home" I am given the impression that the legislature intended to convey the function to be served by the concept of a dwelling rather than to connote its constituent elements, the bricks and mortar of the dwelling. The function is a place serving as home for the claimant. That place is not necessarily confined to a single building. For me this emphasis is reinforced by the inclusion within "dwelling" of "any garage, garden and outbuildings normally occupied as his home including any premises not so occupied ...". A barn converted for residential accommodation is part of the dwelling constituted by the farmhouse and that converted barn. I appreciate that not too much can be derived from that analogy because they both lie within the same curtilage, but it gives the flavour.*

23. Mr Wadsley relies on this passage for the reference to the Oxford English Dictionary that "dwelling" is a "place of residence" and Ward LJ's point that the Legislature had, by using the word "dwelling", focused on the function of the property rather than the bricks and mortar. To my mind the critical point that emerges from this case is that the context of the words used are key. In *Miah* the context suggested that the dwelling was not confined to one building and the policy background was the disregarding of the property for the purpose of means testing benefits. The context here is an entirely different one, and the reasons for focusing on the building rather than the wider unit is quite clear in a planning policy document where the issue is the form of physical development which is or is not supported by national policy.

24. On the basis of the various different definitions of dwelling, Mr Wadsley argues that the approach the Inspector took, that the dwelling included the residential annex, was one that was clearly open to her on the language and therefore was an application of the policy that fell within her planning judgement. On the policy, he argued that the NPPF supported a boost to the number of houses and the Inspector's construction of the policy supported an increase in housing. There was no obvious reason for the difference between allowing sub-division of a single house and allowing the sub-division of the residential unit. Both would lead to more households in the rural area, so the stated policy intent was not as clear cut as the Council and Secretary of State were suggesting.

25. He pointed out that there were necessarily safeguards in place to ensure that inappropriate development did not take place. If there were highway or other planning objections to the development then planning permission could be refused on those grounds. Mr Wadsley also referred to Gravesham DC v SSE 1982 47 P&CR 142, which establishes that for a building to be a dwelling house it must have the ability to provide its occupants with the facilities required for day to day living. He argued that to rely on the exception in para 79(d), the building for which planning permission was being sought would have to meet this test. For the reasons I have set out below I am not sure this analysis is correct, and, in any event, I do not think it would act effectively to limit the scope of the exception.

Conclusions

26. In my view Mr Mohamed and Mr Westmoreland Smith's arguments are correct, and the Inspector erred in law in her approach to para 79(d) of the NPPF. The starting point is that the meaning of "dwelling" within the paragraph is a question of the interpretation of policy, and not its application. The issue is whether "dwelling" means a single residential building, or a wider residential unit that can include secondary buildings within the same plot. That issue is capable of one objective answer regardless of the facts of any particular case, and as such falls within [18] of *Tesco v Dundee* as being a matter of law. This is the type of case where there is a difference from the *ex p Woods* approach to the approach of the Supreme Court in *Tesco v Dundee*. The issue is not whether the word "dwelling" is reasonably capable of carrying the meaning given to it by the Inspector but rather whether that is the correct meaning in the policy context. Once that issue of law is determined there may well be questions of planning judgement on a particular case as to whether those facts fall within para 79(d), for example whether the building being sub-divided is properly described as one dwelling or not.

27. I approach the meaning of dwelling by looking at the words themselves; the context in which they appear; and the overarching policy objective or "mischief". The words "sub-division of an existing residential dwelling" tend in my view towards the dwelling being one physical building rather than a wider residential unit encompassing other buildings. Although it is always possible to posit clearer or different words that could have been used, if the Secretary of State had intended to encompass sub-division of the residential plot then it would have been more natural to use the words "the residential unit" or "the property". To my mind, sub-division of a dwelling, implies a single building.

28. The change from the consultation draft of the 2018 NPPF which used the word "property" to the final version which used the word "dwelling" supports the Secretary of State's position that the intention was to narrow the exception and keep it to the single residential building. I should make clear at this point that, in my view, the Secretary of State's stated intention, as set out in the GLD letter and Mr Westmoreland Smith's written submissions, carries very little if any weight. As Lord Reed said in *Tesco v Dundee* it is not up to a policy maker to say what they think the policy means. It therefore cannot be open to the Secretary of State to say what he intended the policy to mean unless he can point to some contemporaneous document which shows that policy intent at the time the document was finalized. The only document that Mr Westmoreland Smith can point to is the change between the consultation draft and the final version. There is apparently nothing in the consultation response from the Secretary of State which deals with the point, and there is nothing equivalent to a White Paper or travaux preparatoire for the NPPF. Therefore, I am not assisted by the Secretary of State's asserted intention, save to the degree to which it is reflected in the change from consultation to final version of the NPPF.

29. Most importantly, in my view the context strongly militates towards a narrow interpretation. The sub-paragraphs in para 79 are exceptions to the general policy against creating new residential development in isolated rural locations. It is important to have in mind that the policy reason for not supporting new housing in such locations is that it would be fundamentally unsustainable, being poorly located for local services, and that sustainability lies at the heart of the NPPF. As such, it does in my view follow that the exceptions should be narrowly construed as being in general not supportive of sustainable development. The exceptions are all forms of development which could be

said to enhance the countryside, whether by adding housing for rural workers, or reusing redundant buildings. As the letter from GLD dated 15 January 2020 states, para 79(d) makes sense in this context as allowing the sub-division of large properties into flats where that is a good use of the existing dwelling. To allow the sub-division of residential units by allowing separate buildings to become separate dwellings goes well beyond that limited exception.

30. Mr Wadsley argues that there is support in the NPPF for a boost in housing supply and the Inspector's interpretation meets this policy intent. However, it is clear from Chapter 5 of the NPPF, and paras 77-79 in particular, that the general thrust of the policy to increase housing is specifically excluded when it comes to the creation of isolated homes in rural locations. Therefore, I do not think the broader policy in the NPPF is of assistance.

31. Mr Wadsley argues that as the policy plainly allows the sub-division of single residential buildings, there is no sound policy reason to say that it does not apply to the sub-division of residential units. However, there is in my view a very material distinction between sub-division of a single building and the type of sub-division which Mr Wadsley says falls within the policy. Many residential properties in the countryside have some form of outbuildings whether garages, sheds or barns. It is not entirely clear from Mr Wadsley's submissions what he says would be included in the "residential dwelling" in para 79(d) and whether the secondary building had to already be in actual residential use. On the facts of this case, the outbuilding/garage was being used for residential purposes and had been laid out with a bedroom, living room and bathroom. Therefore, both buildings could be said to be being used for residential purposes before the application for a separate dwelling.

32. However, it is also clear that the change from being used as a garage/outbuilding to a residential use was done without planning permission and the Council's officer Mr Croft had accepted that it did not need planning permission. Subject to there being no need for any operational development requiring permission, and there being no issue of planning conditions, then internal alterations of an outbuilding to allow ancillary residential use (i.e. not the creation of a separate residential dwelling) would not require planning permission. It follows from this that if para 79(d) supported the sub-division of a residential planning unit into two separate dwellings, then the implications could be very wide. Any residential property with a suitable outbuilding into which a residential use could be inserted would then have policy support to become a separate dwelling.

33. Therefore, even if the secondary building has to be in residential use at the point at which reliance is sought to be placed on para 79(d), this will often not be a difficult step to achieve. These issues merely highlight the potential extent of the exception to the policy against isolated rural development that would be created if Mr Wadsley's interpretation was correct.

34. For all these reasons I find that the Inspector erred in law in her interpretation of the word "dwelling" and the decision must be quashed and the appeal redetermined.