

Major Casework
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[Via email]

8th August 2024

Dear Leanne,

Appeal Ref. APP/D2320/W/22/3295556

We write further to the email received on 1st August 2024 requesting that the appeal parties advise if they consider the below have any relevance to our case:

1. Consultation on “Proposed reforms to the NPPF and other changes to the planning system” and the “National Planning Policy Framework: draft text for consultation”; and,
2. The Secretary of State’s Written Ministerial Statement entitled “Building the homes we need”.

Both the draft NPPF and the Written Ministerial Statement are material planning considerations, as confirmed by the High Court and Court of Appeal in *R (Cala Homes Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin) and [2011] EWCA Civ 639). It is acknowledged that the draft NPPF is still subject to consultation, which limits the weight it can be given; but nevertheless it should still receive material weight. The Written Ministerial Statement is also itself a material consideration which indicates the direction of travel of national planning policy, which itself should receive significant weight.

Of relevance, the draft NPPF proposes changes to paragraph 115¹ such that “*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, in all tested scenarios*” (additional text underlined).

The effect of this proposed change is to ensure that the worst-case scenario should not necessarily be determinative. Rather, for a refusal to be justified on highways grounds, there will need to be unacceptable highway safety impacts, or severe residual cumulative impacts on the road network, *in all tested scenarios*. The evidence presented by Mr Yeates (see CD M6, paragraphs 5.3.1 - 5.3.4, and CD M9, paragraph 3.3.7) demonstrates that the traffic flows analysed in the Transport Assessment are actually higher than current traffic flows. Therefore, notwithstanding that the proposed change to paragraph 115 of the NPPF indicates that the worst-case scenario should not necessarily be the determinative scenario to be considered, the Appellant’s evidence shows that even on a worst-case scenario there are no unacceptable highway safety impacts or severe residual cumulative impacts on the road network.

¹ Proposed paragraph 113

Paragraph 100² of the draft NPPF has also been amended to state that significant weight should be placed on the importance of new public service infrastructure when considering proposals for development. This includes criminal justice accommodation. We acknowledge that the Secretary of State has already attached significant weight to the need for the proposal (DL21) but the new wording proposed by the new Government further elevates the importance of the delivery of public infrastructure, and this should have a material impact on the planning balance.

Finally, the Written Ministerial Statement emphasises the need to “*build more of the infrastructure that underpins modern life – so today we are taking just the first steps in reforming how we deliver the critical infrastructure the country needs.*” Clearly, new prisons are an integral part of the infrastructure that underpins modern life and the urgent provision of new, modern prison places remains of critical national importance.

Yours sincerely



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Partner, Cushman & Wakefield Planning

² Proposed paragraph 98