

**FURTHER NOTE ON THE MEANING OF ‘DELIVERABLE’ IN  
THE CONTEXT OF THE NPPF’S “SOUNDNESS” TEST**

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**OPINION**

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**INTRODUCTION**

1. In an Opinion dated 15<sup>th</sup> January 2020 (EXD/076), Mr Charles Banner QC advanced the following propositions in respect of the correct interpretation of “*deliverable*” within paragraph 182 of the National Planning Policy Framework (2012). Those propositions were:

- (i) The interpretation of planning policy is an objective question;
- (ii) “*Deliverable*” does not mean “*certain to be delivered*”, “*likely to be delivered*” or “*expected to be delivered*”;
- (iii) “*Deliverable*” means “*able to be delivered*” or “*capable of delivery*”;
- (iv) The above interpretation is consistent with the interpretation given to “*deliverable*” in paragraph 47 of

the 2012 Framework per *St Modwen v. Secretary of State for Communities and Local Government* [2018] PTSR 746 and in particular that the fact that a particular site is capable of being delivered does not mean that it necessarily will be;

- (v) The meaning of “*deliverable*” in NPPF paragraphs 182 and 47 is the same and there is no good reason that they should differ.

2. In short, I entirely agree with Mr Banner QC that “*deliverable*” in this context does not mean that the Local Plan must be certain to be delivered. However, for the reasons which follow, I would interpret paragraph 182 of the Framework as a whole, to understand the meaning of “*deliverable*” in its proper context. I would not suggest any substitute for the policy in the Framework, but an interpretation of it. This is an effort to understand its meaning in context. What does it mean, and what does it not mean?
3. Mr Banner is correct, and I agree, that policy statements should be interpreted objectively and in accordance with the language used. This pair of propositions comes from *Tesco Stores Limited v. Dundee City Council* [2012] UKSC 13, reported at [2012] PTSR 983. However, the case also makes clear that policy statements are to be interpreted in their proper context. For completeness, the

relevant part of the ratio of the case, per Lord Reed at [18], states (emphasis added):

*“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.”*

4. The proper context here is the totality of the definition of *sound* and indeed the Framework as a whole.
5. Mr Banner’s note is really describing a Russian doll for which there is one word to be understood inside the meaning of another, inside the meaning of another, so:
  - (i) “*Deliverable*” is a part of the explanation of the bullet point “*effective*”;
  - (ii) The bullet point “*effective*” is a part of the definition of “*sound*”;
  - (iii) “*sound*” is a part of the Framework as a whole.
6. In my opinion, it is not sufficient to interpret a word in the Framework without explicitly addressing the context. That is what

*Tesco* tells us. Indeed, it applies to every document which was ever written. The context here is very significant. “*Deliverable*”, “*effective*” and “*sound*” are evidently to be understood coherently.

7. “*Sound*” is not defined in the 2004 Act. In the NPPF, para 182 states that a local plan should be “*sound*” in that it is:

**Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

**Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

**Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

**Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

8. The third and fourth bullet points refer to the concept of delivery. It follows, therefore, that the word “*deliverable*” ought not to be interpreted without having regard to the use of the word “*delivery*”

in the fourth bullet point. As Mr Banner correctly points out in his Opinion, relying upon the dicta of Lindblom LJ in *St Modwen*, that deliverability is not the same thing as delivery in the context identified in paragraph 47 of the Framework. But the definition of “*sound*” includes both of these words – see the third and fourth bullet points. For this reason, I do not consider that *St Modwen* assists very greatly.

9. I also note that “*delivery*” is referred to in paragraph 183 in the context of neighbourhood plans. For this further reason, I do not think that *St Modwen* assists here. It seems to me that there is no material distinction between the way in which “*deliverable*” is used in the third bullet point and the way in which “*delivery*” is used in the phrase “*should enable the delivery of sustainable development*” is used in the fourth bullet point.
10. Turning to the middle Russian doll, “*Deliverable*” in the third bullet point is to be interpreted consistently with the word “*Effective*”, which means:

“*Successful in producing a designed or intended result*”<sup>1</sup>.

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<sup>1</sup> Or see Collins English Dictionary: Something that is **effective** works well and produces the results that were intended.

*Homoeopathic treatment can be effective in treating virtually any illness.* [+ in]

*Simple antibiotics are effective against this organism.* [+ against]

*...an effective public transport system.*

**Synonyms:** efficient, successful, useful, active

11. So, having particular regard to delivery, the third bullet point is really asking whether or not the plan is actually going to result in that which the plan seeks to plan for.
  
12. As for the largest and outermost of the Russian dolls, namely the definition of “*sound*”, this is replete with language which speaks of meeting need and achieving development outcomes. The fourth bullet point explains– “*the plan should enable the delivery....*”. This is positively framed and focused on the achievement and realisation of the plan’s development objectives. I think that account needs to be taken of this language, and indeed all of the related paragraphs which address plan making. I do not consider that the definition of ‘*soundness*’, nor the Framework taken as a whole, is merely expecting that a plan is capable of doing what it set out to do.
  
13. Hence, in my opinion, when the question of delivery is understood in its proper context, as the leading authorities invite us to interpret such policy, the meaning of “*deliverable*” is not at as low a threshold as merely being “*able to be delivered*” or “*capable of being delivered*”. Rather, the Secretary of State is inviting Inspectors to ask themselves whether or not a particular plan is going to be effective in delivering what it plans to deliver over its period. Deliverability in the context of the effectiveness of a plan

over its plan period invites consideration of *whether or not the plan would be successful in delivering the result which it intends?*

**Richard Kimblin QC**

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No. 5 Chambers  
London • Birmingham • Bristol  
Tel: 0845 210 5555  
Email: [rk@no5.com](mailto:rk@no5.com)

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David Murray-Cox  
Director  
Turley  
The Pinnacle  
20 Tudor Road  
Reading  
RG1 1NH

**Richard Kimblin QC**



London • Birmingham • Bristol  
Tel: 0845 210 5555  
Email: [rk@no5.com](mailto:rk@no5.com)

Ref: 774250