

**3351035 - Judgements referred to by Appellant – Table of relevant paragraphs**

Core Doc Ref	Judgment	Ref	Relevant Paragraphs	Relevance
12.17	'Barnwell Manor'	Neutral Citation Number: [2014] EWCA Civ 137	24	States that parliament intended that the desirability of preserving the setting of Listed buildings should be given considerable importance and weight in the planning balance.
12.18	'Forge Fields'	Neutral Citation Number [2014] EWHC 1895 (Admin)	45	Paragraph 45 states that with regards to preserving the setting of a Listed building or preserving the character and appearance of a Conservation Area, preserving means doing no harm.
12.22	'Mordue'	Neutral Citation Number: [2015] EWCA Civ 1243	28	Paragraph 28 states that generally, a decision-maker who works through the paragraph of the NPPF which relates to the public benefit test for less than substantial harm to a designated heritage asset, they will have complied with the section 66(1) duty.
12.23	'Nuon'	Neutral Citation Number: [2013] EWHC 2847 (Admin)	25	Paragraph 25 states that in the context of non-physical or indirect harm, the yardstick for 'substantial harm' is effectively the same as for physical harm, that it would be an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.
12.25	'Steer'	Neutral Citation Number: [2018] EWCA Civ 1697	25 and 26	Paragraph 25 states if a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape. Also, paragraph 26 notes the potential relevance of other considerations – economic, social and historical.

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12.24	'Palmer'	Neutral Citation Number: [2016] EWCA Civ 1061	34	<p>Paragraph 34 states that although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.</p> <p>Paragraph 34 also reiterates that the duty to accord "considerable weight" to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight. The desirability of avoiding a great harm must be greater than that of avoiding a small one. The desirability of avoiding harm to a high category heritage asset must be greater than that of avoiding a similar harm to a less important asset.</p>
12.19	'Kay'	Neutral Citation Number: [2020] EWHC 2292 (Admin)	39	<p>Paragraph 39 concerns the consideration of heritage harm as a whole, taking into account public benefits, stating that it may well be on the given facts of a particular case that the benefits arising from one part of a proposal needs to be taken into account in support of another, as offsetting the harm arising from it; indeed, it may be that the purpose of putting the individual elements into a single application is so as to enable the decision-taker to balance the benefits and harm arising from different parts of a proposal containing multiple individual items of development.</p>
12.20	'Kinsey'	Neutral Citation Number: [2021] EWHC 1286 (Admin) Case No: CO/8/2021	88	<p>States that a further flaw was that the OR [Officer's Report] did not disclose the SCO's [Senior Conservation Officer's] classifications of the level of harm within the category of "less than substantial harm", and instead referred to "a degree of less than substantial harm".</p>

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12.21	'Holocaust Memorial'	Neutral Citation Number: [2022] EWHC 829 (Admin)	53 and 54	With regards to what level of harm equates to substantial harm, the judgment states that the Nuon judgment does not import a test of 'draining away' of significance to the test of substantial harm and does not impose a gloss on the term.
12.26	'Cala Homes'	Neutral Citation Number: [2011] EWCA Civ 639	20, 25	Confirms that a WMS is capable of being a material consideration in planning decisions.
12.27	'Crane'	Neutral Citation Number: [2015] EWHC 425 (Admin)	70 and 71	Consideration of the weight to be afforded to an out-of-date policy, and relevant factors to consider, in the context of a housing land supply shortfall. The judgment identifies that relevant factors may include the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall.
12.28	'Phides Estates'	Neutral Citation Number: [2015] EWHC 827 (Admin)	71 and 74	Consideration of the weight to be afforded to an out-of-date policy, and relevant factors to consider, in the context of a housing land supply shortfall. Re-enforces the principles in Crane.
12.29	'Woodcock Holdings'	Neutral Citation Number: [2015] EWHC 1173 (Admin)	87, 105, 108 & 115	Consideration of the weight to be afforded to an out-of-date policy, and relevant factors to consider, in the context of a housing land supply shortfall. Re-enforces the principles in Crane.
12.30	'Richborough/Suffolk Coastal'	Neutral Citation Number: [2017] UKSC 37	55, 56, 79, 83 & 84	Consideration of the weight to be afforded to development plan policies in the context of a housing land supply shortfall and the application of the tilted balance. Identifies that, in the event of a shortfall in the five-year supply: <ul style="list-style-type: none"> <li>- The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance.</li> </ul>

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				<ul style="list-style-type: none"> <li>- Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the 'tilted balance'.</li> <li>- The rigid enforcement of restrictive policies may prevent a planning authority from meeting its requirement to provide a five-year supply.</li> <li>- If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.</li> </ul>
12.39	'Shadwell Estates'	Neutral Citation Number: [2013] EWHC 12 (Admin)	72	Authority for the proposition that the view of the statutory consultee should be accorded great or considerable weight, and that departure from this would require cogent and compelling reasons.
12.40	'Swainsthorpe PC'	Neutral Citation Number: [2021] EWHC 1014 (Admin)	70	Confirms that the <i>Thetford Pigeon</i> principle applies to Highway Authorities.
12.41	'Visao'	Neutral Citation Number: [2019] EWHC 276 (Admin)	65	Confirms that the <i>Thetford Pigeon</i> principle applies to Highway Authorities.
12.42	'Gladman'	[2019] EWHC 128 (Admin)	14-15, 24-27	Confirms that the extent of the shortfall is important as it will have an impact on the weight to be attributed to the ingredients or elements to be weighed in the tilted balance, including (a) the benefits in respect of the provision of housing (the greater the shortfall, the more significant the weight to be attached) and (b) the weight to be attributed to any conflict with relevant policies relied upon to resist development.

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12.43	'Telford'	[2016] EWHC 3073 (Admin)	47	Authority for the proposition that the requirement in the NPPF to "recognise" the intrinsic character and beauty of the countryside is different from earlier policy that required the protection of the countryside for its own sake.
12.44	'Tesco'	[2012] UKSC 13	18-19	The meaning of policy is not a matter that the planning authority is entitled to determine from time to time as it pleases, within the meaning of rationality. Policy statements should be interpreted objectively, in accordance with the language used, read always in its proper context. Planning Authorities cannot make the development plan mean whatever they would like it to mean.