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The Court of Appeal has confirmed that out-of-date development plan policies may be taken into account when performing the “tilted balance” exercise required by the presumption in favour of sustainable development in national planning policy. This latest case highlights the fact that lack of a five-year housing land supply does not guarantee planning permission for residential developments.

Two inspectors had refused planning permission for developments of up to 129 dwellings at Gretton in Northamptonshire (DCS Number 200-008-785) and up to 240 dwellings at Flich Green, Essex (DCS Number 200-008-716). The local planning authorities involved could not demonstrate a five-year housing land supply. As such, the policies that were most important for determining the applications were out of date.

This triggered the tilted balance in paragraph 11(d)(ii) of the National Planning Policy Framework (NPPF), which establishes a presumption in favour of granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The applicants, Gladman Developments Ltd, applied to the Court of Appeal for a statutory review of the inspectors’ refusals after these were upheld by the High Court.

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