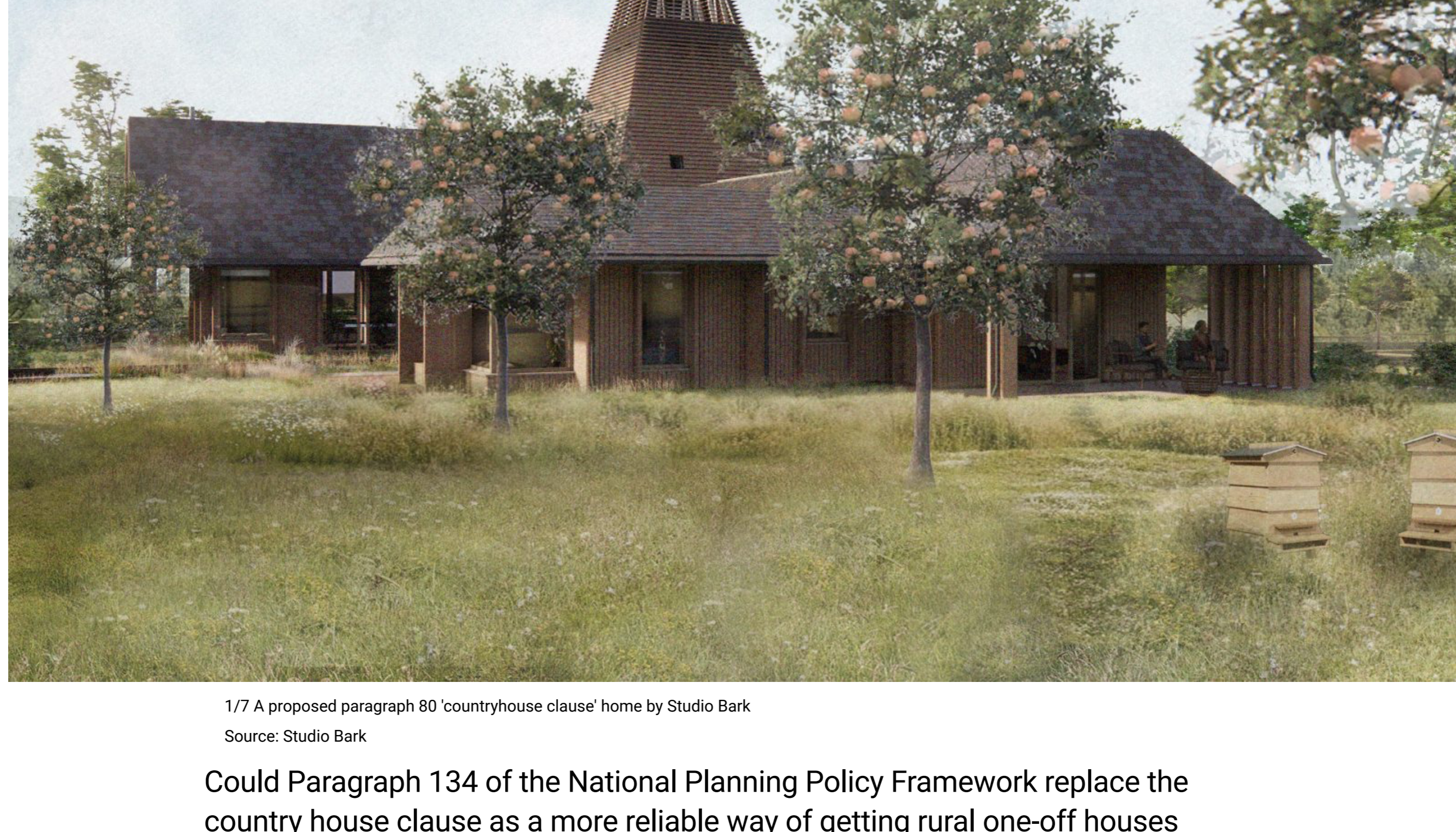


Rethinking the country house clause: is para 134 architects' new ally?

1 DECEMBER 2023 • BY KEITH COOPER



1/7 A proposed paragraph 80 'countryhouse clause' home by Studio Bark
Source: Studio Bark

Could Paragraph 134 of the National Planning Policy Framework replace the country house clause as a more reliable way of getting rural one-off houses through planning? *Keith Cooper* reports

Call it Gummer's Law, the country house clause, the now-no-more Planning Policy Guidance 7 (PPG7), or even its latest, official title: paragraph 80 of the National Planning Policy Framework 2023*. These are just some of the monikers given to the few lines of planning law that have, since 1997, allowed isolated houses to be built in the countryside.

These planning paragraphs are well-known in architects' circles for two very different reasons. They're among the rare moments in any planning legislation that explicitly demand exceptional architectural standards – and they're an increasing nightmare to apply.

So what does the future hold for paragraph 80?



To first get a grip of this question, it's worth tracking back a bit. As with all laws made by politicians, their original intention still has some relevance to their application in the present. The genesis of this unusual, exception rule was the desire of then environment secretary, John Gummer, to allow for a new generation of stately homes.

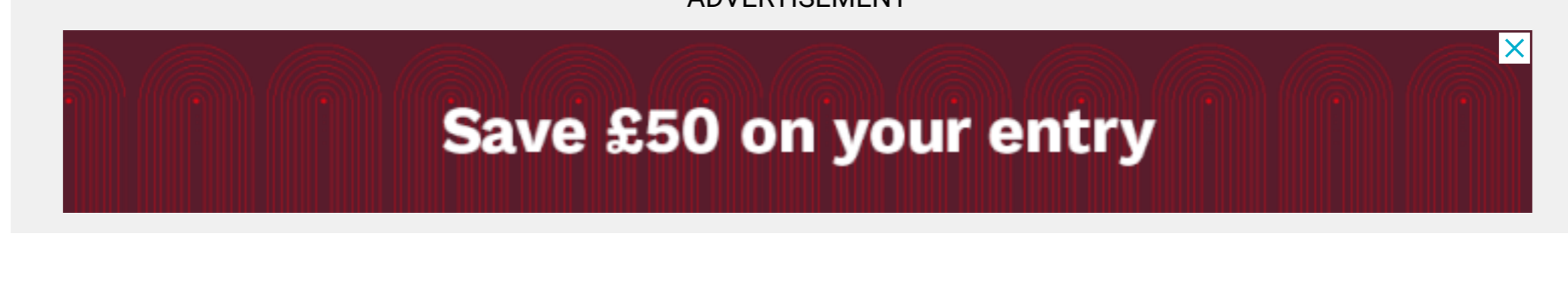
The clause was originally about adding to the tradition of country houses

'We have been involved in doing country homes sometimes under exception policy ever since it was introduced by John Gummer,' says George Saumarez Smith, design director for Classicist practice ADAM Architecture. 'It was originally about adding to the tradition of country houses on the assumption that they would be of a certain size. Now, it is less about size but there is still some emphasis on design quality.'

Paragraph 80 first demands that planning policies and decision-making authorities should resist the development of isolated homes in the countryside but permits them under one or more of five circumstances.

The first four relate to rural workers, heritage assets, the use of redundant buildings and the splitting of existing buildings.

But the fifth circumstance (subsection e) permits development, in principle at least, if the design of the building is 'of exceptional quality' by being 'truly outstanding' and reflects 'the highest standards of architecture' which would 'significantly enhance its immediate setting'. It's a charter for a wow-factor house if ever there was one.



NPPF, paragraph 80*, subsection (e) [2023]

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

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

- is truly outstanding, 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.

***now paragraph 84, since December 2023**

The trouble is that, from Gummer's original iteration to its most recent phrasing, the countryside clause has been a tricky, risky, inconsistently interpreted, and time-consuming planning policy to rely on when seeking permission in rural areas.

'It is an eye-of-the-needle-type application,' is how Saumarez Smith puts it. 'If someone comes to us saying that they are looking to do a paragraph 80 house, we ask whether there is any other way of doing it.'

Analysis carried out by **Studio Bark** of 219 decided paragraph 80 applications shows just two-thirds (67 per cent) were approved. This compares poorly to the 87 per cent overall approval rate of planning applications, according to the latest official figures.

The passage of paragraph 80 applications has also recently become even more tricky following a spate of court decisions that have muddied the waters around what 'isolated' means. These rulings began rolling out in 2017 with the so-called Braintree case.

In this planning appeal decision, the inspector rejected an application because it failed to meet the 'principle of isolation' – that the proposed home should be located away from existing settlements.

Following this ruling, according to Hughes Planning director Rob Hughes, a proposed new development would now only count as isolated under paragraph 80 if it is 'spatially and physically remote from a settlement' – a far from straightforward test when you scratch beneath the surface, as planning officers and inspectors are wont to do.

'It can be difficult to determine when a group of houses or buildings becomes a settlement and it can also be difficult to differentiate if and when a site forms part of a settlement, and when it is isolated from a settlement,' Hughes says. 'You can get situations where you are close to a settlement but are still isolated in the sense of the site having closer ties to the countryside than to the settlement.'

The added complication of this new legal test appears to have given anti-development authorities more leeway to reject applications and made it potentially harder for inexperienced councils to consider them. 'Sometimes, particularly if planning authorities are seeking to resist a proposal for a new dwelling in the countryside, they may question whether a site is isolated enough, suggesting that in such circumstances, para 80 would not apply,' says Hughes.

Kirkland Fraser Moor managing director David Kirkland says it had once taken a year to coax council planners to accept that a home in one of its applications was isolated. 'A lot of the time, planning departments don't have the experience of these things and they rely on their usual planning policies,' he adds.

Saumarez Smith says paragraph 80 applications already require 'an awful lot of work' and can be very subjective. He tells the AJ: 'The success of an application can come down to who opens the planning application and whether they like it or not and whether they can be brought around.'

Studio Bark says that since the recent court rulings, it has seen a growing number of appeal reports where inspectors have agreed with councils that homes are not isolated.

However, its research also uncovered something potentially very useful for architects. In some of these cases the same inspectors had still overturned local authority planning refusals by turning to another planning rule, creating a possible new route for securing planning permission for rural homes. And that planning rule goes by an even catchier title: paragraph 134.

Could this be a new countryside clause?

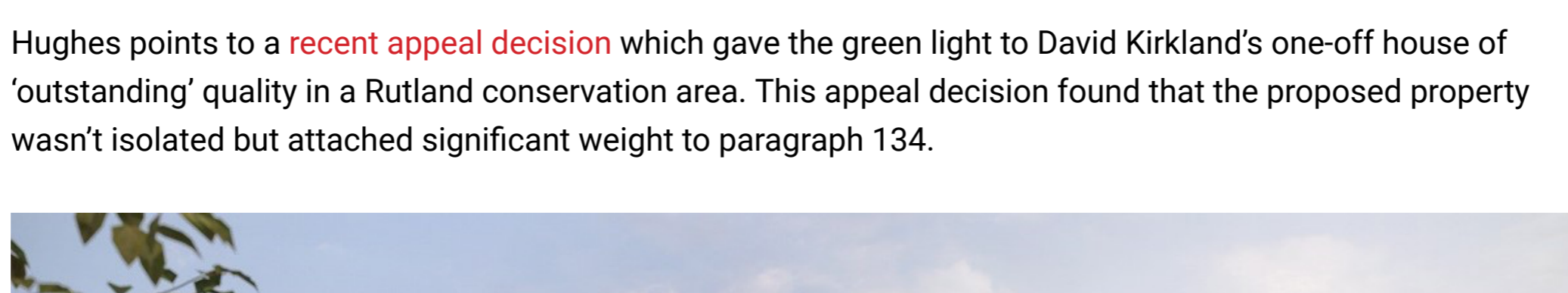
'In effect, paragraph 134 is being used as a backstop,' says Studio Bark associate architect Hannah Towler. 'And what is really exciting about this for us is that sites that had been left behind by changes to case law now have a renewed chance of gaining planning permission.'

'While all developments must be looked at on a case-by-case basis, we can now apply what we've learned from these planning appeals,' Towler adds. Studio Bark has developed set of policy tools and maps to help clients determine whether paragraph 134 might be the key to unlock their planning applications.

Hughes agrees with Studio Bark's analysis: 'There is an increasing body of appeals where inspectors, while deeming a site to not be isolated, have nonetheless granted planning permission having regard to the exceptional quality of design of a scheme.'

Paragraph 134 appears more expansive than section 80 in its demands. It says that 'significant weight' should be given to 'outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings'.

Hughes points to a **recent appeal decision** which gave the green light to David Kirkland's one-off house of 'outstanding' quality in a Rutland conservation area. This appeal decision found that the proposed property wasn't isolated but attached significant weight to paragraph 134.



Source:Kirkland Fraser Moor/Plus Visuals Inc
Kirkland Fraser Moor's Plus Visuals Inc a Rutland conservation area approved under paragraph 134 of the NPPF on appeal

Kirkland says his practice has also used paragraph 134 for a few projects on green belt land. 'There aren't really many areas in some parts of England, like the South East, which are really isolated,' he says. 'And there is also question about whether a home in the middle of nowhere is sustainable.'

So in a world where sustainability is in ascendency, Gummer's Law may no longer be the only, or best, route for exceptional rural development of exceptional quality.

'The important takeaway from all of this,' says Hughes, 'is that, although a site may not be isolated for the purposes of paragraph 80 of the NPPF, there may still be sufficient merit for a proposal to be approved in a non-isolated location in the countryside.'

For Towler, the emphasis of paragraph 134 on sustainability and innovation, as well as outstanding design, makes its potential increased use in an exciting move in a world where the climate is in crisis. 'Whole life zero carbon design is the golden thread running through our practice,' she says.

Studio Bark has pledged to keep a close eye on the appearance of paragraph 134 in planning appeals, as other architects working in rural areas will surely do too.

But it's worth bearing in mind, amid all this interest and excitement about its potential, that there's only one sure thing about planning rules. They're as likely to change as their name.

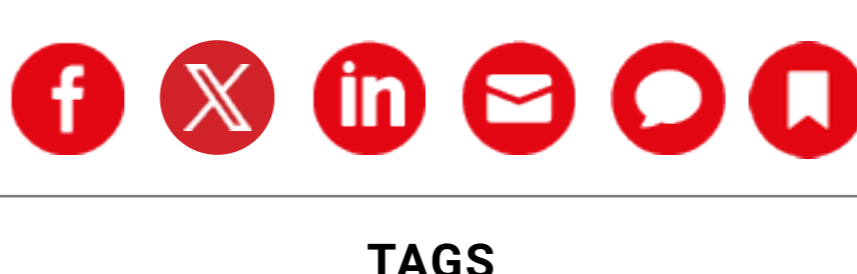
NPPF, paragraph 134 [2023]

Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes. Conversely, significant weight should be given to:

(a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes; and/or

(b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

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2 comments

Richard Hawkes 1 December 2023 at 3:38 pm
Another important point worth adding here is that paragraph 80 specifically provides the policy principle for new dwellings whereas paragraph 134 is just a policy concerning design, which significant weight can be afforded to. Technically, the planning weight afforded to para 134 can be added to any paragraph 80 case, reinforcing the weight that should be given to design of exceptional quality etc. Paragraph 134 in itself, however, doesn't provide the principle that p80 does.

We've found there to be 20 appeal decisions since Braintree which examine, test & help shape the isolation principle & triggering of para 80. It's certainly true that one LPA to the next won't necessarily interpret this in the same way, which can be tremendously frustrating. Various good case studies out there now though.

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Jonathan Braddick 3 December 2023 at 12:05 pm
At the Design Review Panel (<https://www.designreviewpanel.co.uk>), we have observed an increase in Design Teams requesting the Panel to evaluate projects based on the criteria of Paragraph 134 of the National Planning Policy Framework (NPPF). However, as Richard Hawkes points out, Paragraph 134, in itself, does not establish the principle that Paragraph 80e of the NPPF does.

My understanding is that Paragraph 134 of the NPPF is a national policy on design applicable to any development, not just isolated homes in the countryside. At the Design Review Panel, we have noted that commercial developers and house builders are also seeking the Panel's evaluation of their projects against the standards set by Paragraph 134. This is because it is a policy to which significant weight can be attributed and support from a design review panel confirming it feels that a project meets the tests of para 134 can help to mitigate subjectivity in the decision-making process and may also provide a counterbalance to various other considerations.

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