Valued landscapes: where are we 3 years on from the Stroud judgement?

It is a requirement of many public inquiries into proposals in rural areas to decide if a development site is a ‘valued landscape’ or not, and the debate is often a key part of the landscape case on both sides.

The phrase ‘valued landscape’ was introduced in March 2012 with the publication of the National Planning Policy Framework (NPPF) which refers to “protecting and enhancing valued landscapes” (Paragraph 109).

Case law has shown that if a landscape can be proven to be a ‘valued landscape’ in the terms of Paragraph 109 of the NPPF, then the presumption in favour of sustainable development that is set out in Paragraph 14 of the NPPF can be disengaged.

The ‘Stroud Judgement’

The ‘Stroud’ Appeal decision in 2014 is of significance because it was the first time ‘valued landscape’ (in relation to Paragraph 109 of the NPPF) was defined.

In summary, an Appeal was made by Gladman Developments Ltd against Stroud District Council’s refusal of planning permission for 150 houses at the foot of the escarpment to the Cotswold Hills (Appeal reference APP/C1625/A/13/2207324). In his decision, the Inspector acknowledged that there was no agreed definition of ‘valued’ as used in Paragraph 109 of the NPPF and that in the absence of any formal guidance on the point, he considered that to be valued would require the site to show some demonstrable physical attribute rather than just popularity. In this instance, the Inspector found that the site was not ‘valued’ and allowed the Appeal.

The Local Authority sought to challenge the Inspector’s decision in the High Court on four grounds including the Inspector’s approach to valued landscape. During the hearing between Stroud District Council and the Secretary of State for Communities And Local Government & Gladman Developments Limited, the Council suggested that the Inspector equated valued landscape with designated landscape. In his judgement (dated February 2015) Mr Justice Ouseley stated that if the Inspector had concluded that designation was the same as valued landscape he would have been wrong because in the NPPF, the word ‘designation’ is used when designation is meant and ‘valued’ is used when valued is meant and the two words are not the same. Mr Justice Ouseley then considered whether the Inspector really meant that he equated designation with valued landscape and concluded that he did not. He judged that the Inspector knew that designation was not the start and finish of the debate.

What has happened since the ‘Stroud Judgement’?

Since the Stroud judgement in 2015, there have been a number of other Appeals to test the meaning of ‘valued landscape’ under Paragraph 109 of NPPF. Most of these use the Stroud Inspector’s approach to assessing whether a landscape is ‘valued’. Some examples are in the box below.

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1 For example Nanpantan Road, Loughborough (APP/X2410/W/15/3028159, 16 January 2017) and Slepele Bumpstead, Essex (APP/Z1510/W/17/3173332, 6 September 2017)
The Inquiry into the Appeal made by Bovis Homes & Miller Homes Limited against Cheltenham Borough Council’s refusal of planning permission for 650 dwellings at Leckhampton, Cheltenham [September – October 2015, APP/B1605/W/14/3001717]. In this case the Inspector found that “although the site does not comprise a designated landscape, it is clearly a valued one” going on to say “its value is not derivative from being seen in a view. Rather its value derives from its own characteristics, of which views towards the AONB are only one of a number of charming features” (para 263 Appeal Decision]. The Secretary of State concluded that “Though not designated, the site is...clearly a locally valued landscape which paragraph 109...states should be protected”.

The Inquiry into the Appeal made by Story Homes against the decision of Durham County Council to refuse planning permission for a development of 149 houses in County Durham [August 2016 - APP/X1355/W/16/3150609]. Here it was accepted by the parties that to be valued did not necessarily mean “designated” but the site or area needed to be more than ‘appreciated’ to fulfil functions which elevated it above the ordinary i.e. the site had to show “demonstrable physical attributes”.

The Appeal by Gladman Developments against a refusal to grant planning permission for up to 126 dwellings by the Forest of Dean District Council [August 2015, APP/P1615/W/15/3003662]. In this case the development was proposed in an undesignated landscape area, but the Council assessed landscape value on the basis of criteria set out in GLVIA, concluding that the site and its surroundings demonstrated sufficient physical attributes to suggest that they fall within a locally valued landscape worthy of a commensurate degree of protection and enhancement under NPPF Paragraph 109. The Developer’s stance was that the site was a fairly commonplace landscape and there was nothing particularly distinctive about it, nor did it have a demonstrable attribute taking it beyond mere countryside. The Inspector noted that, given that all landscapes are valued by someone at some time, the words ‘valued landscape’ must mean a landscape that is considered to be of value because of particular attributes, that have been designated through the adoption of a local planning policy document. He also concluded that the reference in [NPPF] Paragraph 109 added nothing to the exercise he needed to undertake, or the weight to be attached to the landscape and visual impact of the scheme. The Council sought to challenge the Inspector’s decision on the grounds that the Inspector proceeded on the basis that a “valued landscape” must be a landscape that is "considered to be of value because of particular attributes that have been designated through the adoption of a local planning policy document” (Paragraph 16, APP/P1615/W/15/3003662). The criticism was that the Inspector, in interpreting Paragraph 109 of the NPPF, failed to distinguish between designation and value. As a result, the Council contended that the Inspector made no proper assessment of whether the landscape was valued and simply deduced that, as the landscape was not designated, it was also not valued. The Council suggested that the Inspector’s failure to consider whether it was "valued landscape" could have resulted in a different determination of the planning application. At the hearing (Forest of Dean District Council v Secretary of State for Communities And Local Government & Gladman Developments, October 2016), Mr Justice Hickinbottom was satisfied that the Inspector did not mean that, simply because the area was not designated, it did not and could not comprise valued landscape. Mr Justice Hickinbottom concluded that the Inspector used inappropriate wording in Paragraph 16 of his decision, but he concluded that the Inspector did not adopt an unlawful approach to the meaning of "valued" or to Paragraph 109 of the NPPF.

The Appeal by Story Homes and Durham Diocesan Board of Finance against the decision of Durham County Council to refuse planning permission for 300 dwellings on land to the south of Eden Drive, Sedgefield, County Durham [August 2016, PP/X1355/W/16/3150609]. During this Inquiry the inspector concluded that the appeal site "has value but is not a valued landscape”. The Inspector noted that the site has some recreational value (since a footpath that crosses it provides access to the countryside and footpaths beyond) and it is valued by the local community, but it is unremarkable in
character and therefore it “cannot be regarded, with regard to Paragraph 109 of the NPPF, to be a valued landscape”. [Inspector: John Braithwaite].

How can we assess whether a landscape is ‘valued’?

As landscape professionals we often have to judge whether a site and its surrounds is a ‘valued landscape’. What tools do we have at our disposal to help us?

It is notable that the Government’s Planning Practice Guidance does not help us in this respect – it does not say anything about how to assess whether a landscape is ‘valued’ under Paragraph 109. Looking at previous drafts of the NPPF does not help either. The only reference to value in the CLG’s Draft National Planning Policy Framework: Consultation (July 2011) was in Paragraph 11 which stated: “These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value”. This implies that the intention of the NPPF was perhaps to enable appreciation and protection of landscapes valued by local communities, but provides no guidance on how to assess that value.

We do of course have the 3rd Edition Guidelines for Landscape and Visual Impact Assessment (GLVIA3) which suggests that a stated strategy of landscape conservation is a good indicator of value. It also sets out a number of factors that can be considered when assessing landscape value (Box 5.1 GLVIA3 – see box below), and these could be used as a means of identifying the attributes that make a landscape ‘valued’ in the context of Paragraph 109 of the NPPF.

The factors in Box 5.1 of GLVIA are:

- Landscape quality (condition)
- Scenic quality
- Rarity
- Representativeness
- Conservation interests
- Recreation value
- Perceptual aspects
- Associations

We can also continue to use Inspector’s decisions to see how debates are developing. The following Appeal decisions were all made in 2017:

- In the Appeal decision relating to 225 dwellings at Fant Farm, Maidstone, Kent [March 2017, APP/U2235/W/16/3148213] the Inspector concluded that the landscape of which the appeal site forms a part was valued by local people and this was enough to apparently give it the protection provided by Paragraph 109 of the NPPF.

- In the Appeal decision relating to 55 dwellings at land Funton Brickworks, Kent [February 2017, APP/V2255/W/16/3146393] the Inspector deemed the area in which the site lay was a ‘valued landscape’ for the purposes of Paragraph 109 of the Framework because the site is designated as an AHLV.

- In the Appeal decision relating to 225 dwellings at land at Ashlawn Road West, Rugby [July 2017, APP/E3715/W/16/3147448] the Inspector noted that no particular features had been identified, other than the existence of a Bridleway and, “whilst the Bridleway will no doubt be valued locally there is nothing out of the ordinary about it to elevate the appeal site to being a ‘valued landscape’”. It is interesting to note that the Inspector thought the word ‘valued’ used in the NPPF is different to that understood in everyday language, stating the bridleway across the site “is in every English language sense of the word, with the possible exception of the English used for the Framework, a valued element of our local landscape”.

There is clearly still some debate around the definition of ‘valued landscape’ in the NPPF, and as long as the NPPF remains in place there is a need to assess whether a landscape is ‘valued’ in the way that is meant in Paragraph 109.
Conclusion
I conclude:

- There is no clear published guidance as to how to assess if a landscape is 'valued' in the way that is meant in Paragraph 109 of the NPPF;
- Locally designated landscapes such as 'special landscape areas' or 'areas of great landscape value' are likely to be considered 'valued' for the purposes of Paragraph 109 of the NPPF, but non-designated areas can also be 'valued' for the purposes of Paragraph 109;
- The approach to landscape value taken by the Inspector in the Appeal by Gladman Developments Ltd against Stroud District Council remains relevant (i.e. that for a landscape to be valued would require the site to show some demonstrable physical attribute rather than just popularity);
- Many areas of countryside are understandably valued by local residents, but to be considered 'valued' in the context of NPPF, there needs to be something ‘special’ or out of the ordinary that can be defined;
- Box 5.1 in the 3rd Edition Guidelines for Landscape and Visual Impact Assessment can help us to identify the ‘demonstrable attributes’ that might take a landscape out of the ‘ordinary’ to something that is ‘special’ and valued in the context of Paragraph 109 of the NPPF;
- Landscape character assessments can provide useful evidence to help identify whether a site is 'valued' in the context of Paragraph 109 of the NPPF, especially if they contain evaluative information.

If you’d like help with producing a landscape character assessment or other landscape evidence as part of a local plan or public inquiry, or if you are interested in discussing this subject area further, please contact Rebecca Knight at rebecca.knight@landuse.co.uk.

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