

the local planning authority (or other decision-maker) where relevant and appropriate to the scale and location of the proposal:

- i) the landscape, environmental and heritage characteristics of the village;*
- ii) the locational context of the village and the proposed development (particularly the AONBs, Conservation Areas and heritage assets);*
- iii) site location and sequential approach to site selection;*
- iv) locally identified need - housing and employment, and specific local needs such as affordable housing;*
- v) locally identified community needs;*
- vi) cumulative impact of development in the area in respect of social, physical and environmental impacts."*

3. THE CORRECT INTERPRETATION OF CS2 AND CS11

The interpretation of both policies was, said the Judge, a matter of law, see **Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 at paragraph 17**, but that they are not to be read like a statute or contract (**SSCLG v Hopkins Homes Ltd [2016] EWCA (Civ) 168 at paragraph 24**). That, he said, is fortunate, because "the policies are far from clear".

The first question in issue for the Judge was whether or not Policy CS11 is an exception to or supplants Policy CS2. The Judge ruled CS2 and CS11 **must be read together**. He ruled:

Development can take place outside the built-up area boundaries in the 2006 Local Plan or those to be shown in the Site Allocations document, if they fulfil the requirements of CS11 and if the Local Planning Authority are satisfied that the circumstances are exceptional and are subject to a proven justifiable need.

4. LOCALLY IDENTIFIED NEED

The second issue was what is meant by "locally identified need" for housing in Policy CS11(iv)? The Judge ruled: "I am satisfied that for the reasons explained, local housing need in Policy CS11 means **housing need in the village and its cluster, and perhaps in areas immediately adjoining it.** "

5. THE SEQUENTIAL APPROACH REQUIRED IN CS11

The third issue was, what is required by the sequential approach? The Judge ruled that in applying the sequential approach under CS11 Babergh officers were wrong to interpret "local need" as district need.

6. DECISION TO ALLOW THE ERECTION OF 10 SINGLE STOREY DWELLINGS IN HADLEIGH ROAD EAST BERGHOLT

The Judge ruled that the officer's report did not expressly address the two requirements of Policy CS2 for development in the countryside and the officer's approach was significantly in error for the reasons explained above. The decision must therefore be quashed and remitted to the Local Planning Authority.

OTHER ISSUES THIS TIME WHERE THE DEFENDANT FAILED (Paragraphs 7-9)

7. THE EMERGING EAST BERGHOLT NEIGHBOURHOOD PLAN

The emerging neighbourhood plan was in March 2016 rightfully given limited weight because of outstanding “cogent objections” at the time.

8. TWO LISTED BUILDINGS AND EFFECT ON THE AONB

These factors were a matter of planning judgment and “though said to be finely balanced ... cannot be upset on review by this court.” Having said this, Justice Mitting did indicate these issues were linked to the erroneous approach adopted by the Planning Committee when it failed to apply CS2 and interpret “locally identified need” correctly.

9. NEW HOMES BONUS

The financial benefit to Babergh which would accrue if the development went ahead, namely a bonus paid by central government estimated to be worth between £60,000 and £180,000, depending on the council tax band allocated to the houses, for new houses built would have been a material consideration if taken into account (see section 70(2)(b) of the Town and Country Planning Act 1990), but it was not mentioned in the officers' report or in the Committee's debate. This ground of appeal therefore failed.

COSTS

Mr Justice Mitting said:

“On the facts of this case, I am satisfied that the claimant should recover 75 per cent of their capped costs. I reduce the 100 per cent claim for both of the two reasons that have been advanced, first, that they have abandoned a claim well before trial when it became apparent on the basis of evidence produced by the defendant that it was no longer sustainable and was then therefore properly abandoned, and secondly because not all of the arguments advanced by Miss Blackmore at the trial have succeeded. It seems to me, doing the best I can on a broad-brush basis, that a 75 per cent order would be a fair reflection of the claimant's lack of success on those issues. If my arithmetic is correct I therefore order the defendants to pay to the claimants £26,250 on account of their costs.”

PERMISSION FOR BABERGH TO APPEAL

This was refused by Mr Justice Mitting.

Williams Solicitors

Dated 24th January 2017.