In the High Court of Justice
Queen's Bench Division
Planning Court

CO/3809/2019

In the matter of an application under s113 of the TCPA 1990 for Statutory Review

KEEP BOURNE END GREEN

Claimant

Versus

(1) WYCOMBE DISTRICT COUNCIL

(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendants

Application for permission to apply for Statutory Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Defendants
Order by Mr Justice Waksman

Permission is hereby refused.

Reasons:

1. Ground 1: In October 2018 which was after the final day of the examination hearing concerned with the proposed local plan in issue, the Inspector raised with Wycombe District Council ("the Council"), whether the new 2016-based household projections represented a "meaningful change" in the housing situation which would have any bearing on the soundness of the plan. Having received a detailed response from the Council and having regard also to the ONS's (Office for National Statistics) own statement dated 19 October 2018 as to what its projections really means and the government's "Technical Consultation on updates to national planning policy and guidance" dated October 2018, she was entitled to agree with the Council that there was no meaningful change; see her response of 30 October and paragraphs 28 and 29 of the report. She correctly applied paragraph 16 of the PPG which states that local needs assessments should be informed by the latest available information and it would be necessary to see if there had been a meaningful change, but that this did not "automatically mean that housing assessments are rendered outdated every time new projections are issued." The assessment of meaningful change is a matter of planning judgment exercised in context. Nor could it be said that as at the date of considering the soundness of the plan, the 2014-based projections, published on 12 July 2016, and which informed the Buckinghamshire Housing and Economic Development Needs Assessment ("HEDNA"), as updated in December 2016 and September 2017, were "a few years old".

2. Nor does it follow that just because a different Inspector conducting a soundness examination of a different proposed local plan in Guildford did take account of the 2016-based projections so as to reduce the assessed need, there was an obligation on the Inspector here to do the same.

3. In truth, all of this was a matter for the planning judgment of the Inspector in respect of which it cannot be suggested that she acted irrationally or otherwise unlawfully. I do not accept that the points made by the Claimant in its Reply document in this regard, mean that it was not at the end of the day simply a question of such a judgment.

4. Ground 2: It also follows, that the Inspector was not obliged to take into account the 2016 based projections as a material consideration in relation to the ultimate figure for housing need, the identification of "reasonable alternatives" in the sustainability appraisal or in considering whether there were "exceptional circumstances" so as to justify release of Hollands Farm from

the Green Belt. I accept the First Defendant's argument that there is no basis for a duty to introduce alternative projections at the subsequent stage of identifying the OAN ("Objectively Assessed Need"). The same is true in relation to reasonable alternatives and Green Belt release assessment.

5. Ground 3: The Inspector took a structured and logical approach as to whether in the case of Hollands Farm there were "exceptional circumstances" for its release from the Green Belt. It is not suggested that she was unaware of this requirement, nor could it; see the description of Issue for and, for example paragraph 88. Having found that there was a compelling case for the release of the land from the Green Belt to meet the POA in housing and employment development and that without this, there would be a shortfall in the provision of land for new housing despite the efforts made to identify other suitable land for development she then considered the allocation of Hollands Farm in detail at paragraphs 153-160. All of this conforms to the "ideal" approach to be taken as set out by Jay J in *Calverton v Nottingham City Council* [2015] EWHC 1078 at paragraphs 19-22, 44 and 50-52. Again, the satisfaction of the "exceptional circumstances" requirement, subject to the guidance in *Calverton*, is a matter of planning judgment for the Inspector.

6. Ground 4: There is nothing in this, the only assumption made by the Inspector in paragraph 2 of her report was that the Council had submitted a plan which it considered to be sound which follows the statutory requirement that prior to submission for examination by an Inspector, the Council should have considered that it was sound. See also paragraph 38 of the 2008 version of PPS 12. The Inspector stated at paragraph 19 that she had taken account of all the representations written evidence and discussions at the hearings. She identified the main issues and dealt with those rather than responding to every point raised by represent tours, an approach she was well entitled to take. In particular, she was entitled to place the emphasis which she did on the Buckinghamshire Green Belt Assessment which identified certain areas, including Hollands Form, which performed "weakly", leading to the assessment that it was one of the 10 sites considered appropriate for removal from the Green Belt. She made reference to that again at paragraph 153 when dealing with Hollands Farm specifically. While the Claimant submitted expert evidence to suggest that Hollands Farm should be regarded as more significant, there was no obligation on the Inspector specifically to address that in the report. The fact that she did not is no indication that a reference at the outset to the Council considering the plan to be sound was in fact a form of presumption.

7. Ground 5: There is nothing in this point either; the Council was entitled to take the original approach on the question of screening for habitat impact with regard to the Habitats Regulations which included taking into account the proposed mitigation measures so as to conclude that there was no relevant impact and therefore no need for an appropriate assessment. When, subsequently, the *People Over Winds* judgment of the European Court was published, the Council was entitled, and the Inspector was herself entitled to find that the Council was so entitled, to change its approach so that it now reframed its investigation into the (now) necessary appropriate assessment at which point mitigation measures could be and were taken into account. I do not accept that this amounted to some form of unlawful "retro-fitting". The Inspector made specific reference to the *People Over Winds* decision along with *Holohan* in paragraph 13 of the report. In that paragraph she was entitled to conclude that the plan was compliant with the requirements of the Habitats Directive. The Inspector was entitled to agree the imposition of section 106 obligations so as to provide, among other things, the necessary mitigation measures in connection with the recreational impact on Burnham Beaches SAC. The fact that the section 106 obligations have not yet been put in place (the recreational impact not itself occurring until the development is complete) does not mean that the Inspector could not be satisfied that the nature of the mitigation measures were themselves sufficient to avoid the harm which would otherwise ensue.

8. Ground 6: Looked at overall, I do not believe that there is any substance to the residual reasons challenge.

9. Otherwise all the points in the both Defendant's Grounds of Defence are adopted.

10. Accordingly no arguable case for a review.

11. Costs: If the Claimant does not seek reconsideration, the following applies in respect of costs:

(a) the costs of preparing the First Defendant's Acknowledgment of Service are to be paid by the Claimant to the First Defendant, in the sum claimed of £8,395.00 unless within 14 days the claimant notifies the court and the First Defendant, in writing, that it objects to paying costs, or as to the amount to be paid, in either case giving reasons. If it does so, the First Defendant has a further 14 days to respond to both the court and the Claimant, and the Claimant the right to reply within a further 7 days, after which the claim for costs is to put before a judge to be determined on the papers. If there is no challenge to the assessment of the costs, they must be paid by the Claimant within 14 days of service of this order upon it.

(b) the Second Defendant has sought its costs in relation to its Summary Grounds of Defence relating to Grounds 1 and 2 only, in the sum of £5,806.00, contending that it was necessary for him to do so because those grounds may raise general issues on which it is appropriate for him to comment. If the Claimant agrees that it should pay those costs, then it must do so within 14 days of receipt of this Order. If, however, the Claimant does not agree to pay those costs either as a matter of principle or amount, it must provide written reasons to the Court and the Second Defendant within 14 days of receipt of the Order, after which the Second Defendant may respond within a further 14 days, with the Claimant having a right of reply within 7 days thereafter. After that, the papers on this costs issue will be referred to a Judge for a decision on paper.

(c) Where the Claimant does seeks a reconsideration, all costs shall be dealt with on that occasion.

8. In relation to the applications made by Catesby Estates Limited and by Mr Leo Noe to be joined as Interested Parties, given the outcome of my determination, such joinder is not necessary, unless the Claimant seeks a reconsideration of permission.

9. In that event, the following shall apply:

(1) Both Catesby Estates Limited and Mr Noe shall be joined as Interested Parties;

(2) the Claimants Claim form and statement of grounds, together with the Defendants' statements of grounds of defence and the Claimants reply thereto, shall be served forthwith (and in any event within 7 days) by the Claimants on both of them;

(3) Both Interested Parties shall serve an AOS and summary grounds of defence within 14 days;

(4) Any hearing for the reconsideration must be fixed with regard to the provision of these further documents;

(5) Unless otherwise ordered, neither Interested Party shall be entitled to its costs of its summary grounds of defence or of attending any reconsideration hearing;

(6) This part of the order (on the joinder of Interested Parties) has been made without reference to the other parties, and accordingly, the Claimant and/or the Defendants may apply to vary it or set it aside within 7 days of receipt of this Order, and any such application must be served on all other parties including the Interested Parties. The Interested Parties may, if so advised, respond to such an application within 7 days of service thereof. Any such application will thereafter be dealt with on paper.

D. Waksman

Signed:

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 20 DEC 2019
Solicitors: SCATER
Ref No.

Notes for the Claimant
If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12

In the High Court of Justice
Queen's Bench Division
Planning Court
Administrative Court

CO Ref no: CO/3809/2019

In the matter of a claim for Planning Statutory Review

KEEP BOURNE END GREEN

versus WYCOMBE DISTRICT COUNCIL and Others

Notice of RENEWAL of claim for permission to apply for Planning Statutory Review (CPR PD 8C 7.4)

1. *This notice must be lodged in the Planning Court Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*

2. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the* ***reasons for delay:***

3. *Set out below the grounds for seeking reconsideration:*

4. *Please supply*

   COUNSEL'S NAME:

   COUNSEL'TELEPHONE NUMBER:

Signed Dated

Claimant's Ref No. Tel.No. Fax No.

To the Planning Court Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL