

CO/164/2020

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR LEAVE UNDER S.288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

BETWEEN:

CATESBY PROMOTIONS LIMITED

Claimant

-and-



(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT

(2) BEDFORD BOROUGH COUNCIL

Defendants

CONSENT ORDER

Before the Honourable Mr Justice Jay

UPON the Claimant having applied for a planning statutory review pursuant to s.288 of the Town and Country Planning Act 1990;

AND UPON the First Defendant's acknowledgement of service indicating they do not intend to defend the claim;

AND UPON the Second Defendant not filing an acknowledgement of service, and indicating in an email that they do not intend to take part in proceedings;

AND UPON the court being satisfied the parties agreed final order should be made without a hearing, pursuant to CPRPD8C paragraphs 17.1 and 18.2;

IT IS ORDERED by consent:

1. Permission for statutory review is granted, and the Claimant's application for planning statutory review is allowed;
2. The decision of the Planning Inspector dated 9 January 2020 is quashed, for the reasons set out in the statement of reasons attached;

3. The First Defendant shall pay the Claimant's reasonable costs in the claim to date, subject to detailed assessment if not agreed.

Dated this February 2020

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Solicitor for the First Defendant

Dated 02 July 2020

Statement of Reasons

- (1) The Claimant, a developer of homes, challenges the decision of the First Defendant's Inspector dated 9 January 2020 to refuse outline planning permission for a development consisting of 90 residential dwellings. The right of appeal to the High Court arises under s288 of Town and Country Planning Act 1990 ('TCPA 1990'). The Claimant seeks that the decision is quashed and costs are awarded.
- (2) By way of background, the Claimant submitted an application for planning permission to the Second Defendant, a Local Planning Authority, in April 2019. The Second Defendant did not make a decision, enabling the Claimant to bring an appeal to the First Defendant under s78 of the TCPA 1990 in July 2019.
- (3) The appeal was determined by way of an Inquiry held on dates 12-15, and 21-22 November 2019. A decision was made on 9 January 2020, dismissing the appeal. The Claimant's claim for statutory planning review was issued on 20 January 2020, and served on the First Defendant on 21 January 2020.

- (4) A principal important controversial issue in the appeal was whether the Council would be able to demonstrate a 5 Year Housing Land Supply ('5YHLS') upon the adoption of the then-emerging (and now adopted) Bedford Borough Local Plan ('LP') (DL77-79). It was common ground that the Council could not demonstrate a 5YHLS judged against the standard methodology at the appeal (DL60). In short, the respective positions of the parties before the Inspector were:
- Bedford BC submitted that it would be able to demonstrate a 5YHLS once the LP was adopted because of the operation of paragraph 74 of the NPPF 2019[CB/10/342-345];
 - Catesby Promotions submitted (a) that paragraph 74 of the 2019 NPPF did not apply in this case because the appropriate buffer was not applied during the examination of the LP, the sites relied on in the LP to establish a 5YHLS were not judged against the 2019 NPPF definition of deliverability, and the Council did not inform the examining inspectors or the public that it intended to rely on the LP to establish 5YHLS under paragraph 74 of the 2019 NPPF; (b) that a finding of 5YHLS under the 2012 NPPF did not equate to a 5YHLS under the 2019 NPPF because of the different definitions of deliverability; and, (c) many of the sites relied on in the examination of the LP to establish a 5YHLS would not satisfy the definition of 'deliverability' under the definition contained in the 2019 NPPF [9/308-315].
- (5) After consideration of the grounds, the First Defendant accepts that Ground 1 relating to inadequate reasons is arguable, and the Defendant does not intend to defend the ground. The Inspector did not sufficiently grapple with the detailed arguments raised by the Claimant on the 5YHLS. The First Defendant also accepts that Ground 2 is arguable, and the Inspector misinterpreted paragraph 74 of the NPPF 2019, because he has made no comment on the differences between the 2019 and 2012 tests, the 'appropriate buffer', and any effect on the 5YHLS.
- (6) It follows that the claim is now academic. This consent order is without prejudice to the parties' positions as to any future determination of NPPF paragraph 74, whether for the Claimant or elsewhere.