

**Case Name:** *Abbey Properties Cambridgeshire Ltd v East Cambridgeshire District Council*  
[2020] EWHC 3502 (QB) (18 December 2020)

**Full case:** [Click Here](#)

**Commentary:**

The High Court has dismissed a legal challenge by a housing developer to a neighbourhood plan's designation of a Local Green Space (LGS), providing helpful clarification on factors relevant to the designation of a LGS and the making of neighbourhood plan. The judicial review challenge was brought by Abbey Properties Cambridgeshire ('Claimant') against the decision of East Cambridgeshire District Council ('Council') to accept the recommendation of the Examiner in relation to the Witchford Neighbourhood Plan ('WNP') which included the designation of a LGS at Horsefield.

The challenge was brought on 2 grounds, both of which were dismissed by the High Court. Ground 1, which consisted of 3 separate limbs, alleged that the designation of the Horsefield LGS was legally flawed: (i) as the Examiner failed to have regard to the national policy requirements for LGS designation in paragraphs 99-101 of the NPPF (ii) as the Examiner failed to have regard to his own conclusion that there was a need for an early review of the WNP which was inconsistent with the policy criteria in paragraph 99 of the NPPF that a LGS should be capable of enduring beyond the end of the plan period and (iii) as neither the Examiner nor the Council had made any enquiries of the local plan Inspector who considered that the Horsefield LGS should be deleted from the local plan. Ground 2 alleged that the Examiner had failed to properly interpret policy GROWTH 2 of the adopted local plan for the purposes of making the assessment of general conformity of the draft WNP with the adopted local plan required by the 'basic conditions' in paragraph 8 of Schedule 4B of the TCPA 1990, among other things, as he had failed to consider the interrelationship between policy GROWTH 1 (levels of housing, employment and retail growth) and GROWTH 2 (locational strategy).

In relation to Ground 1 limb (i), the High Court concluded that, read fairly and as a whole, the Examiner in his report had properly applied NPPF LGS designation policy, in particular in relation to whether or not the proposed Horsefield LGS designation was capable of enduring beyond the end of the plan period, and had concluded, in his planning judgment, that it was so capable. As to limb (ii) of Ground 1, the High Court was unpersuaded by the Claimant's argument, finding that the conclusion of the Examiner that the WNP policies may require early review if its policies are to remain relevant in circumstances where the housing delivery across the district does not improve was a contingent conclusion which was not inconsistent with his main conclusion that the WNP's housing provision met its housing requirements. Concerning limb (iii) of Ground 1, the High Court concluded that neither the Examiner nor the Council was under any legal obligation to inquire into the local plan inspector's reasons for recommending that Horsefield's LGS designation be deleted reiterating the important point referenced in previous case law that the tests which the local plan inspector applies in examining a local plan are different in content and rigour to the those tests applied by neighbourhood plan examiners in examining neighbourhood plans.

As to Ground 2, the High Court concluded that the Examiner was entitled to conclude that the locational or spatial strategy set out in the approach to settlements in GROWTH 2 was up to date applying the relevant case law and it was open to him, as a matter of planning judgment, to conclude that the status of GROWTH 2 was not affected by judgments in respect of the status of the related GROWTH 1 policy in the local plan as a result of challenges based upon the absence of a 5 YHLS.

*Case summary prepared by Paul Arnett*