

Case Name: *East Bergholt Parish Council, R (on the application of) v Aggett & Ors* [2019] EWCA Civ 2200 (12 December 2019)

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Commentary: The Court of Appeal dismissed East Bergholt Parish Council's claim that Babergh District Council misapplied policies in the 2012 NPPF during its assessment of the five-year housing land supply when determining three planning applications.

The Parish Council appealed against the refusal of its application for judicial review of the grant of permission for three proposals which did not accord with the development plan for the area. The District Council had concluded that it could not demonstrate a five-year supply of deliverable housing sites and so the presumption in favour of sustainable development was engaged and the decision to grant permission was justified.

The Court considered two issues raised by the appellant. The first was whether the District Council misunderstood the concept of deliverability in the NPPF and erred in law by including only sites on which it was certain that housing would be delivered within five years, contrary to the decision in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643.

The Court held that the assessment of the five-year housing land supply underlying the officer's recommendation was not at odds with the approach in *St Modwen Developments Ltd* and did not betray any misapplication of the NPPF. It found that the approach taken in the assessment was considerably less ambitious than a quest for certainty of delivery. This was demonstrated by the inclusion of a number of sites still without planning permission as there would not have been a certainty of any particular number of dwellings being developed on such sites within five years.

Further, the Court decided that this was ultimately a matter of planning judgment, and that it was not the Court's role to consider the merits of including individual sites in the five-year supply.

The second issue was whether the District Council improperly took into account the possible financial consequences of having to fight appeals if it refused to grant planning permission. In this case, the Court was satisfied that the impugned decision was made in accordance with the law and on the basis of proper planning considerations.

Nevertheless, it added that local planning authorities were not free to misread or misapply government policy because they fear the financial consequences for themselves if later faced with an appeal against a refusal of permission or proceedings for judicial review of a decision to grant.

Case summary prepared by Safiyah Islam