Case Name: *Keep Bourne End Green v Buckinghamshire Council & Anor* [2020] EWHC 1984 (Admin) (23 July 2020)

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Commentary: In the High Court the Claimant, Keep Bourne End Green (a charity), challenged the decision to adopt the Wycombe District Local Plan (2013–2033), in particular the Local Plan's Policy BE2 which, in operation with other parts of the plan, releases from the green belt a site ("the Site") of approximately 32 hectares of mainly agricultural land at Hollands Farm, south-east of High Wycombe, allocating the majority of the site for housing (some 467 dwellings).

The main grounds of challenge can be summarised as twofold. First, that Policy BE2 releasing the Site from the green belt was adopted on a basis of misunderstanding or misinterpretation of national policy (including the National Planning Policy Framework 2012 paragraphs 47 and 50) and guidance (including the National Planning Practice Guidance 6 March 2014 on local plan development) regarding published household projections, in part involving erroneous calculations of "objectively assessed housing need" ("OAHN") for the local area. Second, that that Policy BE2 releasing the Site from the green belt was adopted on a basis of misapplication of national green belt policy requiring exceptional circumstances for release of land from green belt, in part as there were no exceptional circumstances.

Mr Justice Holgate rejected all grounds of challenge. At the outset, he held that "it is important for the court to emphasise … that its role is not to consider the merits of the Council's proposed policy or of the objections made to it. The court is only able to consider whether an error of law has been made in the decision or in the process leading up to it."

On the first ground as above, Mr Justice Holgate held that the local plan had been adopted following proper consideration of applicable published household projections, without errors of law, and with appropriate planning judgment being exercised by decision-makers. In doing so, he commented that "There have been many attempts in the last few years to entice the courts into making pronouncements on the methods used to assess OAHN. Repeatedly the response has been that this is a matter of planning judgment for the decision-maker and not for the courts."

On the second ground as above, Mr Justice Holgate held that, on the basis of there being no definition of the policy concept of "exceptional circumstances", the expression "is deliberately broad and not susceptible to dictionary definition. The matter is left to the judgment of the decision-maker in all the circumstances of the case. Whether a factor is capable of being an exceptional circumstance may be a matter of law, as an issue of legal relevance. But whether it amounts to such a circumstance in any given case is a matter of planning judgment". He held that the relevant decision-maker's (an Inspector) reasons for finding "exceptional circumstances" do not "raise any substantial doubt as to whether a public law error was committed"; the "overall package of considerations upon which the Inspector relied was plainly capable of amounting to "exceptional circumstances" and could not be described as

simply "commonplace". It is impossible to say that the judgment which the Inspector reached was irrational. It did not fall outside the range of decisions which a reasonable Inspector could reach."

Case summary prepared by George Morton Jack