

Case Name: *East Bergholt Parish Council v Babergh District Council* [2018] EWHC 3400 (Admin) (07 December 2018)

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Commentary: A judicial review brought by the Parish Council of the District Council's decisions to grant planning permission for three developments in the village was dismissed. The Claimant's grounds related to the District Council's calculation of the 5 year Housing Land Supply (5YHLS) and its approach to whether sites were deliverable for the purposes of inclusion in the 5YHLS.

The three applications for planning permission were not in accordance with the local Development Plan and planning permission was granted as a result of the application of the tilted balance under the NPPF which was engaged because the Council could not demonstrate a 5YHLS. Concerns about the calculation had been raised by various people and organisations. The Claimant's case was that the Officer's Report was flawed in not drawing to members' attention a major controversial issue, the 5YHLS, which was fundamental to the planning judgment being exercised.

The Judge held that the Officer's Report accurately reflected the position on the Council's 5YHLS and that members of the committee did have enough information in the context (including discussions of the 5YHLS calculation at previous meetings) to understand the position when determining the planning permissions. The Claimant's case in reality was an attack on the assessment of the 5YHLS set out in the Council's Annual Monitoring Report rather than the decisions to grant the planning permissions. The case of *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 had not set a lower bar for the meaning of "deliverable" in footnote 11 of the NPPF.

The Claimant's ground on fairness (including that five days' notice instead of four should have been given) was also dismissed.

Case summary prepared by Susannah Herbert.