

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2020/0087



THE QUEEN ON APPLICATION OF OCKHAM PARISH COUNCIL –v– GUILDFORD BOROUGH COUNCIL & ORS

ORDER made by the Rt. Hon. Lord Justice Lewison

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: REFUSED

An order granting permission may limit the issues to be heard or be made subject to conditions

Reasons

1. The Appellant's Notice gives only one ground of appeal. Although the skeleton argument divides up the argument, in essence the point of law at issue is encapsulated in para 32 viz that a desire to exceed the OAN is not capable of contributing to exceptional circumstances. There is no issue about the judge's exposition of what the phrase "exceptional circumstances" means at [68] to [72].
2. It appears from [90] that there was no attack on the *principle* that the OAN could be exceeded; but the attack was on the *level* of the excess. The judge's conclusion at [91] follows logically from that concession; and is self-evidently correct.
3. Once the point of principle is out of the way, the level of excess is a question of planning judgment. The hurdle of irrationality is extremely high, and the skeleton argument does not begin to surmount it.
4. Moreover, as all the Respondents point out in their responses to the application for permission to appeal, the NPPF is concerned with the actual delivery of housing, not merely is allocation in a plan. It cannot be either unlawful or irrational to allow for some buffer or future-proofing. The concession was therefore correctly made.
5. The judge is highly experienced in planning matters. His judgment is careful and closely and cogently reasoned. An appeal would have no real prospect of success.
6. I should add that the Inspector's decision was fact-specific. There are no wider implications that would justify an appeal to the Court of Appeal which has no real prospect of success.
7. The question of costs protection does not, therefore, arise.



Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)



Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

By the Court

Signed: *Kim Hunter*
Date: 21 February 2020

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **C1/2020/0087**

**DATED 21ST FEBRUARY 2020
IN THE COURT OF APPEAL**

ORDER

Copies to:

Richard Buxton Solicitors
19b Victoria Street
Cambridge
CB1 1JP
Ref: OCK1-001/KK

Guildford Borough Council
Legal Services
Millmead House
Millmead
Guildford
GU2 4BB

Government Legal Department
Dx 123243
Wetminster 12

Herbert Smith Freehills Llp
Exchange House
Primrose Street
London
EC2A 2EG

Mills And Reeve Llp
Botanic House
100 Hills Road
Cambridge
CB2 1PH

Cripps Pemberton Greenish
22 Mount Ephraim
Tunbridge Wells
Kent
TN4 8AS

Lower Court Ref: CO/2175/2019