

IN THE COURT OF APPEAL, CIVIL DIVISION



REF: C1/21018/1698



THE QUEEN (on the application of CK PROPERTIES (THEYDON BOIS) LIMITED) -v- EPPING FOREST DISTRICT COUNCIL

ORDER made by the Rt. Hon. Lord Justice Sales

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

Decision: (1) permission to appeal is refused, (2) the application for a protective costs order is dismissed

Reasons

- 1. Supperstone J's judgment discloses no material arguable error of law. The judge was entitled to dismiss the claim both on the merits [55]-[88] and for discretionary reasons, [89]-[91]. There is no real prospect of success on appeal and no other compelling reason to grant permission to appeal. It is appropriate to begin with Ground 3 (as at the hearing below): the councillors were properly informed about the reasons for the exclusion of the site from residential allocation in the plan and so could lawfully conclude that the plan was sound, as the judge found (and was entitled to find) on the facts: [55]-[74]. As to Ground 1, the judge correctly found that the respondent did comply with its SCI, as Appendix B was put on its website when it was finalised. This finding was sufficient for the judge's conclusion on this ground. As to Ground 2, even if it is arguable that the respondent acted unlawfully as alleged, the judge was clearly entitled to dismiss the claim for the discretionary reasons he gave at [89]-[91]. The appellant in fact had a fair opportunity to make representations to the council at an earlier stage and is in a position to be able to participate fully in the examination.
2. Since permission to appeal is refused, it is not appropriate to grant a protective costs order.

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:

- 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;
Boundary disputes;
Inheritance disputes.

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

Signed: [Signature]
Date: 12 September 2018

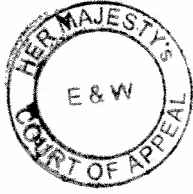
Notes

- (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

By the Court

- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.6 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: **C1/21018/1698**



By the Court

DATED 12TH SEPTEMBER 2018
IN THE COURT OF APPEAL

ORDER

Copies to:

Howes Percival Llp
Dx 5280
Norwich
Ref: JZM/JZC/227430.1

Epping Forest District Council
Leagal Services
Dx 40409
Epping
Ref: DG/RR/CM/489

Lower Court Ref: CO9972018