

IN THE PLANNING COURT
HIGH COURT OF JUSTICE

CLAIM NO: CO/5916/2017

B E T W E E N:-

EAST BERGHOLT PARISH COUNCIL Claimant

and

BABERGH DISTRICT COUNCIL Defendant

and

MR AND MRS P AGGETT (1)
COUNTRYSIDE PROPERTIES PLC (2)
Interested Parties

SECOND WITNESS STATEMENT OF PAUL IRELAND

I **PAUL IRELAND** of 28 Richardsons Road, East Bergholt, Colchester Essex. CO7 6RR
WILL SAY as follows:-

Introduction

1. I am an elected Councillor of East Bergholt Parish Council ("the Parish Council"). I was first elected to the Parish Council in 2003 and was a councillor for 4 years until I stood down. I was re-elected in 2011 and 2015. I have been Chairman of the Parish Council for 4 years. I am retired but my previous occupation was an IT Director. I have a PhD in Nuclear Physics. I am 66 years of age.

2. I previously made a witness statement to support our claim for judicial review (please see CB/TabAA2). This statement included the relevant financial disclosure for an application for costs capping, which I refer the court to. I make this second witness statement in further support of the Parish Council's application for costs protection, which has been challenged by the Second Interested Party, Countryside Properties Plc ("Countryside"), and to address further points made in the Parish Council's Reply dated 14 February 2018. I exhibit a small number of additional documents to this statement. As with my previous statement, I have sought to exhibit only essential documents and make references where appropriate, although full copies of any document can be supplied if required. These documents appear in the bundle marked PI2.

Cost cap application

3. I understand that, while it has been accepted by the Defendant and Countryside that the Parish Council's claim is an "Aarhus Convention claim", Countryside is seeking to argue that the cap relating to our costs liability should be raised from the usual level of £10,000. Without costs protection, I can confirm that the Parish Council would be pressured into withdrawing from these proceedings as the costs would simply exceed our financial resources, which are set out in my first witness statement (CB/TabAA2) and further explained below.
4. Aarhus or, alternatively, judicial review costs capping is of fundamental importance to the Parish Council for financial reasons and because of what is at stake for us, the community we represent, and our local environment if the two planning permissions we are challenging proceed to be built out. I emphasise that issuing a judicial review claim was not a decision we took lightly, and we have consistently sought to do so in a cost-effective manner, but is a decision that we firmly believe is of real public importance.

The importance of this claim to East Bergholt

5. By way of background, East Bergholt as a community has a strong track record of engagement and action in relation to planning and environmental matters. The Parish Council is at the forefront as the democratic representatives of the community in pursuing these matters on behalf of the villagers. For example, we are an area that worked hard to prepare and adopt a Neighbourhood Plan, which has overwhelming

support from the local community; there was a 51% turn-out for the vote with a 93% 'yes' vote, the largest in the country at the time.

6. In addition, East Bergholt was a semi-finalist in Channel 4's currently broadcasting Village of the Year 2017 where, in a programme that went out on Saturday 27 January 2018, the judges stated that they were impressed by the way the community has preserved a world-renowned heritage site from being damaged by tourism.
7. The residents in East Bergholt and the surrounding rural areas are extremely worried and frustrated about the Defendant's policy of granting permission for development in core and hinterland villages. The challenge to the Defendant's decisions on these two planning applications is of very significant importance to the residents of East Bergholt. In fact, there have been unprecedented levels of community engagement and attendance at Parish Council and the Defendant council meetings concerning the applications and other similar developments. This has been widely reported in the local press.
8. For example, below are some key quotes from press articles:

"What the villagers cherish is the fact that East Bergholt is a village, not a town. It is a diverse and vibrant community – a community aware of the importance of Constable's legacy and with a strong determination to see it passed on to future generations of residents and visitors alike."

Extract from East Anglian Daily Times - Constable Country in East Bergholt under threat by proposal for 144 homes – 15 January 2015

"Earlier this month, more than 300 people "packed out" a village meeting – one of the biggest attended in living memory"

Extract from East Anglian Daily Times - Fight against 'ridiculous' plan for 144 homes in Constable Country 'gathering momentum' as 100 protest signs put up – 14 July 2015

"Dozens of members of the public tried to cram into the council chamber in Hadleigh, with many eventually having to settle for an overspill room, to hear the debate surrounding the application ahead of the decision earlier today. More than 400

letters of representation were made to the council regarding the application which would cover nearly 19 acres.”

Extract from East Anglian Daily Times - 23 March 2017

“East Bergholt villagers explain why preserving Constable Country means so much to them”

Extract from East Anglian Daily Times – 4 April 2016

“Anger in East Bergholt as controversial homes plans backed by Babergh”.

Extract from East Anglian Daily Times 02 August 2017

9. Given the high levels of local interest and engagement, I consider that it was particularly unfair that the Defendant only gave the Parish Council and other consultees four clear working days’ notice of its agenda for the planning committee at which the planning applications our claim concerns were considered. That we were only given four days’ notice was confirmed by the Defendant’s Assistant Director of Law and Governance on 20 December 2017 in correspondence with Patricia Wright, the Secretary of the East Bergholt Society (correspondence exhibited). She confirmed that the agenda was published on the Council’s website only by 11:54 on Wednesday 26 July 2017, even though the planning committee meeting was held at 09:30 on Wednesday 2 August 2017. We informed the Defendant that we were aware of this correspondence on Monday 12 February and we are yet to receive a formal response as to its position. We also do not know if the Defendant complied with its own Constitution. The lengthy and detailed Officer’s Reports for the two applications, and a third application that we were also concerned about, were also only published online with four days’ notice.

10. It is our firm understanding that the Defendant invariably gives the Parish Council and other statutory consultees five clear working days’ notice of planning decisions to be considered by its committee and all associated Officer’s Reports by publishing this information on its website. For example, I can see that for a planning committee scheduled for next Wednesday 21 February 2018, the relevant documents were uploaded to the website on Tuesday 13 February 2018.

11. This cutting short of the usual notice period really made it difficult for us to properly prepare representations for the meeting. This was made worse by the fact that we had not just one application to make representations on, but three, and that it was the school summer holidays, which always makes it harder to get volunteers' help. Our parish councillors (who are all volunteers) worked extremely hard to prepare our representations but they struggled to do so in the time frame and we could really have used the conventional extra day (or more). I do think this caused us prejudice and it is very unfair if the Defendant or Countryside is trying to argue that we are too late to make any of the grounds in our claim because of delay given the background and their own failings in this regard.

12. It is clear that challenging the two applications in this claim is of huge importance to East Bergholt. As I set out in my first witness statement, development on the cumulative scale consented by these applications will forever alter the character of the Parish and the approach through Constable country, as well as impacting on important heritage assets and the Area of Outstanding Natural Beauty. It also clearly impacts development across the District if there is not a five-year housing land supply. Many other residents and parishes are concerned. It is also of significant importance to the public that clear reasons are given for such important decisions and our claim is very much focused on proper access to environmental information. Therefore, I believe the Parish Council is firmly acting in the interests of the public and the environment.

The financial implications for the Parish Council if costs cap is refused

13. Crucially, I can confirm that we require costs protection to continue with this claim and that we would also find the proceedings prohibitively expensive if the usual costs limit was to be varied up, which is something Countryside seeks. It is also very disappointing that Countryside have not even bothered to engage with us as to what level the cap should be at; they have simply threatened that it should be raised to an unspecified higher level, which I feel is designed to scare us off. Bluntly, unlimited costs liability would pressurise us into withdrawing our claim. For a small Parish Council with limited means, it is intimidating for us to be threatened with having to pay the sizeable costs that a company like Countryside is readily able and prepared to spend on litigation such as this.

14. In reality, the cost of this litigation means very little to Countryside, and spending on legal expenses is a commercial decision it is prepared to make. I can see from Countryside's Annual Report 2017 that its cash or cash equivalents as at 30 September 2017 was £77.4 million and that its operating profit has increased by 34% compared to 2016. Furthermore, in an article in the financial section of the Daily Mail, 26 January 2018, Countryside is reported to have increased its homebuilding by 47% in October-December 2016. It should be noted that Countryside has instructed an experienced QC and a junior barrister. Similarly, the Defendant itself reported in its Statement of Account for 2016/2017 cash or cash equivalents of £4,194,000 and the Defendant has instructed a QC.
15. In comparison, the Parish Council has made the most difficult financial decision to issue a judicial review claim, even though this might mean not being able to afford to fund other vital community projects, because we think it is the single most important challenge that our community and our local environment face. By way of contrast to Countryside and the Defendant, the Parish Council has instructed junior counsel, with support where appropriate from a more recently called junior counsel, in a concerted effort to keep costs as modest as possible.
16. In terms of our financial position, I explained in my first witness statement that the Parish's current anticipated available reserves are only in the order of £23,000. I set out below further detail on some of our future outgoings, which mean we simply cannot afford to pay any more than £10,000 in costs without sacrificing other parish schemes.
17. One example of a project we may not be able to afford is the East Bergholt Neighbourhood Plan project. To address the housing needs of the community and local area, the Parish Council has formed the not-for-profit East Bergholt Community Land Trust to develop affordable housing in the community. If we do not have costs capping, this is exactly the kind of vital community project that we may not be able to fund.
18. As I stated above, the Parish Council took the lead in preparing and sponsoring the East Bergholt Neighbourhood Plan (EBNP) through the Neighbourhood Planning process. This cost the Parish Council £28,688 in 2016/2017 plus 15,000 volunteer hours. We are now facing unanticipated costs in relation to our EBNP. At the time of production of the EBNP the Parish Council was advised by the Defendant that

criteria-based housing was an acceptable approach to land supply. Now we are being told by the Council that it is essential to include specific sites. Under the current statutory framework, it is not easy for us to modify the EBNP accordingly and we are required to go through a much longer and costlier formal process to amend it. We have been quoted that to update the EBNP it will cost approximately a further £20,000 for advice from Professional Planners (£300 per hour); £3000 for the inspection, and moreover there would be the cost of consultation with villagers and for printing 1500 copies of the updated EBNP.

19. In addition, we are facing the one-off cost of preparing for the introduction of the EU General Data Protection Regulation in May 2018 which is projected to cost the Parish Council £6,000.
20. I emphasise that the Parish Council must maintain a sensible reserve of funds in case of emergency or unexpected expense caused by events outside of our control but which are our responsibility, such as remedying the effects of weather or vandalism-related damage to parish property, such as recreation grounds, children's play equipment, the sports pavilion and the cemetery. I would ask the court not to make any order that cuts the Parish Council's finances to the bone to the point that we lose any room to manoeuvre.
21. We believe that there is a very clear inequality of arms which should be addressed by the court in the form of costs protection.

Similar Planning Court claim running arguments based on *St Modwen*

22. It has been brought to our attention that there is at least one other challenge currently lodged in the Planning Court concerning five-year housing land supply related decisions and the impact of the *St Modwen* judgment. I exhibit those grounds to this statement.

Defendant's members' understanding of five-year housing land supply

23. On 7 February 2018, it came to our attention that the Defendant's Overview and Scrutiny Committee had published a "Review Scoping Document" on "Five year housing land supply" (exhibited to this statement). It appears that the purpose of this

document is to establish the scope of a review that this particular committee will carry out in relation to five-year housing land supply. This document makes clear:

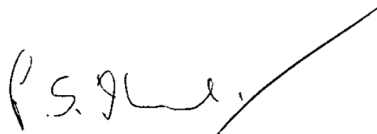
“There is a mixed understanding among Councillors and communities regarding the 5 year housing land supply – both how it’s calculated and the implications of not having one. There is also limited understanding of how to influence it.”

24. The fact that the Overview and Scrutiny Committee sees fit to conduct this review leaves me with serious doubt that councillors have the expertise required to understand the implications of making planning decisions related to five-year housing land supply, such as those we are challenging. This strengthens my belief that it was the correct decision to issue this judicial review. I agree that members do not understand how to calculate or the implications of five-year housing land supply. I strongly think that if they had been properly advised that the outcome would have been different.

STATEMENT OF TRUTH

I believe the facts stated in this Witness Statement to be true.

Signed:

A handwritten signature in black ink, appearing to read 'P. Ireland', with a long, sweeping horizontal stroke extending to the right.

DR PAUL IRELAND

Dated: 14 February 2018

