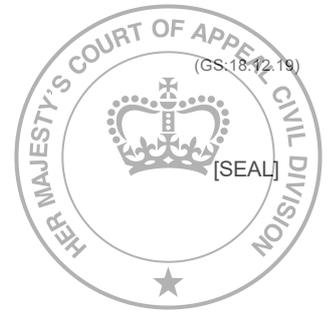


IN THE COURT OF APPEAL, CIVIL DIVISION



REF: C1/2020/1865

GIRLING –v– EAST SUFFOLK COUNCIL

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. Ground 1 focusses too narrowly on the officer's report. Although it is true that, in general, where a planning committee follow an officer's recommendation they can be assumed to have relied on the officer's reasons, it is clear from the judge's findings at [40] that the committee were given further information at their meeting. Having regard to the information provided (especially about the state of the trees in Coronation Wood) it appears that the committee were advised that overall the proposals could be considered to *benefit* the AONB. Based on that advice the decision to grant planning permission accorded with para 172 of the NPPF even on the Appellant's interpretation. This ground of appeal has no real prospect of success.
2. I note also that the judge considered that this was a new argument not pleaded or relied on below. That is a further reason for refusing permission to appeal on this ground.
3. Ground 2. Whether or not the Appellant argument on the interpretation of reg 26 is correct, in view of the judge's decision on the facts at [58] to [61] success on the point would not change the judge's order. In consequence the point is an academic one; and for that reason alone permission to appeal on this ground should not be granted. But further, I consider that the judge's interpretation of reg 26 was plainly correct.
4. 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

Signed:
Date: 10th November 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: **C1/2020/1865**