In the High Court of Justice
Queen's Bench Division
Administrative Court

CO/250/2021

In the matter of an application for judicial review

THE QUEEN

on the application of

BIOABUNDANCE COMMUNITY INTEREST COMPANY

Claimant

-and-

SOUTH OXFORDSHIRE DISTRICT COUNCIL and others

Defendant

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of Service filed by the Defendant and Interested Parties

ORDER by the Honourable Mr Justice Dove

1. The application for permission to apply for judicial review is refused.

2. The defendant's costs of preparing the Acknowledgement of Service are to be paid by the Claimant to the Defendant, summarily assessed in the sum of £8,265.69.

3. Paragraph 2 above is a final costs order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Defendant a notice of objection setting out the reasons why he should not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Defendant's response is served, file and serve submissions in reply.

4. The directions at paragraph 3 apply whether or not the Claimant seeks reconsideration of the decision to refuse permission to apply for judicial review.

    (a) If an application for reconsideration is made, the Judge who hears that application will consider the written representations filed pursuant to paragraph 3 above together with such further oral submissions as may be permitted, and decide what costs order if any, should be made.

    (b) If no application for reconsideration is made or if an

application is made but withdrawn, the written representations filed pursuant to paragraph 3 above will be referred to a Judge and what order for costs if any, should be made will be decided without further hearing.

Reasons

1. In relation to ground 1, the decision required of the Defendant was defined by section 23 of the Planning and Compulsory Purchase Act 2004 as being, in essence, whether the plan should be adopted or not (bearing in mind the objective of contributing to the achievement of sustainable development). I accept the submission made that all of the matters identified in the Committee Report were relevant considerations in relation to the decision as to whether or not the plan should be adopted. Little of substance in relation to the nature of the decision can be gleaned from a forensic examination of the observations of members of the Council made in debate. They provide little help in relation to the ultimate reasons for the Council, as a collective body, resolving to reach the decision which they did by democratic vote. This observation arises before there is any consideration given to whether the members whose observations are relied upon were instrumental in the passing of the motion to adopt the plan. In my view ground 1 is not arguable.
2. In respect of ground 2, similar observations apply in relation to the reliance upon individual remarks by members in the course of a debate leading to a collective decision of the Council. In any event, I am unable to accept the proposition that the First Interested Party had placed the Defendant, and in particular the members, under coercion or undue pressure to adopt the plan. It is clear that the First Interested Party left the decision as one for the Defendant to reach exercising its own independent judgment.
3. Ground 3 relates to the approach taken to the identification of the housing requirement for the plan, and the contention that in endorsing the housing requirement the Inspector failed to properly understand and thereafter apply government policy from paragraph 60 of the NPPF and the relevant guidance in respect of that policy in the PPG. In my view that contention is unarguable in the light of the clear and careful consideration given by the Inspector to the question of the application of the policy, and its implications for the housing figure in the plan set out at paragraphs 32 to 35 and 37 of the Inspector's Report. There is no error in the interpretation of the NPPF or the Guidance in this analysis and, therefore, no substance in ground 3. In a similar way, the contentions of grounds 4 and 5 are not arguable. It is clear from the material that the figure in the plan of 775 for the housing requirements had its roots in the 2014 SHMAA (see Table 90 and paragraph 9.52) and the suitability of that figure and its derivation from the SHMAA are fully and clearly explained by the Inspector at paragraphs 36 and 37 of his Report. Thus, the justification for the figure used for the housing requirement was evident and the reasons for its use were set out. There is in my view no arguable legal error in relation to this issue.
4. Turning to ground 6, the question of the need for the plan to address the housing need arising from Oxford City, the Inspector dealt with

this issue at paragraphs 40 to 42 of his Report. It is notable that the Inspector dealt directly with the point taken by the Claimant in relation to the changes to the assessment of Oxford related need since the 2014 SHMAA at paragraph 41 of his Report. He thereafter explains, at paragraph 42, why meeting the needs of Oxford in the manner proposed in the plan remains relevant and necessary in the light of the more recent information available. Whilst I note that it is reported that Lang J has granted permission to apply in relation to a similar point in the context of Cherwell District Council, I have to consider whether this point is arguable in the context of South Oxfordshire District Council, and in the light of the matters set out above I am entirely satisfied that it is not.

5. Finally, in relation to ground 7 for the reasons set out above the housing requirement was not the subject of an uplift as contended by the Claimant and, in any event, the Inspector explained clearly and carefully his judgment in relation to the question of whether the issue of climate change justified any reduction of the housing requirement at paragraphs 51 and 52 of his Report. The reasons which were provided by the Inspector were entirely adequate to explain to the participants in the process the views that he had reached in this connection.
6. This is an Aarhus claim and the claimant's liability for costs is properly to be limited to £10,000. I assess the defendant's costs from their schedule in the sum of £8,265.69. In my view having reviewed the documentation this is not a case where further sets of costs in relation to the participation of the interested parties is warranted: they essentially rehearsed the same issues in response to the claim that were set out by the defendant.

Signed Ian Dove 26.3.21

The date of service of this order is calculated from the date in the section below

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For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]
or the Claimant's, and the Defendant's [and the Interested Party's] solicitors

Date: 29/03/2021

Solicitors: LEIGH DAY
Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.

A fee is payable on submission of Form 86B. ***For details of the current fee please refer to the Administrative Court fees table at*** https://www.gov.uk/court-fees-what-they-are.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the gov.uk website at https://www.gov.uk/get-help-with-court-fees