Appendix 9

Councillor Stephen Williams
Oak Cottage
Burnt Oak
East Bergholt
COLCHESTER
CO7 6TJ

E-mail:
Telephone: (01206) 298877

To: The Chairperson
Babergh District Council
Planning Committee

Ward: Dodnash

31st July, 2017

Dear Chairperson,

Item No 3. 179-220 B/16/01092 EAST BERGHOLT – Land East of Constable Country Medical Centre, Heath Road

I regret that for personal reasons I am out of the country and unable to join you in this meeting. I respectfully ask the Chair to have this read to the members before they arrive at their decision.

On some occasions the numerical order of items on the agenda is not necessarily followed therefore I apologise if some of this content is repeated in my letter relating to the proposed developments in Moores Lane and Hadleigh Road, East Bergholt to be heard the same day.

Members will remember my letter to the East Anglian Daily Times dated 26th January 2017 headed:

"JUDICIARY NOW SUPPORTS PLANNING DEMOCRACY
IN SOUTH SUFFOLK
Re The High Court Ruling in
East Bergholt Parish Council v
Babergh District Council December 9th 2016"

I wrote:

"I tried three times to convince [the ruling party group at the time] to adopt amendments to Babergh`s Local Plan so as to allow only for moderate housing growth over the balance of the planned period. I argued growth should be in line with local need established by reference to Core and Hinterland Village requirements. (In East Bergholt itself we had actual survey results quantifying the need for housing and upon which I based my proposals)."

"As a lawyer I found therefore the judgment of Justice Mitting in the case of ***East Bergholt Parish Council v Babergh District Council [2016]***, entirely refreshing. In that case he ruled development can only take place in Babergh outside the built-up area boundaries ("BUAB`s") if they fulfil the requirements of planning policy CS11 and if planning policy CS2 is also observed. This means development can only take place outside BUAB`s where the District Council is satisfied that circumstances are exceptional and subject to a proven justifiable need. Mr Justice Mitting went onto say:

"I am satisfied that for the reasons explained, local housing need in Policy CS11 means housing need in the village and its cluster, and perhaps in areas immediately adjoining it. "

Members of the Planning Committee, the Court therefore ruled that development of the kind envisaged by this application is in effect unlawful because of the absence of a proven "local need" within the meaning given to those words by Justice Mitting. In *the Hadleigh Road case* Babergh lost and was required to pay around £75,000 in legal costs. My fear is Babergh will lose again at great cost on this application too.

Under the principle of "stare decisis" the Court declared the position as at the date of Justice Mitting`s decision and all matters within the purview of the Court. The non-existence of a 5 year land supply was never argued by either of the two Counsels for Babergh District Council in that case which was heard on Friday 9th December 2016, less than 8 months ago. So what has changed? We find out in the officer`s report:

At page 217 her report states:

"179. In any event, as the Council does not have a five year housing land supply, it is considered therefore that limited weight should be attached to policies CS2, CS11, CS15, EB1 and EB2. Whilst it is considered that the proposal does not strictly comply with these policies, any conflicts with these policies (whether in relation to proving "exceptional circumstances" or compliance with the limbs of policy CS11 including (locally identifiable need) should be afforded limited weight.

"180. Therefore, whilst the proposal is not in accordance with the development plan as a whole, it is considered that the adverse impacts from the proposed development (including the identified harm to heritage assets or otherwise) do not significantly and demonstrably outweigh the benefits of the development explained in this report, even where policies in the Neighbourhood Plan are given greater weight due to their recent examination and development by the community.

2181. As such, the proposal is considered to be sustainable development, in accordance with the three dimensions of sustainable development set out in the NPPF, and a recommendation of approval is therefore made. Whilst such a decision would not be in accordance with the development plan, viewed as a whole, it is an outcome that is envisaged by policy CS1 where the 'tilted balance' and the presumption in favour of sustainable development are engaged."

The officer reasons that because suddenly there is no five year land supply the Local Plan or Core Strategy can be bypassed so that only the "sustainable development" test under the NPPF remains.

There are two aspects of this application which concern me:

1. How is it that less than 8 months have passed by and suddenly the existence of a 5 year land supply is now being denied in circumstances where previously (even in the High Court in December 2016), it was never questioned? Is it just convenient to do so to avoid a Judge`s ruling? Do members really want to be involved in what could be seen as pure subterfuge? Is it entirely correct to assume there is now no 5 year land supply? Do the Planning Committee members really want to risk another judicial review when there is something at the very least "fishy" and far from transparent about a sudden reinterpretation of the land supply figures against a judgment already given by the High Court prohibiting this kind of development?

2. Secondly, and more importantly, I genuinely believe that once again, the legal team at Babergh Planning Department have got it wrong and made an error of law giving rise to the substantial risk of yet another finding against the Council if you approve this application.

   The error in law is this:

   If in the unlikely event there is no five year land supply, nowhere in this report does it refer to the necessity of assessing "sustainable development" against a finding of absence of local need for this kind of housing as determined by Justice Mitting in the *East Bergholt Parish Council v Babergh District Council case.* In other words members, please let us use common sense and ask ourselves:

   How can this application amount to "sustainable development" within the meaning of paragraph 14 of the NPPF when there is already a legal finding of no proven local need? How can it possibly be sustainable in those circumstances?

I therefore invite you to apply this common sense approach and refuse this application to avoid any further legal costs involved in fighting and losing yet another judicial review. This time you could also risk personal surcharges for repeated mistakes made by the Planning Committee. Follow the recommendations in this report I say at considerable risk certainly, for sure, to the Council.

If you recall, I tried to warn you repeatedly last time.

Yours faithfully

Councillor Stephen Williams
Dodnash Ward