



Costs Decision

Site visit made on 14 November 2017

by S R G Baird BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30th November 2017

Costs application in relation to Appeal Ref: APP/M2325/W/17/3181335 99 Ballam Road, Lytham St Annes, FY8 4LF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Purcell Developments for a full award of costs against Fylde Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a 3-storey apartment building containing 8 apartments with associated car parking and landscaping following the demolition of the existing dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Whilst members are not bound to follow the advice of their professional officers in doing so they are required to properly exercise their development management responsibilities and to rely on reasons for refusal that stand-up to scrutiny on the planning merits of the case. When Members considered the proposal it is accepted that they were advised that the Council did not have a 5-year supply of housing land as required by paragraph 47 of the National Planning Policy Framework (Framework). Where a 5-year supply of housing land cannot be demonstrated, Framework paragraph 14 requires that the tilted balance is applied when assessing the planning merits of a proposal. The tilted balance requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.
4. It is for the decision maker to determine what weight to attribute to the various issues that go to make up the planning balance, tilted or otherwise, in any particular case. This can include the scale of the shortfall and the likely duration of that shortfall. However, where there is a lack of a 5-year supply, the starting point has to be the tilted balance. Here, there is nothing in either the evidence submitted on the appeal or in the reasons for refusal, which demonstrates that in coming to the decision in May Members engaged the requirements of Framework paragraph 14.
5. Subsequently, the Council's Statement of Case dated October 2017, based on a Housing Supply Statement dated 31 March 2017 – Examination in Public Edit July 2017, identifies that the supply of housing land exceeds 5 years. As such

the Council concluded that the tilted balance is not engaged. However, that position is wholly inconsistent with the Council's position as set out in the Statement of Common Ground for the Mains Lane, Poulton-le-Fylde appeal¹, also dated October 2017, which unequivocally acknowledges a less than 5-year supply of housing land exists and that the tilted balance is engaged.

6. The Council has, with its Statement of Case, produced evidence to substantiate the reasons for refusal. However, given that the starting point for the planning balance is the application of the tilted balance an approach which has not been applied, the reasons for refusal and the Members' conclusions do not stand-up to scrutiny. Accordingly, in this case the Members have failed to exercise their development management responsibilities properly. This failure amounts to unreasonable behaviour and has resulted in the appellant incurring unnecessary expenditure in pursuing an appeal. Accordingly, a full award of cost is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Fylde Borough Council shall pay to Purcell Developments the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Fylde Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

George Baird

Inspector

¹ APP/M2325/W/17/3174723.