



Costs Decision

Site visit made on 4 February 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 19th March 2020.

Costs application in relation to Appeal Ref: APP/M3645/W/19/3239019 Greenheyes, Uvedale Road, Limpsfield RH8 0EN

- 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 Mr Aziz Elkhadraoui for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of 7 apartments along with associated landscaping, parking & access.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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. The applicant contends that the Council failed to properly grapple with the extent of the shortfall in their housing land supply or to apply the 'tilted balance' of the presumption in favour of sustainable development set out in paragraph 11d) of the National Planning Policy Framework (the Framework). They therefore contend that had the correct test been applied, even if the Council had arrived at the same conclusion as to the level of harm, this could only have resulted in the application being allowed.
4. Paragraph 49 of the PPG sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. While no figures for the Council's housing land supply are contained in the officer report, the latest position from the Council's 2019 Annual Monitoring Report is set out in its appeal submissions. Although this figure is disputed by the applicant and various appeal decisions have been referenced giving different figures, all are nevertheless well below the 5-year supply required by the Framework. Therefore, the presumption in favour of sustainable development in Framework paragraph 11d) is engaged.

6. The Council's officer report weighed the harm arising from the scheme against the contribution to housing land supply when reaching its decision. In its appeal statement, the Council deals with the extent of the shortfall and stresses that it is well aware of the lack of 5-year housing land supply. However, even in light of this shortfall, its conclusion sets out that the scheme would not bring benefits such as affordable housing, and that the harm identified on character grounds was not outweighed by housing provision. On a straightforward reading, both conclusions appear to be a simple balancing exercise as there is no explicit reference to the presumption in favour of development or application of the 'tilted' balance in paragraph 11d)ii). Although the Council's response to this application for costs seeks to apply that balance, the wording has effectively been reversed and therefore appears to have been incorrectly applied.
7. The requirement to apply a presumption in favour of sustainable development where there is no 5-year supply of housing land has been in place since the publication of the first Framework in 2012. The Courts have since held that it will be necessary for the decision maker to engage at least in broad terms with the extent of the shortfall in housing land supply in reaching a decision. Accordingly, the Council's failure to explicitly engage with the extent of the shortfall and apply the paragraph 11 d) balance was unreasonable behaviour.
8. Nevertheless, on the basis of the evidence before me and having engaged with the shortfall and applied the paragraph 11 d) balance, I have dismissed the appeal. Consequently, the proposed development is not one which should clearly have been permitted. Therefore, there is no certainty that had the Council applied the 'tilted' balance, it would have reached a different decision and granted permission. Accordingly, it has not been demonstrated that unnecessary or wasted expense has been incurred by the applicant.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L McKay

INSPECTOR