IN THE MATTER OF

LAND AT PEAR TREE LANE,
EUXTON,
CHORLEY

COSTS APPLICATION
MADE ON BEHALF OF
THE APPELLANT

GLADMAN DEVELOPMENTS
LIMITED

No5 BARRISTERS CHAMBERS

Introduction

1. This is an application for a full award of costs against the substance of the Council's case

2. Costs applications should be short because the point being made should be obvious. This application is no exception.

The Timing of the Application

3. There is no bar on the timing of an application save for it needing to be made before the end of the inquiry. This the Appellant has done. The parties are encouraged to give notice of applications for costs. But there are reasons for why the Appellant has not done that, which relate specifically to the substance of the Council's case. In short, the Appellant wanted to clearly understand the reasons for the Council's decision to ignore the standard method (SM) and to rely instead on a housing requirement set out in the Memorandum of Understanding/ Statement of Common Ground No2. In particular, the Appellant wanted to understand the very surprising claims made by the Council about the following:

   (1) The claim the Council is itself relying on the standard method, despite the figure it is using being only half that of the figure actually derived from the proper application of the standard method.

   (2) The claim the Council is able to introduce an additional step into the standard method, by which it significantly redistributes the housing requirement across three local authority areas and yet claims it is still the standard method.

   (3) The claim the Council can redistribute the housing requirement across three local authority areas ahead of the adoption of the local plan (or at least the Local Plan Inspector finding the requirement sound).

(4) The claim the Council can redistribute in this way despite the fact the NPPF/2019 now making expressly clear that deviation from the SM is ONLY permissible as "in the context of preparing strategic policies".

(5) The claim paragraph 013 of chapter 2a of the PPG is relevant to decision taking, when it is in a paragraph specifically addressing plan making and, moreover, paragraph 016 is the paragraph which expressly addressed the approach to take to decision taking.

(6) The claim MOU2 can be used for decision making even though it is not a DPD or even an SPD.

(7) The claim MOU2 and the HNS should be given full weight; and

(8) The claim MOU2 is not a material consideration, albeit it is the whole basis of the Council's case on 5YS

4. None of these claims are remotely credible. LPA's should not be entitled to refuse applications for planning permission based on reasons which are simply not credible.

5. The Appellant also wished to seek clarification on the Council's case about the important delivery of 54 units of affordable housing and why it should only be given limited weight.

6. The Council's case on these matters was explored during the XX of the Council's evidence. It was then pursued in part in XX of the Appellant's witness today (day 6). The Appellant is entitled to seek to clarify such matters during the inquiry and this it has done. It is only after this, and the Council's clarification and persistence in pursuing these points that the Appellant has felt it is appropriate to seek costs.

The Application for Costs

7. The Council's case on the housing requirement is simply not credible because it has pursued the abovementioned lines of argument which are simply not credible. The case presented is not reasonable. One can only take the legitimate exercise of planning judgment so far. The Council has misread and misapplied both the NPPF (2019) and the guidance in the PPG. There can be absolutely no doubt about that. More detail on why the Council is wrong is provided in the Appellant's closing submissions.

8. An easy way to test whether it is unreasonable is to imagine what the Council would say if the roles were reversed. If the Council had relied upon the SM and Gladman had said it should be another figure, despite the definition of local housing need in the glossary of the NPPF. NPPF (2019) makes it absolutely clear that using some other method is not appropriate when using local housing need to calculate the 5YS in the context of decision making. The Council would have said that Gladman's case flies in the face of the NPPF and PPG. And they would be right to say that.

9. The housing requirement is the pivotal issue in terms of the defence of the Council's case. If the SM is applied properly (as it must be) then the Council accept they have no 5YS. The shortfall is very significant whether the one site in dispute is deducted from the supply or not.

10. The RR on its face makes clear that the 5YS is pivotal to the issue of the grant of planning permission. There are no technical objections or indeed any other objections of any kind, supported by expert evidence. The site is already earmarked for development needs. It is just an issue of timing. And absent a 5YS then plainly the site is needed to meet the shortfall, as the rest of the Borough is either existing built development or Green Belt, save for an area of the Pennines which is eminently unsuitable for development.

11. The Harrogate Court case concerned a decision made under NPPF (2018) which did not contain the very express wording on the issue of an alternative approach being taken to the use of the SM, only when in the context of plan making. Moreover, the point was in fact academic. And the case only concerns what is lawful and not what is reasonable. They are two different tests and should not be confused.

12. The previous appeal decision concerned wholly different circumstances and a situation in which the tilted balance was not applied.

13. It is respectfully submitted that a full award of costs should be made in this case.

2 July 2020

CHRISTOPHER YOUNG QC
No5 Chambers
Birmingham - Bristol - Leicester - London