

Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 23/11/18

gan **Richard Duggan BSc (Hons)**
DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 12/12/18

Costs Decision

Site visit made on 23/11/18

by **Richard Duggan BSc (Hons) DipTP**
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 12/12/18

Costs application in relation to Appeal Ref: APP/T6850/A/18/3212223

Site address: Troedybryn, C2018 From Junction by Llys-Onnen at Abercegir to Junction with A489T at Pont Ab, Abercegir, Machynlleth SY20 8NR

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mr Frantisek Sic for a full award of costs against Powys County Council.
 - The appeal was against the refusal to grant planning permission for the erection of a single, affordable detached three bedroom family dwelling with a separate garage/ workshop.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr Frantisek Sic

2. The Appellant contends that the planning application was assessed against a policy which had not been implemented at the time of submission and was subsequently refused, but if the correct policy had been used the application would have been approved. The second reason for refusal related to the built heritage officer's insistence that the dwelling will adversely impact a listed building, despite numerous attempts to demonstrate that this is not the case including the preparation of a 'Sketchup', therefore, the applicant has already spent a considerable amount of money on additional work.

The response of Powys County Council

3. In response, the Council states that the agent submitting both the application and the appeal would be aware of the requirement of the Local Planning Authority (LPA) to determine applications based on the policies adopted at the time of determination, not at the time of submission. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states: If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. Furthermore, paragraph 3.1.3 of Planning Policy Wales (9th Edition, 2016)¹ states:

¹ Since the Council submitted their response the 10th Edition of Planning Policy Wales was issued in December 2018.

`...applications for planning permission or for the renewal of planning permission, should be determined in accordance with the approved or adopted development plan for the area.

4. The application was submitted to the LPA in October 2017 prior to the adoption of the Local Development Plan (LDP). During the course of the application the Council attempted to overcome concerns raised by the Built Heritage and Ecology officers to progress the application. The final set of comments from the Built Heritage officer was received on the 22 May 2018, one month following the adoption of the LDP.
5. As there had been a significant change in policy since the submission of the application, with the LDP being adopted, it is considered that it was not unreasonable of the LPA to determine the application based on the adopted planning policies.

Reasons

6. Section 12.3 of the Welsh Government's Development Management Manual and the associated Section 12 Annex '*Award of Costs*' ('the Annex') advise that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. In terms of the advice contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour. Procedural awards may be claimed for unreasonable behaviour occurring during proceedings which has caused unnecessary or wasted expense. Such an award is made where a party has disrupted or delayed the process for determining an application, appeal or call-in during proceedings. Examples of unreasonable behaviour that may lead to an award of costs include, the failure to determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application.
8. It is clear from the evidence that concerns were raised by the Council relating to the impact of the development on the setting of listed buildings as set out in the detailed consultation responses of the Built Heritage officer. In response to these concerns the Appellant submitted two amendments to the scheme which necessitated further consultation with the Council's Built Heritage officer. In addition, the Council's ecologist required a Phase 1 Habitat Survey to be submitted to assess any impact on reptiles and whether any mitigation measures would be required. The additional time taken to negotiate and attempt to resolve these issues resulted in the determination of the application being delayed to such an extent that the policy framework had changed due to the adoption of the LDP.
9. Based on the available evidence it appears unlikely that swifter action by the LPA and the Appellant in relation to built heritage and ecology matters would have led to a different eventual decision. The Council continued to object to the development due to its impact on the setting of listed buildings and the potential harm to ecology, thus, it appears likely that an appeal would have ensued even had the Council determined the application within the policy framework of the UDP.
10. Although there was a delay in determining the application, the evidence does not show that the Council caused deliberate delay. It is also beyond my jurisdiction to determine the appeal proposal under the old policy framework of the UDP. Therefore,

this matter does not amount to unreasonable behaviour within the meaning of the development management manual which would justify costs being awarded.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Annex at Section 12 of the Development Management Manual, has not been demonstrated. A partial or full award of costs is therefore not justified in this case.

Richard Duggan

INSPECTOR