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## Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 25/02/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13.05.2019

## Costs Decision

Site visit made on 25/02/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 13.05.2019

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**Costs application in relation to Appeal Ref: APP/T6850/X/18/3217896**

**Site address: Riverside Caravan Park, Llangammarch Wells, Powys, LD4 4BY**

**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 195, 322C and Schedule 6.
  - The application is made by Mr John Carroll for a full award of costs against Powys County Council.
  - The appeal was against the refusal of the Council to issue to issue a certificate of lawful use or development for a the siting of 40 touring caravans and 13 static caravans between 1 February and 31 October inclusive in any one year and the winter storage of 42 caravans.
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## Decision

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

## Reasons

2. Welsh Government (WG) guidance relating to an award of costs, in the form of the WG Development Management Manual (DMM) and the associated Section 12 Annex: *Award of Costs* (May 2017) (Annex 12), advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for an award of costs to incur unnecessary or wasted expense in the appeal process.
  3. The applicant contends in this case that the Local Planning Authority (LPA) failed to engage with the question of lawfulness in the application for a Lawful Development Certificate (LDC) and misunderstood the legal basis for the application. It is therefore contended that, despite requesting a substantive response, it was necessary to lodge an appeal simply in order to have the question of lawfulness of the proposal addressed. The LPA has chosen not to respond to the application for an award of costs. I shall therefore determine the application on the basis of the information before me and within the context of the concerns raised by the appellant.
  4. Despite the outcome of the appeal decision, I have found a number of shortcomings in the way the LPA considered the application. Indeed, the ambiguity of the LPA's reasoning and the lack of a proper assessment of the implications of the 2001 and 2014 LDCs on the enforceability of Condition No.6 of the 1969 permission meant that the appellant needed to utilise the appeals process for such matters to be thoroughly tested. Moreover, the LPA did not assess whether or not the development would constitute a material change of use. I recognise the fact that the overall conclusion of
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the appeal was that the LPA's decision not to issue an LDC was well-founded. However, such a finding was made despite the fact that the LPA's reasons for refusing the application were found to be misguided. Indeed, had the necessary issues been fully considered and properly reasoned at the application stage, there is a reasonable likelihood that the appellant may well have taken advice and not progressed with the appeal.

5. I therefore find the LPA's behaviour to be unreasonable, as defined by Annex 12 of the WG's DMM. As such unreasonable behaviour resulted in unnecessary cost for the appellant through the appeals process, it follows that a full award of costs is justified. The application for an award of costs is therefore allowed in the terms set out below.

### **Costs Order**

6. In exercise of the powers under section 322C 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 Powys County Council shall pay to Mr John Carroll the costs of the appeal proceedings described in the heading of this decision.
7. The applicant is now invited to submit to Powys County 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. In the event that the parties cannot agree on the amount, an application for a detailed assessment by the Senior Courts Costs Office should be considered.

*Richard E. Jenkins*

INSPECTOR