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## Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 01/03/17

Ymweliad â safle a wnaed ar 01/03/17

**gan Clive Nield BSc(Hon), CEng,  
MICE, MCIWEM, C.WEM**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 17.03.2017**

## Costs Decision

Hearing held on 01/03/17

Site visit made on 01/03/17

**by Clive Nield BSc(Hon), CEng, MICE,  
MCIWEM, C.WEM**

**an Inspector appointed by the Welsh Ministers**

**Date: 17.03.2017**

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**Costs application in relation to Appeal Ref: APP/T6850/A/16/3159853**

**Site address: Box Bush Farm, Three Cocks, Brecon, LD3 0SH**

**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, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Andrew Laurie-Chiswell for a full award of costs against Powys County Council.
  - The hearing was in connection with an appeal against the refusal of an application for planning permission for change of use to a touring caravan park, conversion and extension of existing buildings to provide sanitary, office, retail (site users only), storage and garage facilities, alteration to the access arrangements and installation of a private sewage treatment facility.
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## Decision

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

## Submissions for Mr Andrew Laurie-Chiswell

2. The costs application was submitted in writing and was presented at the hearing. The following additional points were made orally following the Council's response.
3. With respect to the Council's withdrawal of reason for refusal number 1, it was not until 29 November 2016 that Mr Boyington confirmed that the Council would inform the Planning Inspectorate that Reason for Refusal 1 (RfR1) would be withdrawn, well beyond any reasonable period. The Costs Circular says notification should be made immediately. Because that confirmation was so late the Appellant had no choice but to prepare his statement on the possibility that the Council would not withdraw it.
4. On Reason for Refusal number 2 (RfR2), concerning the geometry and layout of the access, the Council has still not explained its stance on DMRB standards and has provided no evidence to back up its position. Its only arguments on highway safety are the theatrical comments about sudden braking and deficiencies on the internal access road, which could have been addressed by condition if the Council had been prepared to consider it. Even at the hearing there was no evidence from the Council to link its claims to UDP policies, TAN18 or Planning Policy Wales, which were the policy references in its reasons for refusal. A full award of costs is justified on both reasons for refusal.

## **Response by Powys County Council**

5. The response was made partly in writing and partly orally at the hearing. A written response was submitted in respect of RfR1, which was reinforced by further oral comments. The response in respect of the costs application for the second reason for refusal was made entirely orally.
6. In addition to the written response on RfR1, it is noteworthy that the Council's correspondence of 29 November 2016 was preceded by the Agent's email of 29 September 2016 confirming the agreement reached with Mr Boyington (the Council's highways officer) at a site meeting that day that RfR1 would be withdrawn. Thus the Appellant was well aware of the Council's intended withdrawal long before its formal confirmation in its December statement.
7. The Appellant has complained about a lack of response to correspondence on the part of the Council but that was due to an unfortunate change in both the highways officer and the planning case officer which caused some disruption, though Mr Boyington did respond on 9 June 2016 explaining the situation and saying he needed to review the file. He also responded on 29 June 2016 saying that information had been received from objectors and that he needed to discuss that with the planning officer before clarifying the Council's position. Thus, although there was some delay, there was no lack of intent on the Council's part.
8. Turning to RfR2, the Appellant claims the Council should have made more reference to the DMRB (Design Manual for Roads and Bridges). The Council disagrees; this RfR is valid on planning grounds and by reference to the policies listed in the refusal. Nevertheless, the DMRB has been discussed at the hearing and covered in previous meetings and correspondence, and it is clear it is the standard that has to be applied.
9. The costs application is not justified in respect of either of the reasons for refusal.

## **Reasons**

10. Circular 23/93, Awards of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings, advises that, irrespective of the outcome of the appeal, costs may only 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.
11. In this case, the Council refused the application for 2 reasons relating to highway safety: the first referred to insufficient information to demonstrate adequate visibility splays; the second stated that the access would be substandard due to its geometry and layout. On the first reason (RfR1) the Council's (then) highways officer initially advised that visibility splay requirements would be met, but the Council later receded from that position after receiving advice from the third party objectors' highways consultant. However, the Council has provided no evidence that it critically appraised that third party evidence, and it certainly made no attempt to resolve its apparent uncertainties with the Appellant before refusing the application.
12. Those uncertainties were subsequently overcome when the (present) highways officer visited the site on 29 September 2016 and agreed that the required visibility splays were achievable. I have reached the same conclusion, finding the third party objectors' case to have little merit. As a consequence, the Council has not defended RfR1, and has presented no evidence to justify it. I consider the Council acted unreasonably in refusing the application on this ground, particularly in apparently

making little or no attempt to resolve uncertainties with little merit. Whilst this failure might be explained by officer changes occurring at the time, it provides no justification for it. The Council acted unreasonably in this respect.

13. The Council could have limited the implications of this if it had withdrawn the reason for refusal promptly. However, it also failed to do that. Although the (present) highways officer accepted the visibility splays were achievable as early as 29 September 2016, the Council did not inform the Planning Inspectorate that it was withdrawing RfR1 until it submitted its statement on 23 December 2016. The appeal was formally started on 17 November 2016, and the Council should have withdrawn RfR1 promptly. Although the Appellant was aware that the Council's highways officer no longer supported this RfR, he acted prudently in dealing with the reason in his appeal statement in the absence of the Council's formal confirmation. He may not have considered this to be necessary if the Council has acted more promptly, and I consider the Council acted unreasonably in failing to do this.
14. I turn now to the second reason for refusal (RfR2). Following the Council's refusal and during the preparation of the appeal statements there seemed to be some uncertainty as to the basis of the Council's assertion that the geometry and layout of the access would be substandard. Although correspondence made particular mention of concerns about the swept path analysis, reference was also made to DMRB standards. However, there was some doubt about what standards were being referred to. Nevertheless, the Council's appeal statement makes reference to TD41/95, Vehicular Access to All Purpose Trunk Roads, and argues that its geometry standards should be applied to this case. That is a reasonable argument and, although I have concluded that the access would be safe whilst falling short of those standards, I consider the Council has provided reasonable evidence to support its case. Thus it has not acted unreasonably in respect of RfR2.
15. As a consequence of this, it would have been necessary for the Appellant to pursue an appeal even if the Council had not included RfR1. Thus it is necessary to consider the second part of the "test" to justify an award of costs against the Council, i.e. "and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process". In this case, the dispute between the Appellant and the Council cannot be considered in isolation, as the third party objectors also played an active and determined part. They were represented by professional experts in planning and highways matters, who presented detailed evidence to support the Council's refusal on both reasons for refusal. Thus, regardless of the Council's position on RfR1, the Appellant would still have needed to produce evidence on that ground in order to counter that of the objectors' experts. Consequently, I do not consider that the Council's unreasonable behaviour in respect of RfR1 has caused the Appellant to incur expense that he would not have to have incurred on account of the third party objectors' active involvement.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, has not been demonstrated.

*Clive Nield*

Inspector