



Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 15/2/17
Ymweliad â safle a wnaed ar 15/2/17

gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 12.04.2017

Costs Decision

Hearing held on 15/2/17
Site visit made on 15/2/17

by Declan Beggan BSc (Hons) MSc DipTP
DipMan MRTPI

an Inspector appointed by the Welsh Ministers
Date: 12.04.2017

Appeal A Ref: APP/T6850/A/16/3158750

Site address: Ivy House, Middletown, Welshpool, SY21 8EL

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 County Planning Act 1990, sections 78, 322 and schedule 6, and the Local government Act 1972, section 250(2).
 - The appeal is made by Mrs Julie Trimble of Trimwright Homes Ltd against the decision of Powys County Council.
 - The application Ref. P/2014/0632, dated 12 June 2014, was refused by notice dated 18 March 2016.
 - The development proposed is the 'Erection of 4 No. dwellings and formation of associated access'.
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Appeal B Ref: APP/T6850/A/16/3161920

Site address: Ivy House, Middletown, Welshpool, SY21 8EL

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 County Planning Act 1990, sections 78, 322 and schedule 6, and the Local government Act 1972, section 250(2).
 - The appeal is made by Mrs Julie Trimble of Trimwright Homes Ltd against the decision of Powys County Council.
 - The application Ref. P/2016/0902, dated 19 August 2016, was refused by notice dated 25 October 2016.
 - The development proposed is the 'Erection of 4 No. dwellings and formation of associated access'.
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Appeal C Ref: APP/T6850/E/16/3158754

Site address: Ivy House, Middletown, Welshpool, SY21 8EL

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 Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and schedule 3, and the Local Government Act 1972, section 250(5).
 - The appeal is made by Mrs Julie Trimble of Trimwright Homes Ltd against the decision of Powys County Council.
 - The application Ref. P/2014/0633, dated 12 June 2014, was refused by notice dated 16 March 2016.
 - The works proposed are the 'demolition of existing wall to provide new vehicular access in connection with P/2014/0632'.
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Appeal D Ref: APP/T6850/E/16/3161930

Site address: Ivy House, Middletown, Welshpool, SY21 8EL

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 Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and schedule 3, and the Local Government Act 1972, section 250(5).
- The appeal is made by Mrs Julie Trimble of Trimwright Homes Ltd against the decision of Powys County Council.
- The application Ref. P/2016/0901, dated 19 August 2016, was refused by notice dated 25 October 2016.
- The works proposed are the 'demolition of existing wall to provide new vehicular access in connection with P/2016/0902'.

Decision

1. I allow the application for an award of costs in the terms set out below.

The submissions for Mrs Julie Trimble of Trimwright Homes Ltd against Powys County Council

2. The costs application was submitted in writing and was augmented orally on the day of the Hearing. It refers in particular to paragraphs 8, 9 & 10 of Annex 3 of Circular 23/93¹ which relates to unreasonable behaviour by a Council in dealing with a planning application. The Applicant refers in particular to the Council's grounds for refusal relating to heritage as being insufficient in terms of the impact on the heritage asset, and that the applications were not considered properly in the light of the development plan and other material considerations, with one of the refusal reasons not being necessary at all. The Applicant maintains the applications were submitted following positive pre-application advice and that the listed building consent applications were only submitted because the carrying out of works without such consent, if required, would have resulted in a criminal offence. The Applicant also asserts the Council's refusal with regards to highway matters in relation to appeal A was absent of any evidence to defend the stance taken. A full award is sought in respect of all appeals.

The response by Powys County Council

3. The response was made orally at the Hearing. The Council asserted that it had not acted unreasonably in its consideration of the applications and that both issues of impact on the heritage asset and highways involved matters of subjective judgement. The Council maintains any pre-application advice was given on an informal basis and at that time it was understood the stone wall central to appeals C & D would remain; it is argued in any event that the decisions of the Council are not bound by the informal views of officers' of the Council.

Reasons

4. Circular 23/93 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who have behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

¹ Circular 23/93 Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings

5. Consideration of planning applications and appeals involves matters of judgement which at times are finely balanced. Paragraph 8 of Annex 3 to Circular 23/93 makes it clear that in any appeal proceedings, the Local Planning Authority will be expected to produce evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations.
6. The Council's first reason for refusal on appeals A & B related to the impact of the proposed development on a heritage asset and was supported by evidence both written and oral which had substance. I was persuaded that the Council's stance was appropriate and reasonable, and based on local and national planning policies; albeit I didn't agree with every aspect of their case. Each case must be decided on its individual merits, and the Council was not unreasonable in placing less weight on the provision of housing than the weight attributed to policies relating to protection of heritage assets; the Council's stance in this regard was therefore a matter of planning balance as set out in paragraph 8 of Annex 3 to Circular 23/93.
7. The Council's second reason for refusal detailed in the decision notices for appeals A & B refers to the removal of a section of wall contrary to paragraph 106 of Welsh Office Circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas. Paragraph 106 deals with the issue of granting listed building consent and states that local authorities should not authorise demolition to make way for new development unless it is certain that new development will proceed; this can be achieved by way of a planning condition ensuring a contract of works has been made, and that planning permission has been granted. Bearing in mind the Council were refusing the proposed development on heritage matters, I see little justification or reason for their second refusal reason. However whilst there is a degree of unreasonable behaviour in this regard, nonetheless, in terms of the planning appeals, the Applicant has been put to no meaningful unnecessary or wasted expense because of the inclusion of the second refusal reason.
8. As regards issues relating to the listed building appeals, irrespective of the reasons for doing so, the Applicant of her own volition submitted two listed building applications seeking consent for the works identified in appeals C & D. During the course of the first application she disputed that the works covered by the application did in fact relate to a listed structure; this stance was sustained during the course of second application and the appeal process.
9. As regards the listed status of the western boundary wall, any assessment of this is based on fact and degree, and having considered the relevant evidence the Council were of the view that the wall was curtilage listed and that the works would harm the identified heritage asset; the Council then proceeded to refuse listed building consent due to a lack of justification for the works. Whilst I took a contrary view to the Council on the listed status of the wall and on its impact on the setting of the listed building, nonetheless, the Council's stance was a matter of interpretation and planning balance, and is not necessarily in the circumstances to be regarded as unreasonable behaviour. As regards the listed status of the wall and the impact of its demolition, the disagreement on the merits of both cases was a matter that ultimately could only have been determined by way of an appeal.
10. As regards to the pre-application discussions that took place before the first set of applications were submitted, the Council is not bound by informal advice given by its officers prior to a formal determination, especially when that advice as, explained at the Hearing, was given on the understanding that the western boundary wall was to

be retained; consequently in this regard I find no unreasonable behaviour in the subsequent approach taken by the Council after the applications were submitted.

11. Pulling the threads of the above together, in terms of matters related to the heritage reasons for refusal on all four appeal applications, an award of costs in this instance is not justified.
12. As regards the Council's refusal reason referred to in appeal A relating to highway matters, the Council failed to provide any substantive or compelling technical evidence to demonstrate that the proposed development would be detrimental to highway safety. The Council's behaviour in this regard has been unreasonable and has resulted in the Applicant incurring unnecessary and wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 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 Mrs Julie Trimble of Trimwright Homes Ltd, the costs of the appeal proceedings, described in the heading of this decision, limited to those costs incurred in adducing evidence in relation to effect of the proposal on highway issues raised as part of the Council's reasons for refusal in appeal A.
14. 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, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Declan Beggan

INSPECTOR