



Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 20/06/17

Ymweliad â safle a wnaed ar 20/06/17

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17.07.2017

Costs Decision

Hearing Held on 20/06/17

Site visit made on 20/06/17

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 17.07.2017

Costs application in relation to Appeal Ref: APP/T6850/A/17/3168479

Site address: VLF Building, Criggion Radio Station, Back Lane, Criggion, Welshpool SY5 9BE

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, section 78, section 322C and Schedule 6.
 - The application is made by Mr Chris Moore for a full award of costs against Powys County Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use conversion of former VLF building to dwelling.
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Decision

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

Procedural Matter

2. New and updated guidance has been published for 'Awards of Costs' and is included as an annex to the 'Development Management Manual' at Section 12. The guidance revokes and replaces existing Welsh Office Circular 23/93: Awards of Costs incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings ("the Circular") and takes immediate effect. However, applications which have been received by local planning authorities before 5 May 2017 and which are appealed against or called in by the Welsh Ministers will continue to be determined in accordance with the previous procedure rules and regulations. Accordingly, the procedure outlined in Circular 23/93 remains relevant.

The submissions for Mr Chris Moore

3. The application and final comments were made in writing.

The response by Powys County Council

4. The response was provided in writing.
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Reasons

5. Circular 23/93 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 expense in the appeal process.
6. 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. Furthermore, unreasonable behaviour also includes introducing new evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage.
7. The Council's first reason for refusal related to flood risk and was supported by evidence both written and oral. I was persuaded that the Council's stance was appropriate and reasonable, and based on local and national planning policies. Each case must be decided on its individual merits, and the Council was not unreasonable in the way it considered the comments received from Natural Resources Wales, against the weight attributed to national and local policies relating to flood risk; 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.
8. Turning to the second reason for refusal. The proposal was discussed with a range of Council officers and other consultees over an extended period. From the evidence before me much of the discussion centred on the impact of noise from the nearby quarry. It is not unusual for advice to be sought from appropriately qualified staff and experienced in-house experts or professional consultants. In the discussions advice was provided by the Council's Environmental Health Officer (EHO).
9. Both during the application determination and at the Hearing there was much debate about the most appropriate method to assess the noise environment. Although it may have been confusing for the appellant to have received inconsistent advice, it was incumbent on the appellant to demonstrate that the proposal was acceptable. Nevertheless, it was evident that the EHO voiced his concerns regarding the application at every stage; indeed the additional survey work undertaken by the EHO supported his stance and did not introduce substantive new matters on noise issues.
10. In any event, for a claim to succeed, it must be clearly demonstrated how such behaviour has also resulted in unnecessary and wasted expense. I am not persuaded the Council's behaviour made any difference in respect of the appellant's need to lodge an appeal and produce evidence at the Hearing given the Council's various other substantive concerns, and given that the appellant wished to pursue this particular scheme.
11. The Council did not disagree with the appellant that the Criggion Quarry Review of Old Mineral Permission (ROMP) survey showed that the quarry was exceeding its noise limits at the time of the survey. Nevertheless, that is a matter for the Council to enforce. Additionally, the ROMP condition relating to noise specifies "any noise sensitive property", rather than any particular ownership, a matter which the appellant was aware of. Again it was incumbent on the appellant to demonstrate that the proposal was acceptable in terms of the living conditions of any future occupiers.
12. Accordingly, with regard to the Council's second reason for refusal, the Council was able to demonstrate planning grounds for concluding the proposals were contrary to

the relevant local and national planning policies, in the terms of their own planning judgement.

13. The third reason for refusal related to the impact of the proposal on the mineral operations at Criggion Quarry. The concept of 'safeguarding' and Buffer Zones are established through local and national policies and guidance. The Council had concerns about the effect of the proposal on the ability of the operator to continue extracting the mineral and sensitive new development in the Buffer Zone which are set out in its delegated report and grounds for refusal, and further elaborated in its Statement of Case. The Council took the view that the scheme conflicted with the relevant policies and was able to produce evidence to substantiate this reason for refusal. The Council had legitimate concerns that the development could effectively sterilise the mineral resource, this approach does not amount to unreasonable behaviour.
14. As such, the matter is one of disagreement between the parties which could have only been resolved at appeal and therefore the appellant has not been put to unnecessary or wasted expense. Consequently the application for an award of costs against the Council is refused.

Conclusion

15. I acknowledge the appellant's frustration and I agree that the some aspects of the Council's behaviour may be open to criticism. However, overall, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 23/93, has not been demonstrated and that no award of costs is justified in this case.

Joanne Burston

INSPECTOR