
Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 07/06/18

Ymweliad â safle a wnaed ar 07/06/18

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22/06/2018

Costs Decision

Hearing Held on 07/06/18

Site visit made on 07/06/18

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 22/06/2018

Costs application in relation to Appeal Ref: APP/E6840/A/18/3193689

Site address: Oak Tree Farm, Old Quarry Road, Devauden NP16 6NS

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 Ms Judi James for a full award of costs against Monmouthshire County Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the siting of a temporary rural workers dwelling.
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Decision

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

Procedural Matters

2. New and updated guidance has been published for awards of costs and is included as a new 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. Therefore I have taken into account the new guidance when making my decision.

The submissions for Ms Judi James

3. Submission were provided in writing and supplemented orally at the Hearing.
4. In summary the appellant considers that the Council acted unreasonably in refusing planning permission for the proposed development. The Council should have accepted the advice of the two agricultural consultants who stated that the development met all the relevant tests of Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN 6). In giving weight to third party objections the Council failed to take into account the temporary nature of the application and failed to produce relevant and robust evidence to support their reasons for refusal. Finally the Council took some 55 weeks to determine the application, which is far too long.

The response by Monmouthshire County Council

5. Submissions were provided in writing and supplemented orally at the Hearing.
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6. In summary the Council states that it acted reasonably in terms of the appeal procedure and made its decision on the application based on the planning merits of the application. Members of the Planning Committee have relevant professional experience in agricultural businesses and after reviewing the application and supporting documents considered that the proposal did not accord with TAN 6.
7. Whilst the application did take a significant time to determine, this was due to the need for the appellant to clarify certain aspects of their case. Council Officers were seeking to work in a positive and flexible manner with the appellant and no party has been subjected to unnecessary costs.

Reasons

8. The guidance advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The Guidance provides examples of circumstances which may lead to an award of costs against a Council. Awards may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
9. The Guidance makes clear that a local planning authority is at risk of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
10. Members of the Council's Planning Committee determined to refuse the application contrary to the officer's recommendation. Nevertheless, planning authorities are not bound to accept the recommendations of its officers. But what they are required to do, if professional advice is not followed, is to show reasonable planning grounds for taking a contrary decision.
11. In support of its case at appeal the Council produced a comprehensive statement providing a robust level of objective analysis of the scheme and its impact that the Cost Guidance requires. It is clear from the planning officer's Committee Report that members of the Planning Committee would have had regard to TAN 6, the tests of which are set out on the Council's six week statement, and also had regard to the representations made by third parties. However it is also evident that the Council reached its decision following consideration of planning policy, rather than solely in response to third party opposition.
12. Whilst the Council reached a different conclusion to the recommendation of its officers, the consideration of planning applications and appeals involve matters of judgement which at times are finely balanced. The key test is whether evidence is produced on appeal which provides a respectable basis for the Council's stance. I consider that the Council was able to substantiate its case to a reasonable extent on the reasons why it considered that a clear agricultural need was not proven and doubts over the viability on the evidence presented to them.
13. Turning to the time taken to consider the planning application. It is clear that constructive co-operation and dialogue between the parties at all stages of a planning application and appeal will minimise the risk of a costs award. The Council acknowledges that it did not determine the application within the appropriate timescale. Whilst not condoning the apparent inaction of the Council and its delay which is most unfortunate this would not seem to be a case where better communication with the appellant would have enabled the appeal to be avoided altogether. Particularly as the Council's planning officer and agricultural advisor

undertook a collaborative approach with the appellant. Furthermore, there has been no failure by the Council to produce timely, relevant and robust evidence to substantiate its stance against the development during the appeal process.

14. As such, the matter is one of disagreement between the parties which could have only been resolved at appeal. Thus the appeal could not have been avoided and no unnecessary or wasted expense was consequently incurred.

Conclusion

15. For this reason and having regard to all other matters raised, an award of costs is therefore refused.

Joanne Burston

INSPECTOR