
Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 20/02/18

gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 03/07/18

Costs Decision

Site visit made on 20/02/18

by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

an Inspector appointed by the Welsh Ministers

Date: 03/07/18

Costs application in relation to Appeal Ref: APP/E6840/C/17/3187660

Site address: Ridge House Stables, Earlswood, Chepstow, Monmouthshire, NP16 6AN

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 174, 322 and Schedule 6.
 - The application is made by Mr Ronald Harris for a full award of costs against Monmouthshire County Council.
 - The appeal was against an enforcement notice (EN) alleging 'Non-compliance with condition 1 imposed on planning permission DC/2013/00128'.
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Decision

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

The submissions for Mr Ronald Harris

2. The cost application was submitted in writing.

The response by Monmouthshire County Council

3. The response was submitted in writing.

Reasons

4. The 'Development Management Manual' at Section 12 Annex: Award of Costs ('the Annex') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour.

Procedural Matters

6. In terms of procedural matters the Applicant argues paragraph 3.10 (k) of the Annex is applicable i.e. the Council are at risk of an award of costs against them for failing to comply with statutory deadlines or procedural requirements for proceedings. The Council provided its statement within the statutory deadline and I am not aware it has
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failed to comply with any other procedural requirements for proceedings; the Council's behaviour in this regard cannot be regarded as unreasonable or resulted in unnecessary expense. Any procedural shortcomings associated with the previous enforcement appeals related to the site are outside the scope of paragraph 3.10 (k) and the consideration of the current appeal.

Substantive Matters

7. In terms of substantive matters the appellant argues paragraphs 3.11 (b), (e), (i) & (l) of the Annex are applicable; I shall address each in turn.
8. With reference to paragraph 3.11 (b), the Applicant argues the Council's statement of case lacked objective analysis in terms of the impact of the development central to the appeal, and states that in any event the issues could have been dealt with via other controls outside the planning regime.
9. Whilst I found in favour of the Applicant in terms of the siting and impact of the storage pile, nonetheless, in this instance I consider the Council provided adequate and reasonable written evidence in defence of their case based on concerns related to the visual and residential impact of the storage pile, and the fact that the condition had not been complied with, resulting in the enforcement notice being served. In arriving at its view, the Council took into account relevant local planning policy, and a professional judgement had to be made based on the material planning considerations; the harm identified was a matter of interpretation and planning balance, and is not necessarily in the circumstances to be regarded as unreasonable behaviour. I appreciate that in terms of the Council's concerns regarding odour, that in broad terms this is generally covered by other legislation, however this does not mean that it cannot be a legitimate planning concern, albeit not a statutory nuisance, and therefore be subject to a planning condition; as stated previously this was a matter of planning judgment and therefore the stance the Council took was not unreasonable in terms of costs referred to in the Annex.
10. With reference to Paragraph 3.11 (e) of the Annex, the Applicant argues the planning condition central to the EN had been found to be effectively unenforceable by two previous Planning Inspectors; it is argued this was an untenable position and the Council continued to unreasonably pursue enforcement action which has caused unnecessary expense for the Applicant in repeatedly defending his position.
11. Contrary to the Applicant's views the previous Inspectors did not specifically state the planning condition central to this appeal was unenforceable, rather their stance was that the enforcement notices served on those occasions were invalid or a nullity due to the notices specific shortcomings in how they were constructed. The Council reviewed their wording of the current EN in light of the previous appeal decisions. I found the enforcement notice subject to this appeal had no technical flaws that deemed it to be a nullity; the Council were perfectly entitled to serve the revised notice in light of the on-going breach of planning control and therefore their stance was not unreasonable, bearing in mind the Applicant had not complied with a planning condition.
12. Paragraph 3.11 (i) of the Annex refers to local planning authorities being at risk of an award of costs for unreasonable behaviour if a condition is imposed that does not comply with the tests set out in Circular 16/14: *The Use of Planning Conditions for Development Management*. The Applicant argues the condition does not meet the tests of Circular 16/14 and has resulted in a number of failed enforcement actions by the Council prior to the serving of the EN subject to this costs award.

13. I note one of the previous Inspector's comments on a previous appeal decision that the condition created uncertainty and ambiguity in its wording, nonetheless, the condition was quite clear that no waste was to be deposited or stored on the site without the approval of the Council; this element of the condition is clear and to my mind enforceable. Whilst I found the condition was not necessary, that was in light of the fact that the Applicant was already storing waste on a particular spot within the site that I deemed acceptable. At the time the Council imposed the condition they considered it was required in the interests of visual and residential amenity; whether it was necessary when originally imposed was a matter of interpretation and planning balance, and is not necessarily in the circumstances to be regarded as unreasonable behaviour. Notwithstanding the shortcomings of the condition in terms of Circular 16/14, the details it required have not been forthcoming and resulted in the serving of the EN; in these circumstances the Council's serving of the EN cannot be considered as unreasonable, and in any event the Applicant availed of the opportunity under his grounds of appeal to challenge the condition.
14. Paragraph 3.11 (I) of the Annex refers to local planning authorities being at risk of an award of cost where an enforcement appeal could have been avoided due to inadequate investigation or insufficient communication on the part of the local planning authority. The Applicant maintains proper investigation of the matter would have concluded there was no breach, as the storage of manure was not development. As explained in the appeal decision, conditions may address matters which are not necessarily development in their own right. It is clear that a breach of planning control has occurred due to non-compliance with a planning condition. The Council attempted to persuade the Applicant to comply with the condition which ultimately resulted in the EN being served. To my mind in terms of the current appeal, the Council adequately investigated the matter prior to instigating enforcement action. In the absence of the details required by the condition and in the light of a number of complaints about the activity on the site, the Council were entitled to pursue enforcement action; this is not unreasonable behaviour on behalf of the Council.
15. Drawing the threads of the above together, I therefore consider that the Council have not behaved unreasonably having regard to the advice contained within the Annex. An award of costs is not justified for procedural or substantive reasons either in full or in part.

Formal Decision

16. I refuse the Applicant's application for an award of costs.

Declan Beggan

INSPECTOR