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## Penderfyniad ar gostau

Ymweliadau â safle a wnaed ar 05/05/21 & 01/06/21

gan Paul Selby, BEng (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 4/6/21

## Costs Decision

Site visits made on 05/05/21 & 01/06/21

by Paul Selby, BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 4/6/21

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**Costs application in relation to Appeal Ref: APP/E6840/A/21/3267848**

**Site address: Land adjacent St. Teilo's Church, Llantilio Pertholey (Grid Ref Easting: 331094; Northing: 216404)**

**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.
  - The application is made by Mr Bryan Nicholls for a full or partial award of costs against Monmouthshire County Council.
  - The appeal was against the refusal of planning permission for a residential development of 11 units.
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## Decision

1. The application for a full award of costs is refused. The application for a partial award of costs is allowed in the terms set out below.

## Reasons

2. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an 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.
3. The costs application is made on both procedural and substantive grounds. In addition to the matters raised in the costs application, dated 1 April 2021, other substantive inconsistencies have been alleged in the applicant's further appeal statements and its costs rebuttal, dated 19 May 2021. I have had regard to these.
4. On 21 January 2021 Natural Resources Wales (NRW) published an 'evidence pack' identifying issues with phosphate levels in river SACs, alongside a 'Planning Position Statement' and 'Interim Planning Advice'. The appeal, which was originally made against the non-determination of the planning application, was lodged on 28 January; the same date that the Council issued its decision notice refusing planning permission.
5. The appeal scheme's effects on the SAC were not identified as a reason for refusing planning permission. This accords with advice provided to the Council by NRW on 11 August 2020 that the proposal would not be likely to have a significant effect on the River Usk SAC, subject to the imposition of appropriate conditions.

6. I note that the Council's delegated report records that the planning application was validated on 7 December 2018. Had the Council refused the application in accordance with the statutory timescale, it is possible that NRW's advice relating to SACs would have remained consistent during any resulting appeal procedure. However, whilst the reason for the protracted application process has not been fully explained, it is apparent that it relates, at least in part, to cooperation taking place between the applicant and Council aimed at securing an acceptable scheme.
7. Patently, NRW's actions are beyond the control of the Council, the party against which the costs application has been made. The Council's position on this matter has remained consistent throughout. Whilst the timings are unfortunate, it was not unreasonable of the Council not to identify this matter as a reason for refusal or update its Habitat Regulations Assessment. It was also not the Council's responsibility to draw the applicant's attention to the documents published by NRW in January.
8. The Council's second reason for refusal contends, amongst other things, that the appeal scheme would impose a significant adverse visual impact on the character and setting of the Grade I listed Church of St. Teilo. The Council's delegated report provides little explanation of the specific nature of these impacts in relation to the church's significance and does not record any objection from a Conservation Officer. Nonetheless, the Council's appeal statement provides further, albeit limited, explanation of its stance on this matter which is consistent with earlier advice provided by the Council's Senior Landscape and Urban Design Officer during the application process. The applicant has also been provided with an opportunity to rebut both the Council's case and a representation submitted by Cadw, and to submit further written evidence on this matter. In any case, in the substantive decision I have found that the proposal would not preserve the setting of the Grade I listed building and would conflict with relevant national policy. It follows that the Council's second reason for refusal was not unreasonable in this regard.
9. Notwithstanding this, some of the observations made by the Council's Senior Landscape and Urban Design Officer during the application process were only submitted at a late stage in the appeal proceedings. Whilst some of these responses do not raise new matters or are adequately summarised in other appeal documentation submitted by the Council, others contain otherwise unsubmitted information ('additional comments') which align with the Council's second reason for refusal.
10. The applicant contends that had he had sight of these additional comments prior to the appeal being made, amendments to the scheme may have been considered during the application process. However, by the applicant's own admission the additional comments do not introduce substantial new evidence. I am not persuaded that these additional comments, either individually or in combination with other consultation responses, would have prompted a substantive redesign to the scheme. Nonetheless, the lateness of the submission of these additional comments to the appeal, and the need to ensure fairness to appeal parties, led to me having to seek further comments from the applicant in relation to both the costs application and the substantive appeal. There is little to explain why the Council did not submit copies of these consultation responses earlier in the appeal process. In this respect it is apparent that the Council's actions in introducing relevant information late in the appeal proceedings has introduced unnecessary complexity which has led to the applicant incurring otherwise avoidable expense.
11. The applicant alleges that the Council has not determined or provided a position on the appeal proposal in a consistent manner to a recent planning application to the

appeal site's south ('the Glebe site'). Whilst the full circumstances of that other case are not before me, in my substantive decision I have found that the two sites differ in several respects, including in relation to their visual and physical relationship with the Church of St. Teilo. The appeal site is also more proximate to the recorded population of Great Crested Newts to the north of the site and it extends east of the River Gavenny. Further, the Glebe site is described as a 100% affordable housing exception site rather than a market-led housing scheme. For these reasons I find limited evidence of inconsistency on the Council's part.

12. The applicant contends that, during the appeal process, the Council did not respond to requests for information in a timely manner, which delayed the completion of the Unilateral Undertaking. Whilst I have no reason to dispute this, there is little evidence that the Council's behaviour in this regard has caused the applicant unnecessary or wasted expense.
13. In conclusion, I find that on most grounds an award of costs against the Council is unwarranted. However, in relation to the additional expense incurred by the applicant in providing two rebuttals (dated 19 May 2021 and 28 May 2021) to previously unsubmitted consultation responses made by the Council's Senior Landscape and Urban Design Officer, I conclude that a partial award of costs against the Council is justified.

#### **Costs Order**

14. 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 Monmouthshire County Council shall pay to Mr Bryan Nicholls the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Monmouthshire 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.

*Paul Selby*

INSPECTOR