



Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 13/07/21

gan **J Burston BSc MA MRTPI AIPROW**

Arolygydd a benodir gan Weinidogion
Cymru

Dyddiad: 25/01/2022

Costs Decision

Site visit made on 13/07/21

by **J Burston BSc MA MRTPI AIPROW**

an Inspector appointed by the Welsh
Ministers

Date: 25/01/2022

Costs application in relation to Appeal Ref: **APP/E6840/A/21/3273388**

Site address: **Greenfield, Merthyr Road, Llanfoist NP7 9LN**

The Welsh Ministers have transferred the authority to decide this Costs Application 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 Ikaria Development Ltd for a full award of costs against Monmouthshire County Council.
 - The appeal was against the refusal of planning permission described as *the “demolition of the existing dwelling and its replacement with an active living centre providing 18 high quality retirement apartments, communal living space, an extensive landscape strategy (including green roof) with a private landscaped courtyard plus pool and gym facilities.”*
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.

Reasons

2. The Annex at Section 12 of the Development Management Manual, Award of Costs (the guidance) advises at paragraph 1.2 that “*Parties are expected to meet their own costs. An appellant or applicant is not awarded costs simply because their appeal or application succeeds and similarly, a local planning authority is not awarded their costs because their position or decision is upheld. An award of costs may only be made where one party has behaved unreasonably, and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense.*” 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.
3. In summary the applicant’s cost application is based on: the Council’s provision of vague, generalised and inaccurate information as part of presentations given by members of the planning committee; a failure to act reasonably when considering issues relating to residential amenity; unreasonable behaviour in adding reference to heritage impacts within the reason for refusal; and inconsistency in decision making when considering heritage impacts on similar applications.

4. The Council's decision to refuse planning permission was taken, contrary to the advice of its Planning Officer, following a Committee meeting. However the decision making Committee were not duty bound to follow officer advice, providing they were able to identify sufficiently robust planning reasons for not doing so.
5. The effect of a proposed development on the character and appearance of area is a more subjective matter, often determined by an exercise of judgement in the particular circumstances of a case. Cllr Howard presented at the Committee Meeting as the local ward member, representing the views of his constituents. It was not in my opinion unreasonable for Cllr Howard to present these views to the Committee given his local knowledge of the site and its surroundings. The meeting allowed all parties to present their views, including the appellant. Whilst the Councillors who did speak at the meeting were against the proposal, this does not in itself demonstrate procedural or substantive unreasonableness. I am also satisfied that the Council has adequately addressed this matter in its decision notice and in response to this appeal.
6. The second part of the reason for refusal related to the harm to neighbouring occupiers living conditions. In so determining, the Council rejected the technical advice of its officers that the proposed landscaping and the location/design of the scheme would be effective to prevent such harm. At appeal the Council has done little to support this part of its refusal. Moreover, the conditions proposed in the Officer Report are sufficient to address the harmful impacts identified by the Committee. The Guidance (at 3.11(c)) advises that a planning authority refusing permission on a ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the development to proceed.
7. Given this advice, the technical evidence presented by the applicant and the advice of its Officers, I consider that the Council acted unreasonably through refusing the application on a ground it has failed to evidence adequately at appeal. It follows that the Council's unreasonable behaviour has led to the appellant incurring unnecessary expense in pursuing the appeal on this refusal ground.
8. Turning to the impact of the development on views towards the Blaenavon World Heritage Site (WHS). Members appear to have given little weight to the wide range of factual evidence and information presented by the applicant and statutory consultees. The Planning Committee had no additional information or analysis to form an objective basis for its refusal on heritage grounds. I find there was a failure to substantiate this part of the reason for refusal. Indeed, the ability for parties to be awarded costs is intended to encourage local planning authorities to rely only on reasons for refusal that stand up to scrutiny on the planning merits of the case. I note the applicant's concerns relating to 'inconsistency in decision making' in terms of heritage matters, however, every application must be considered on its own merits, and this site has unique characteristics that set it apart from other developments locally.
9. I consider, therefore, that the Council has behaved unreasonably by failing to produce relevant evidence on appeal to support this ground of refusal, and this has led to the appellant incurring unnecessary expense in pursuing the appeal in relation to this matter.
10. To summarise, although I do not consider that the Council acted unreasonably in refusing the application in relation to the character and appearance of the site and surrounding street scene, and that an appeal could not have avoided, it remains the case that I conclude that the Council acted unreasonably with respect to the heritage and living conditions grounds within its reason for refusal and, in so doing, caused the appellant to incur additional and unnecessary expense. Therefore the award of costs is a partial one in the terms set out.

Conclusion

11. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 322C 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 Ikaria Development Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the issues concerning residential amenity and heritage impact.
13. 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.

J Burston

Inspector