



Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 16/08/11
Ymweliad â safle a wnaed ar 16/08/11

gan Gareth A. Rennie BSc (Hons) DipTP
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 31/10/11

Costs Decision

Hearing held on 16/08/11
Site visit made on 16/08/11

by Gareth A. Rennie BSc (Hons) DipTP
an Inspector appointed by the Welsh Ministers
Date: 31/10/11

Costs application in relation to Appeal Ref: APP/H6955/A/11/2152446
Site address: Shrewds Lair Farm, Ty Broughton Hall Lane, Tallarn Green,
Threapwood, Malpas

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, and the Local Government Act 1972, section 250(5).
 - The application is made by Time & Leisure Ltd for a full award of costs against Wrexham County Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of an agricultural worker's dwelling.
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Decision

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

The submissions for Time & Leisure Ltd

2. The appellant believes that the Local Planning Authority (LPA) have demonstrated unreasonable behaviour and that has resulted in additional costs. In particular with reference to paragraph's 8 and 26 of Annex 3 to circular 23/93.
3. The appellant's case is outlined in their written costs application. However they make the specific case that the LPA have failed to show why the development should not be permitted, and have not produced any credible evidence to substantiate their doubt about the development.
4. In addition the Council failed to provide specific and adequate reasons for not reaching the decision within the time limit. The Council did not request an extension of time, or request any additional information. Furthermore the Council have not produced evidence to substantiate each of their stated reasons why they would have refused the application if they had determined it within the statutory period.
5. It is also maintained that the Council have not specifically stated what their reason for refusal would have been and did not present the matter to committee for a determination as to what these reasons would have been. It is also maintained that the Council's constitution does not allow for delegation in such circumstances.

The response by Wrexham County Borough Council

6. The Council considers that they have not acted unreasonably.
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7. In terms of the content of the Council's hearing statement it is clear why the development would have been refused. Evidence has been presented in that statement to support why it was not considered within the timescale. It is not possible to comment on the content of telephone conversations referred to by the appellant. Even so Officers were discussing internally how to proceed with the application.
8. The appellant also makes reference to the first application and the only reason for refusal. In terms of this appeal initially the viability of the enterprise was taken at face value because of this application. However, discrepancies were noted between the information in the appraisal and that observed on the farm.
9. The issue of the viability of the enterprise is central to the Council's position and it was not able to come to a decision until this issue had been resolved. As was maintained in the hearing not all the information requested was forthcoming especially open and clear valuations and details of stock sales.
10. There was not a requirement to take this application to committee. The scheme of delegation specifically allows for the conduct of appeals. It is argued that the delegation scheme can also be interpreted to allow the pursuit of non-determination appeals. The Council have not included any additional reasons for refusal but sought to clarify its concerns in both statement and its conclusions.

Reasons

11. I have considered this application for costs in the light of Circular 23/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
12. I consider that the Council has shown that they had reasons for not coming to a decision within the appropriate time period. There was a degree of uncertainty about the viability of the enterprise and the movement of stock that was compounded by a somewhat tentative and confused inspection of the site by the Council.
13. It does seem apparent that there was a significant breakdown in communication between the appellant and the Authority and some contradiction in the advice received from individual officers. There also appears to be a lack of written communication and lack of precision on both sides about the nature and amount of any information to be provided by the appellant. However, I do not consider that this was due to unreasonable behaviour rather that it was due to misunderstanding on both parts.
14. My decision notwithstanding, I also consider that the LPA have adequately expressed the reasons why they would have refused the application had they determined it. These were stated in the LPA's hearing statement and during the hearing and these were sound planning reasons, based on development plan policy. Whilst there is reference to the previous refusal, the Council were not confined to a consideration of that reason for refusal. It was not unreasonable for the LPA to consider the other tests within the guidance. Neither do I consider that the LPA unreasonably introduced other issues during the hearing that were not covered by the hearing statement.
15. A broad interpretation of the scheme of delegated powers could infer that powers to deal with appeals against non-determination. The scheme is ambiguous and unclear but I do not consider Officer's interpretation of it amounts to unreasonable behaviour. The decision not to refer the matter to committee or draft recommendation to that end was not, therefore, unreasonable.

16. Overall, whilst there were inadequacies in the LPA's approach and a lack of communication, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 23/93 has not been demonstrated.

Gareth A. Rennie

Inspector