



Llywodraeth Cymru
Welsh Government

Mr Justin Paul
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Ein Cyf/Our ref: qA1399761
Dyddiad/Date: 12 March 2020

Dear Mr Paul,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78.
APPEAL BY MR R BELLIS OF BELLIS BROS & TRUSTEES OF THE BELLIS
FAMILY TRUST.**

APPEAL REFERENCE APP/H6955/A/19/3231048.

**LAND TO THE NORTH AND SOUTH OF LANE FARM, ROSSETT ROAD,
TREVALYN, ROSSETT, WREXHAM, LL12 0DS.**

APPLICATION FOR AN AWARD OF COSTS.

1. I refer to the application made by you, on behalf of your client Mr R. Bellis, for an award of costs against Wrexham County Borough Council, following the refusal of planning permission P2018/0560 on 5 July 2018, the subject of the above appeal.
2. The application for an award of costs was made at the time the appeal was lodged. The Inspector at the inquiry provided a report to the Welsh Ministers on his findings and conclusions on the costs application, which is appended to this letter. The decision on the appeal inquiry was recovered for determination by the Minister for Housing and Local Government, who issued her decision on 14 February 2020. The Minister allowed the appeal and planning permission for residential development for up to 132 dwellings was granted. It follows the Welsh Ministers will also take the decision on the related costs application.
3. I am authorised the by Minister for Housing and Local Government to determine the application.
4. In planning and enforcement appeals the parties are normally expected to meet their own expenses. Costs are awarded only when unreasonable behaviour is held to have occurred and this has caused the party seeking costs to waste or incur expense unnecessarily.



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SUMMARY OF THE DECISION

5. The formal decision is set out in paragraph 8 below. Your Client's application for an award of costs is unsuccessful and no award of costs is being made.

REASONS FOR THE DECISION

6. In the Costs Report the Inspector concluded:

"21. Welsh Government (WG) guidance relating to an award of costs, in the form of the WG Development Management Manual (DMM) and the associated Section 12 Annex: '*Award of Costs*' (May 2017) (Annex 12), advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for an award of costs to incur unnecessary or wasted expense in the appeals process.

22. It is a matter of common ground that the Council refused planning permission contrary to the professional advice of its officers. Nevertheless, as set out in the applicant's submissions, paragraph 3.9 of Annex 12 clarifies that LPAs are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers. They are expected however to show that they had reasonable planning grounds for taking a decision contrary to such advice.

23. The applicant contends that the Council prevented development which should clearly have been permitted having regard to the development plan, national policy and other material considerations. It is also submitted that the Council failed to produce evidence to substantiate its reasons for refusal. However, the Council was correct in concluding that the development lies outside of settlement limits, within a Special Landscape Area (SLA) and within a Green Barrier, all of which are defined by the adopted Wrexham Unitary Development Plan 1996- 2011 (Adopted 2015) (UDP). It is also the case that the development would result in the loss of Best and Most Versatile (BMV) agricultural land, a resource which the adopted UDP seeks to protect. The objection raised through the second reason for refusal was also consistent with concerns raised in writing by the Highways Authority. I therefore consider the reasons for refusal to be clear and unambiguous.

24. I recognise the fact that Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this respect, there is no doubt that both the provisions of national planning policy and the inability of the Council to demonstrate a 5 year housing land supply are significant material considerations. Nevertheless, the weight to be afforded to such factors is a matter for the decision-maker. Indeed, it required a degree of professional judgement based on the particular merits of the case. As such, I consider that the Council was entitled to come to a different conclusion to that of its officers. In this regard, and notwithstanding the recommendation made to Ministers in respect of the appeal scheme, I do not consider that it has been satisfactorily demonstrated that the Council behaved unreasonably in refusing planning permission. In coming to this conclusion, I have been particularly mindful that the decision was made in accordance with the adopted development plan and following consideration of the Officer's Report which clearly set out the full set of material considerations.

25. In addition to such matters, the applicant has cited the failure of the Ward Member to engage with the developer as part of the requirements of Part 1A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended) (the DMPO). However, whilst there is a duty on applicants to consult with a Ward Member, it does not impose any requirements for the Ward Member to respond to that consultation. Such a position does not, therefore, justify an award of costs. Similarly, whilst the applicant has raised significant concerns about the processes associated with the hearing and giving of evidence at Planning Committee, these are largely matters for the Council to determine and monitor. Indeed, such processes are not explicitly defined by the DMPO or DMM and the claims that such processes resulted in unreasonable behaviour remain anecdotal and unsubstantiated by cogent evidence.

26. Based on the foregoing, and having fully considered the relevant advice in Annex 12 of the DMM, I find that neither a full nor partial award of costs has been satisfactorily demonstrated as justified in this case. I shall therefore recommend that the application be refused”.

RECOMMENDATION

7. I see no reason to disagree with the Inspector’s findings and conclusions. The Inspector recommended the application be refused and I agree with that recommendation for the reasons given by him.

FORMAL DECISION

8. In exercise of the authority referred to in paragraph 3 above and for the reasons given above, your application for an award of costs is unsuccessful and no award of costs is made.

9. A copy of this decision has been sent to Wrexham County Borough Council.

Yours sincerely



T Davies
Head of Planning Decisions
Planning Directorate

Arwyddwyd o dan awdurdod Y Gweinidog Tai a Llywodraeth Lleol; un o Weinidogion Cymru.

Signed under authority of the Minister for Housing and Local Government; one of the Welsh Ministers.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.