
Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 4/01/18

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07.02.2018

Costs Decision

Site visit made on 4/01/18

**by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 07.02.2018

Costs application in relation to Appeal Ref: APP/H6955/A/17/3186707

**Site address: Former Farmstead, Big Green Farm, Ellesmere Lane, Penley,
Wrexham, LL13 0LP**

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, 322C and Schedule 6.
 - The application is made by Wawne Developments Ltd for a full award of costs against Wrexham County Borough Council.
 - The appeal was in connection with a refusal to grant planning permission for a development described as "Outline application for erection of upto 13 dwellings including construction of vehicular access."
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Decision

1. The application for an award of costs in either full or part is refused.

The submissions for Wawne Developments Ltd

2. The cost application was submitted in writing.

The response by Wrexham County Borough 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. Consideration of planning applications and appeals involves matters of judgment that are at times finely balanced. 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.
 6. Based on the cited examples of unreasonable procedural behaviour there is no evidence to indicate that the Council behaved unreasonably in its determination of the application, or during the appeal process that would have caused the Applicant to incur unnecessary or wasted expense in the appeal process.
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7. The Applicant argues that as the application was submitted in outline, the issues subject to the refusal reason could have been addressed in any subsequent reserved matters applications thus allowing the development to proceed in principle and thereby avoiding an appeal. The application was submitted in outline for upto 13 dwellings and included a Design and Access Statement that referred to a scheme for 13 dwellings; in addition the submitted indicative layout showed that upto 13 dwellings could be accommodated on the site.
8. In terms of the substance of the issues relating to the Council's reason for refusal, the site was located within open countryside and a Special Landscape Area; the onus was on the Applicant to justify their case. In reaching its decision the Council took into account relevant national and local planning policies, and a professional judgment had to be made by the Council based on the evidence and information available.
9. The letter to all Chief Planning Officers' in Wales¹ highlights in regards to outline planning applications that detailed consideration will be required on the use and amount of development being proposed, and even if matters such as layout and scale are reserved, an application will still require a basic level of information on these issues. I appreciate that scale, appearance and layout were matters that were to be addressed at a later date, however irrespective of this, based on the nature of the information submitted as part of the application, it was not unreasonable for the Council to arrive at a view that there was likely to be detriment to character and appearance of the area, thereby resulting in the refusal of the outline scheme.
10. Whilst I took a contrary view to the Council on the issue of the impact of development on the site and the wider area, and that the detailed design could be addressed at a later date, nonetheless the Council's stance at that time, irrespective of any post decision communication with the Applicant, was a matter of interpretation and planning balance, and is not necessarily in the circumstances to be regarded as unreasonable behaviour; ultimately the disagreement between the parties could only be resolved by way of an appeal.
11. The Applicant refers to discussions that took place post decision and prior to the submission of the appeal in order to resolve matters, however, in terms of the substantive issue relating to the appeal proposal those discussions were in regard to a different type of scheme; the applicant of their own volition entered into further dialogue with the Council during this period and therefore any costs incurred cannot reasonably be attributed to the Council.
12. 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 full or in part.

Other Matters

13. In response to the cost claim by Wawne Developments Ltd, the Council ask that I consider a partial procedural award of costs against the Applicant due, in their opinion, to the unnecessary time spent in defending their position, on a cost claim they maintain had no substance and involved costs unrelated to the appeal application and appeal process; the Annex refers to an Inspector initiating an award of costs where it

¹ Ref. CL -02-2008 from the Planning Division of the Welsh Assembly Government

is considered clear that the unreasonable behaviour of one of the parties has incurred another party unnecessary or wasted expense.

14. As referred to above, consideration of planning applications and appeals involves matters of judgment that are at times finely balanced. Whilst I have not found in favour of Wawne Development Ltd in terms of their cost claim, nonetheless, the Applicant was perfectly entitled to argue a cost claim based on the facts and merits of the case as they saw it, with their cost claim stance on the whole being a matter of interpretation and planning judgement; the Applicant's submission of a cost claim is therefore not necessarily in the circumstances to be regarded as unreasonable behaviour, and therefore I see no reason to initiate an award of costs against them for merely exercising their rights under the provisions referred to above.

Formal Decision

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

Declan Beggan

INSPECTOR