

Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 29/04/15
Ymweliad â safle a wnaed ar 29/04/15

**gan Kay Sheffield BA(Hons) DipTP
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 11/06/15

Costs Decision

Hearing held on 29/04/15
Site visit made on 29/04/15

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers
Date: 11/06/15

Costs application in relation to Appeal Ref: APP/H6955/A/14/2228984
Site address: Talwrn Farm, Talwrn Road, Legacy, Wrexham, LL14 4ER

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 D and PJ Molloy for a partial award of costs against Wrexham County Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of a barn egg laying unit with associated feed bins, hardstandings, access track and upgraded highway access.

Decision

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

The submissions for D and PJ Molloy

2. The application for a partial award of costs was made orally at the hearing. The application was made under paragraph 8 of Annex 3 of Circular 8/93¹ in respect of the Council's third and fourth reasons for refusing planning permission.
3. With regard to the third reason for refusal the applicants contend that the Council's assessment of traffic on roads was contrary to Manual for Streets 2 and Technical Advice Note 18: Transport as set out in the submitted Transport Report. The Council's case was underpinned purely on the basis of unsubstantiated concerns rather than appropriate technical evidence to rebut the findings of the detailed and technically substantiated evidence submitted by the applicants. The Council's highway officers raised no objection to the proposal and the Council fielded no professional highway expert to defend its reason for refusal. The impact of the development in any given hour would be within the existing range of day to day variation on a route with sufficient capacity to accommodate the increase in traffic with an acceptable degree of safety. The Council had provided no evidence to defend its unreasonable and inconsistent reason for refusal.

¹ Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings

4. Turning to the fourth reason for refusal the applicants contend that issues of noise and odour are not subjective issues but are measured using a scientific assessment. Detailed noise and odour assessments by professionals had been submitted in evidence which confirm that the development would be compliant with legislation designed to protect residential amenity. In considering the planning application the Council's environmental health officers had not only reviewed the details of the case but had also visited a similar operation in order to assess the impact. The officers had raised no objection. The applicants considered it unreasonable of the Council to provide no expert evidence in defence of the reason for refusal.

The response by Wrexham County Borough Council

5. The response by the Council was made orally. The Council clarified that the third reason for refusal related to the approach roads to the site and not the upgrading of the access. The Council stated that it was not bound to adopt any technical evidence and did not need to be reliant on the advice given by the highway officers. The Council was of the opinion that increased numbers of heavy goods vehicles (HGVs) and the suitability of the existing roads and the effect these could have on highway safety was a subjective issue for those living close to the site. Notwithstanding the advice from the highways officers, the Council was therefore convinced by the concerns raised by the local residents.
6. In respect of the fourth reason for refusal, the Council considered that although modelling can show no problem should arise from noise and odour, the management of the site could lead to a situation where problems could occur and give rise to legitimate concerns. Every receptor would have a different opinion of the scale of the impact and therefore noise and odour can be subjective issues. The Council made its decision based on the scale of the concerns raised by residents with regard to these matters.

Reasons

7. Circular 23/93 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 8 of Annex 3 of the Circular states that in any appeal proceedings the Council is expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations. If they cannot do so, costs may be awarded against them. Moreover the Council is expected to produce evidence to show clearly why the development cannot be permitted. In cases where planning issues are clearly shown to be finely balanced, an award of costs relating to substantive, as distinct from procedural, matters is unlikely to be made against the Council.
8. The Council is not bound to adopt the professional evidence or technical advice given by its officers, or received from statutory bodies or consultees. However the Council is expected to show that it had reasonable planning grounds for taking a decision contrary to such advice; and that it was able to produce relevant evidence to support its decision in all respects. It follows that the Council is expected to thoroughly consider relevant advice from a statutory consultee before determining a planning application. If the Council does not accept or adopt any such advice, it is required to explain why.

9. The Council is also expected to consider the views of local residents when determining a planning application. Nevertheless local opposition to a proposal is not, by itself, a reasonable ground for the refusal of a planning application, unless that opposition is founded on valid planning reasons which are supported by substantial evidence. Whilst the planning authority will need to consider the substance of any local opposition to the proposal, its duty is to decide the case on its planning merits.
10. It was generally accepted that although the proposed route to be taken by the HGVs fell below the desired standard, it is a route regularly used by such vehicles. The amount of HGV traffic which would be generated by the development was not disputed by the Council. I accept that the increased numbers of HGVs and the suitability of the existing roads and the effect these could have on highway safety is a matter of concern to those living close to the site. However, the Council failed to produce substantive evidence of the effect the estimated increase in traffic as a result of the development would have on highway safety.
11. Residents living in proximity of the site will have differing levels of tolerance with regard to noise and odour emitting from the site. These issues were obviously of great concern to local residents and I accept that a situation could arise in the management of the site where problems could occur and give rise to legitimate complaints. However, the Council failed to produce any evidence to rebut the technical evidence of the applicant which confirmed that the development would be compliant with legislation designed to protect residential amenity. Moreover, there is no evidence that the controls which would be in place would ordinarily allow such situations to develop.
12. In this instance the Council failed to show that it had reasonable planning grounds for taking a decision contrary to professional or technical advice or that the local opposition to the development in terms of highway safety, noise and odour were supported by substantial evidence sufficient to outweigh the planning merits of the case. On this basis I conclude that the Council has behaved unreasonably and thereby caused the applicants to incur unnecessary or wasted expense in the appeal and a partial award of costs is justified.

Costs Order

13. 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 Wrexham County Borough Council shall pay to D and PJ Molloy, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the production of evidence with regard to the third and fourth reasons given by the Council for refusing planning permission.
14. The applicants are now invited to submit to Wrexham County Borough 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.

Kay Sheffield

INSPECTOR