

Amgylchedd a Datblygu Cynaliadwy
Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Mr L Isted
Head of Community Wellbeing and
Development
Wrexham County Borough Council
Lambpit Street
Wrexham
LL11 1AR

Ein Cyf/Our ref: qA1000389
Eich Cyf/Your ref: P/2011/0102
Dyddiad/Date: 17 August 2012

Dear Mr Isted

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR W J PARRY AND MRS P PARRY
SITE AT BORRAS HALL, BORRAS HALL LANE, LLAN Y PWLL, WREXHAM
APPLICATION FOR AN AWARD OF COSTS

1. I refer to the application made by your Council for an award of costs against Mr and Mrs Parry.
2. I am authorised by the Minister for Environment and Sustainable Development to determine the application.
3. In planning and enforcement appeals the parties are normally expected to meet their own expenses and 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.
4. The submissions contained in your letters dated 31 January, 7 February and 28 March 2012, together with those in the letters dated 6 February, 2 March and 10 April 2012 from the appellants' agents, have been considered in light of Welsh Office Circular 23/93.

SUMMARY OF THE DECISION

5. The formal decision is set out in paragraph 14 below. Your Council's application for an award of costs is successful.

REASONS FOR THE DECISION

6. The Council's application for an award of costs is based on the advice provided in paragraphs 6 to 10 of Annex 2 to Welsh Office Circular 23/93. The thrust of the case for an award of costs is that the appellants behaved unreasonably in withdrawing the appeal, without any material changes in the Council's case, or any other material circumstances relevant to the planning issues arising on the appeal, at a time which resulted in the late cancellation of the hearing

7. In opposing the application for costs, the appellants' agents submitted that, although the Council say that the appeal hearing would have been the most appropriate place to have discussed the issues, the fact of the matter is that against the background of the Council's stated intention to seek an award for costs against Mr and Mrs Parry were they to do so, it was not viable for them to pursue the appeal. Had they pursued the appeal the Council would have sought an award of costs and the Council's and their own costs would have been greater. The costs regime is not intended to deter people from exercising their right of appeal but that is exactly the effect it had in this case.

8. While the Council's intention to apply for an award of costs may have been a determining factor in the decision to withdraw the appeal, I note the following comments made by the appellants' agents in their letter of 15 December 2011 to you:-

"You will appreciate that the current Appeal raises issues which are not straightforward and it cannot be said that the Council would succeed in any application for costs as indicated in your recent letter.

To succeed it would be necessary for the Council to demonstrate unreasonable behaviour on the part of the Appellant and the Council would fail on this count – on the contrary it is perfectly reasonable for an Appellant facing a potential or threatened prosecution to seek to regularise the position by making a Planning Application and by pursuing an Appeal."

9. There appears to be no misunderstanding on the part of the appellants and their agents as to the costs regime and the criteria that have to be satisfied before an award of costs is made and, in view of this, I do not consider it reasonable to withdraw the appeal on the basis that the Council indicated it would be making an application for costs.

10. In support of the Council's application you have referred to the advice in paragraph 9 of Annex 2 to Welsh Office Circular 23/93, that advice being

"If an appeal is withdrawn, without any material change in the planning authority's case, or any other material change in circumstances, relevant to the planning issues arising on the appeal, after the date on which the Secretary of State is subsequently satisfied that the principal parties had received formal notification of the arrangements for an inquiry or hearing, an award of costs may be made against the appellant, in accordance with section 322A of the 1990 Act."

11. I acknowledge that the parties to the appeal were in discussions during the appeal with a view to reaching an outcome acceptable to both sides. I do not consider how the parties approached those discussions to be relevant to my consideration of this application for costs but what I do consider relevant is the question of whether anything came out of those discussions which materially altered the Council's case or the circumstances relevant to the planning issues arising on the appeal.

12. Having considered the papers I take the view that nothing came out of those discussions which materially altered the Council's case or the circumstances relevant to the planning issues arising on the appeal. Nor is there anything in the evidence to suggest

there has been any material change in those issues from the time the appeal was made to the time it was withdrawn.

13. In the light of the conclusions in paragraphs 8 to 12 above I consider that the withdrawal of the appeal was unreasonable. I am also satisfied that, as a result of this unreasonable behaviour, the costs incurred by your Council in producing their case for the appeal have been wasted. Consequently, I propose making a full award of costs in favour of your Council.

FORMAL DECISION

14. For the reasons given above, and in exercise of the authority referred to in paragraph 2 above, I hereby allow your Council's application for an award of costs.

15. Accordingly, I enclose a formal order made under Section 250(5) of the Local Government Act 1972, as applied by Section 322A of the Town and Country Planning Act 1990, requiring Mr William John Parry and Mrs Patricia Parry to pay the costs of the above appeal incurred by Wrexham County Borough Council in an amount to be assessed in default of agreement. You are now invited to submit to GHP Legal, agents for Mr and Mrs Parry, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement to that amount. A guidance note on assessment is enclosed.

Yours faithfully



S M JONES
Deputy Head
Decisions Branch
Planning Division

Signed under authority of the Minister for Environment and Sustainable Development,
one of the Welsh Ministers



Llywodraeth Cymru
Welsh Government

LOCAL GOVERNMENT ACT 1972

TOWN AND COUNTRY PLANNING ACT 1990

ORDER AS TO COSTS

MR WJ PARRY AND MRS P PARRY

Reference:qA1000389

Under Section 250(5) of the Local Government Act 1972, as applied by Section 322A of the Town and Country Planning Act 1990 (hereinafter called the "Act of 1990"), and all other enabling powers, **MR WILLIAM JOHN PARRY AND MRS PATRICIA PARRY** are **HEREBY ORDERED** to pay **WREXHAM COUNTY BOROUGH COUNCIL** the costs incurred in respect of the appeal below, and assessed in default of agreement as to the amount thereof.

Subject of the appeal:

Appeal under section 78 of the Act of 1990 against the refusal of planning permission for the retention of an agricultural building at Borrass Hall, Borrass Hall Lane, Llan-y-Pwll, Wrexham.

Date of hearing:

7 February 2012

Date of notification of withdrawal of appeal:

30 January 2012

Date: 17 August 2012

S M JONES
Deputy Head
Decisions Branch
Planning Division

Signed under authority of the Minister for
Environment and Sustainable Development,
one of the Welsh Ministers

