



Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 20/12/11
Ymweliad â safle a wnaed ar 20/12/11

gan Alwyn B Nixon BSc(Hons) MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 18/01/12

Costs Decision

Hearing held on 20/12/11
Site visit made on 20/12/11

by Alwyn B Nixon BSc(Hons) MRTPI
an Inspector appointed by the Welsh Ministers
Date: 18/01/12

Costs application in relation to Appeal Ref: APP/H6955/A/11/2159246

Site address: Chirk Court Care Home, Maes y Waun, Chirk, Wrexham LL14 5ND

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.
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- 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 Clwyd Alyn Housing Association for a full award of costs against Wrexham County Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the phased demolition of an existing single storey 30 bedroom residential care home and phased construction of a new two storey 72 bedroom EMI nursing facility.
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Decision

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

The submissions for Clwyd Alyn Housing Association

2. The costs application was made at the hearing. The application is for full costs on the basis that both reasons for refusal were unreasonable in the circumstances. Circular 23/93 Annex 3 paragraph 7 advises that local planning authorities should not prevent development which could reasonably be permitted; paragraph 8 states that authorities will be expected to produce evidence to substantiate each reason for refusal; paragraph 9 makes clear that authorities will need to show that they had reasonable planning grounds for taking decisions contrary to the professional or technical advice of their officers; paragraph 11 advises as to the possibility of imposing conditions in order to allow development to proceed.
3. In relation to the first reason for refusal, the Council entirely disregarded their own maximum standards for parking provision and the fact that the proposal satisfied unitary development plan policy T8 in this respect. No evidence has been provided as to why these standards are inappropriate, or what additional level of parking is necessary in this case. Even if an additional parking requirement had been identified, there is ample scope to meet this within the site – it would therefore have been appropriate to address this matter, if necessary, by imposing a condition.
4. As regards the second reason for refusal, there has been a wholly unbalanced approach to the assessment of the impact of loss of a single tree and a failure to produce convincing evidence to support the Council's stance. The decision to refuse permission fails to acknowledge that in applying policy there may be circumstances where the needs of development outweigh the desire to retain a particular tree. The

Council's case fails to show any reasonable basis for departing from the assessment of its officers and there is no consideration at all of the fact that a requirement to plant a replacement tree would have an immediate and satisfactory mitigating effect.

The response by Wrexham County Borough Council

5. The response was made orally at the hearing. Neither of the two reasons for refusal involved unreasonable behaviour by the Council and no unnecessary expense had been caused. There was nothing procedurally wrong in the way that the Council had considered the application. Councillors had considered the officer report and decided to visit the site before making a decision.
6. The Council's parking standards are guidelines only, and moreover have been subsequently amended. Members were entitled to make their own assessment of the proposal, including applying their local knowledge, and reach their own conclusion as to the adequacy of the parking provision. Their conclusion that the provision was insufficient was reasonable, given the uncertainty over staffing levels needed. Following the deferral of the application the appellant was asked to consider making additional parking provision; however, there had been a clear unwillingness to provide this.
7. There were clear policy objections to the loss of the protected tree. The initial scheme put to the Council presented the loss of the tree as inevitable. Discussions with the appellant made it clear that there was unwillingness to amend the design to avoid this. Members visited the site and looked at the impact that loss of the tree would have on the street scene. Planting a replacement would not provide adequate mitigation. Members were entitled to conclude that loss of the tree was unacceptable.

Reasons

8. 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.
9. At the time of the decision to refuse permission the Council's parking requirements were clearly set out in the April 2005 revision of Local Planning Guidance Note No. 16. These standards were maximum standards. The proposal fully complied with these standards. The professional advice given by the Council's officers was that the proposal made adequate provision for parking. The Council failed to produce any substantive evidence to support its contention that the parking arrangements proposed were inadequate or that harm would be caused to the living conditions of nearby residents as a result of the level of on-site parking proposed. Although the Council pointed at the hearing to a subsequent revision to its adopted parking standards, these are still maximum standards and no evidence has been produced which suggests that the number of spaces proposed would not be adequate. Even if there had been good reason to seek more spaces, this matter could have easily been addressed by imposing a condition on any permission granted. In the circumstances I consider that the Council's decision to refuse permission on the basis of inadequate parking provision amounted to unreasonable behaviour.
10. Prior to determination of the application there were discussions with the appellant concerning the scope for a scheme redesign which would enable tree T12 to be retained. The appellant put forward detailed and cogent reasons for the scheme design proposed and why an alternative proposal which did not involve the removal of

tree T12 was not a practical proposition. The report to Members set out these matters in detail, analysed the degree of harm to amenity that would be caused by the removal of the tree and concluded that the proposal was acceptable.

11. Whilst Members are not bound to accept the professional advice of officers, they should be able to produce evidence to show reasonable planning grounds for taking a contrary decision. The evidence produced in support of the decision to refuse fails to have regard to the design constraints arising from the need to maintain an ongoing care facility at Chirk Court whilst development is carried out, the economic and operational reasons for the form of development proposed and other constraints affecting the consideration of alternative development layouts. Moreover, the Council's evidence as to the visual impact of removal of tree T12 was overstated, since the photo-representation of the resultant loss of tree canopy failed to depict the full extent of the canopies of T10 and T13 which would remain. The evidence also did not make allowance for the mitigating effect over time of a replacement tree.
12. Overall, I find that the Council has not produced evidence to show reasonable planning grounds for taking a decision contrary to the recommendation of its officers. Its decision to refuse planning permission led to the appellant having to pursue an appeal which should not have been necessary. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, has been demonstrated and that a full 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 Clwyd Alyn Housing Association the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is 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.

Alwyn B Nixon

Inspector