



Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 19/04/22

gan Paul Selby BEng (Hons) MSc MRTPI

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 10/05/2022

Costs Decision

Site visit made on 19/04/22

by Paul Selby BEng (Hons) MSc MRTPI

**an Inspector appointed by the Welsh
Ministers**

Date: 10/05/2022

Costs application in relation to Appeal Ref: CAS-01541-R1G0G2

Site address: Sunnybank, Mount Pleasant, Heolgerrig, Merthyr Tydfil CF48 1RT

The Welsh Ministers have transferred the authority to decide this application 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 Mr Stephen Wall for a full award of costs against Merthyr Tydfil County Borough Council.
 - The appeal was against the refusal of planning permission for Construct a detached dwelling and a detached garage (Outline).
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Decision

1. The application is refused.

Reasons

2. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an 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.
3. The application is made on both procedural and substantive grounds. The dispute centres on the Local Planning Authority's (LPA's) fifth reason for refusal, concerning the matter of highway safety, albeit the applicant's costs claim is not limited to this refusal reason.
4. The applicant initially sought pre-application advice from the LPA in early 2020. The applicant contends, and I have no reason to dispute, that revisions were then made to the scheme, which took account of an appeal decision relating to a nearby site issued in June 2020 (Ref: APP/U6925/A/20/3246989) ('the Tramroadside appeal decision'). This revised scheme, which sought to improve visibility for highway users in the vicinity of the proposed access point, was the subject of a second pre-application inquiry in July 2020 and received no objection from the Council's Head of Engineering in relation to highway safety impacts. A planning application made in October 2020 was later refused, partly on the basis of highway safety impacts, in the light of the Tramroadside appeal decision.

5. The LPA accepts that the Head of Engineering was not aware of the Tramroadside appeal decision when he provided his initial advice. This is unfortunate, as it appears that knowledge of the decision influenced a later objection, made on the basis of highway safety impacts. The applicant alleges various reasons for why this advice changed, but these are unsubstantiated. In any case, the Tramroadside appeal decision is a legitimate material consideration in this appeal, relating as it does to a nearby, comparable residential development which would be accessed via similar parts of the local road network. It was not unreasonable of the LPA to draw the Tramroadside appeal decision to the attention of the Head of Engineering when it became evident that he had not considered it. Indeed, it would have been irregular of the LPA not to have done this.
6. Para 3.11 (f) of the Annex states that LPAs are at risk of an award of costs being made against them if they do not determine or provide a position on similar cases in a consistent manner where there has been no material change in circumstances. It is regrettable that the LPA's pre-application advice did not consider the implications of the Tramroadside appeal decision. However, irrespective of whether the nature of that advice prompted a planning application, the LPA's evidence in relation to highway safety matters is adequately reasoned, takes account of relevant material considerations and concludes against pertinent policies of the adopted Local Development Plan. The Delegated Report confirms that the LPA rightly considered the scheme's highway safety benefits but concluded, on balance, that the scheme would be harmful in highway safety terms. The LPA has also adequately justified its other reasons for refusing the application, even though I may not concur with all of its conclusions in that regard. There is no evidence of unreasonable behaviour which has resulted in unnecessary or wasted expense at appeal.
7. I am informed that the LPA's pre-application advice includes disclaimers which indicate that its content cannot bind the LPA's actions in relation to a future planning application. That is appropriate, as it is the planning application, and not the pre-application procedure, which is the statutory process by which permission for development is given or denied. The discretionary nature of Wales' planning system means that risk is inherent within the process of applying for planning permission. The pre-application procedure is one way in which risk may be reduced, but it cannot be wholly avoided.
8. The applicant has cited various case law and legal concepts. I concur with the quote attributed to Lord Hoffmann that it is unhelpful to introduce private law concepts of estoppel into planning law, but in any case, I disagree that there is evidence of estoppel by representation. The LPA did not revoke its pre-application advice; rather, it attributed it lesser weight in its overall planning determination, for the reason that it had not been informed by the Tramroadside appeal decision. It evidently did this with the public interest in mind. This was not unreasonable behaviour as defined in the Annex, and against which costs applications are determined.
9. The applicant has quantified costs borne during the application process, but notwithstanding my findings above, paragraph 2.8 of the Annex states that costs cannot be claimed for the period during the determination of a planning application. Whilst other allegations have been made, there is no compelling evidence to substantiate these, and I afford them little weight. I note the applicant's comments regarding other avenues to seek redress in relation to the processing of the planning application, as is his right. I make no further comment on these as they are not relevant to my determination.
10. For the reasons given above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Annex, has not been demonstrated. Accordingly, no award of costs is made.

Paul Selby INSPECTOR