



Penderfyniad ar gostau

Ymchwiliad a gynhaliwyd ar:

1, 2, 3 & 04/03/22

Ymweliad â safle a wnaed ar: 15 & 16/03/22

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18/05/2022

Costs Decision

Inquiry held on:

1, 2, 3 & 04/03/22

Site visit made on 15 & 16/03/22

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 18/05/2022

Costs application in relation to Appeal A - Ref: APP/R6830/A/19/3243545

Site address: Land to the north, west and east of Mindale Farm, Ffordd Hendre, off Ffordd Ty Newydd, Meliden, Prestatyn, LL19 8PG

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 R. A. Roberts of Penrhyn Homes for a full award of costs against Denbighshire County Council.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling and outbuildings, erection of 133 dwellings, construction of internal estate roads, sewers, SUDS drainage and open spaces, strategic and hard/soft landscaping and ancillary works.
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Costs application in relation to Appeal B - Ref: APP/R6830/A/19/3243547

Site address: Land North of Meliden Road & West of Ffordd Ty Newydd, Meliden, Prestatyn, LL19 8RL

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 R. A. Roberts of Penrhyn Ltd for a full award of costs against Denbighshire County Council.
 - The appeal was against the refusal of planning permission for the construction of a New Road (approximately 400m in length) from Ffordd Talargoch to land at Mindale Farm, in association with application Ref: 43/2018/0750 for residential development on housing land allocation.
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Decision

Appeal A - Ref: APP/R6830/A/19/3243545

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

Appeal B - Ref: APP/R6830/A/19/3243547

2. The application for an award of costs is refused.

Procedural Matters

3. As set out above, there are two applications for an award of costs. Whilst I shall determine each case on its own particular merits, to avoid duplication, I shall set out my reasoning in this single document, albeit with separate formal decisions.

Reasons

4. The Section 12 Annex 'Award of Costs' ('the Annex') of the Welsh Government's (WG) Development Management Manual (DMM) advises that, irrespective of the outcome of an 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. I shall consider the applications on this basis.

Appeal A - Ref: APP/R6830/A/19/3243545 – Proposed Residential Development

5. In this case, the applicant seeks a full award of costs for alleged unreasonable behaviour that led to unnecessary expense through the appeals process. In the alternative, the applicant seeks a partial award of costs should either the highways or drainage reasons for refusal be found to be unjustified through the associated planning appeal. In addition, an award of costs is sought in respect of the need to prepare Noise and Air Quality Reports appended to the appellant's Planning Written Statement of Evidence (Appendix 12) which were prepared in response to the LPA's concerns raised through a letter dated 2 October 2020.

Highways

6. Local Planning Authorities (LPAs) are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority.
7. In this case, the Council's refusal on highways grounds was contrary to the advice of its professional officers. However, the detail of the Council's objection only became clear through the submission of the LPA's Written Statements of Evidence (WSoE). As such, the applicant was not in a position to provide evidence or a scheme of mitigation in advance of the determination of the application. Rather, the applicant was put in the unfortunate position of having to appeal the scheme to fully understand the detail of the Council's case.
8. The Inspector dealing with the previous appeal at the site [Appeal Ref: APP/R6830/A/17/3174131] concluded that the local highway infrastructure could accommodate the increased traffic flow generated by the proposed development without harm to highway safety. Nevertheless, the Council has sought to justify the highways reason for refusal in this case on the basis of congestion at the Ffordd Penrhwlfa/ A547 priority junction. However, as I have found in the appeal decision, no cogent evidence

was submitted to demonstrate that the increased use of the junction would represent a material risk to highway safety.

9. The development would inevitably increase traffic in the vicinity of the Ffordd Penrhwlfa/A547 priority junction. However, I have not seen anything to lead me to conclude that such increases would be unacceptable having regard to the location of the junction in such a built area. Furthermore, the Council has not provided any indication why it considers that the traffic generated by the appeal scheme would be materially worse than what would have been anticipated when it resolved to allocate the land for residential development in its adopted Local Development Plan (LDP).
10. There is no doubt in my mind that the circumstances outlined above indicate that the Council behaved unreasonably in respect of such matters. Indeed, notwithstanding the evidence submitted at the WSoE stage of the appeal, it did not produce evidence to substantiate the impact of the proposal on highway grounds prior to taking its decision. Rather, it made its decision contrary to the advice of its professional officers without there being any reasonable grounds for doing so. Moreover, such unreasonable behaviour resulted in unnecessary and wasted expense through the appeals process. As such, and having considered all matters raised, I consider that an award of costs is justified in respect to these matters.

Drainage

11. As with the highways issue, the drainage reason for refusal was advanced contrary to the advice of the Council's professional officers. It is also relevant to note that, at that time, there was no objection from NRW, the Local Lead Flood Authority or Waterco acting in an advisory role. Indeed, the position at the time the application was determined was that any outstanding drainage matters could have been dealt with through the imposition of a suitably worded planning condition(s). As with the highways issues, the detailed concerns in respect of drainage matters were not shared with the applicant until the WSoE stage of the appeals process.
12. The withholding of sufficient detail to support its reason for refusal until the WSoE stage of the appeal clearly constitutes unreasonable behaviour on behalf of the Council. Nevertheless, I have found in the Council's favour in respect of the drainage issue at appeal and, whilst the applicant has undertaken significant work to progress its drainage strategy through the appeals process, I am mindful that such work would have been necessary to satisfy the pre-commencement conditions that would have otherwise been imposed had the Council granted planning permission for the development. I therefore remain unconvinced that unnecessary or wasted expense has been satisfactorily demonstrated in respect of this particular matter.
13. Given that the DMM is clear that both unreasonable behaviour and unnecessary expense has to be demonstrated for costs to be awarded, I find that costs are not justified in respect of this particular matter.

Noise and Air Quality

14. The LPA, in a letter dated 2 October 2020, raised concerns over noise and fumes associated with the development materially contributing to an unacceptable impact upon the settlement of Meliden. Given that such concerns were unsupported by any robust evidence, such matters were not discussed at any great length at the Inquiry. Nevertheless, in light of such concerns being raised, the applicant commissioned Noise and Air Quality Reports and submitted them at the WSoE stage of the appeal [Appendix 12 of Appellant's Planning WSoE].

15. The Council states that the applicant chose to seek costly reports and that it was not at the behest of the LPA. However, given the lack of any technical evidence and the resulting ambiguity associated with the highways reason for refusal, I consider it to be understandable why the applicant felt it necessary to provide evidence in respect of such matters. Indeed, it was unreasonable for the LPA to raise such concerns so late in the process and, as the preparation of these documents clearly led to unnecessary expense, I consider that an award of costs is justified in this respect.

Conclusion in respect of Appeal A

16. Based on the foregoing, I find that unreasonable behaviour for the purposes of Annex 12 of the DMM has occurred and that, in respect of both the highways matters and the commissioning of Noise and Air Quality Reports, such behaviour resulted in unnecessary and wasted expense being incurred through the appeals process. I therefore conclude that a partial award of costs is justified. The application for an award of costs should therefore be allowed, in part, under the terms set out in the Costs Order below.

Appeal B - Ref: APP/R6830/A/19/3243547 - Proposed Road Scheme

17. The applicant seeks a full award of costs in respect of Appeal B. However, I have outlined in the associated Appeal Decision that the road proposed under Appeal B would be located in the countryside for planning policy purposes and that, without a justification in the form of an associated planning permission for residential development, it would represent an unjustified incursion into an agricultural field with associated visual harms.

18. This position is broadly reflective of the Council's reason for refusal and the Council substantiated its reason for refusal through the appeals process. I therefore find that unreasonable behaviour for the purposes of DMM has not occurred in respect of this application. The application for an award of costs in respect of Appeal B should therefore be refused.

Costs Order in respect of Appeal A - Ref: APP/R6830/A/19/3243545

19. In exercise of the powers under section 322C 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 Denbighshire County Council shall pay to Mr R. A. Roberts of Penrhyn Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of highways matters and the Noise and Air Quality Reports associated with Appeal A.

20. The applicant is now invited to submit to Denbighshire County 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, an application for a detailed assessment by the Senior Courts Costs Office should be considered.

Richard E. Jenkins

INSPECTOR