
Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 18/05/16
Ymweliad â safle a wnaed ar 18/05/16

gan Alwyn B Nixon BSc(Hons) MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 29.06.16

Costs Decision

Hearing held on 18/05/16
Site visit made on 18/05/16

by Alwyn B Nixon BSc(Hons) MRTPI
an Inspector appointed by the Welsh Ministers
Date: 29.06.16

Costs application in relation to Appeal Ref: APP/M6825/A/15/3139036
Site address: Land at Rhiw Las, Abbey Road, Whitland, Carmarthenshire SA34 0LH

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 Rhiw Las Limited for a full award of costs against Carmarthenshire County Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for One Planet Development (OPD) consisting of four zero carbon dwellings.

Decision

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

The submissions for Rhiw Las Limited

2. The costs application was submitted in writing. In summary, the basis for the application is that the decision to refuse planning permission was unreasonable. The reasons for refusal lacked precision and were unsubstantiated by evidence. The Planning Committee had failed to follow officer advice and had ignored or misapplied national planning policy and guidance; moreover it had been swayed in its decision by immaterial considerations. In addition, the Council had persisted with its stance despite its subsequent approval of OPD in a comparable location.

The response by the Council

3. The response was made in writing. The Council contests all of the matters above. Whilst the Council agrees that the proposal is compliant with national policy concerning OPD it considers that the proposal conflicts with a number of development plan policies and that this outweighs the compliance with national policy on OPD. The reasons for refusal identify the policy elements at issue and the Council has given evidence as to the site's isolated location and incompatibility with more sustainable forms of transport. The elected members were entitled to disagree with the officer recommendation on this basis. Whilst some non-material points may have been raised during the Committee meeting, the reasons for refusal are material matters. The other development referred to differs from this proposal in a number of significant respects.
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Reasons

4. 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.
5. Annex 3 to Circular 23/93 explains that a planning authority is not bound to adopt, or include as part of its case, the professional advice given by its own officers. But it will be expected to show that it had reasonable planning grounds for taking a decision contrary to such advice; and be able to produce relevant evidence to support its decision in all respects. In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations.
6. In this case, the authority does not contest that the proposal constitutes One Planet development. It accepts that the proposal meets all of the requirements for land based One Planet development in the countryside set out in Welsh Government policy and practice guidance. It raises no objection against the development in these terms; the Carmarthenshire Local Development Plan (LDP) does not contain any policies of its own dealing particularly with One Planet developments.
7. The authority's case rests on its contention that, notwithstanding its acceptance that there is no conflict with One Planet development policies, the proposed development is nonetheless in conflict with elements of LDP policies GP1, TR2 and TR3, which seek to ensure that development occurs in sustainable locations with appropriate access to satisfactory travel opportunities by means other than private car. However, LDP policy TR2 is patently not applicable to a development of this minor scale; the policy is specifically directed at developments having a potential for significant trip generation. I find no tenable basis, on the detailed facts of the proposal as clearly expressed in the submitted management plan, for the Council's contention that the proposal properly fell to be considered within the ambit of this policy.
8. Turning to policies GP1 and TR3, whilst these are policies generally applicable to all forms of development, it is plain that such policies need to be applied sensibly having regard to the nature, scale and characteristics of the development concerned. In this case, the application of policy requirements that development provides an integrated transport network which safely and conveniently promotes the interests of pedestrians and cyclists and has suitable provision for access by public transport must take into account the inherent locational and operational characteristics of the proposal as land based One Planet development located in the open countryside.
9. Viewed in that light, I find nothing in the authority's case to substantiate its contention that the proposal is unsustainably located and inadequately provided for as regards travel by foot, cycling or access to public transport. On its facts, and bearing in mind the obvious differences between standards of accessibility applicable to locations in the countryside compared to development in urban areas, the site is comparatively well-located as regards travelling distances to local settlements and facilities, including public transport links by bus and train. The travel plan accompanying the application contained comprehensive proposals for incorporating journeys to and from the site by bicycle (including battery assisted cycles) and on foot, encouraging public transport use for journeys farther afield and maximising car-sharing and combining trip purposes where cars are used. There is no evidence to indicate that the characteristics

of Abbey Road render it unsuitable for use by pedestrians; the highways authority raises no objection in these terms.

10. In summary, I conclude that the authority has failed to produce evidence to substantiate any of the reasons given for refusing permission contrary to the professional advice of its officers, and moreover relied in its reason 2 on an assertion of conflict with LDP policy TR2 which plainly should not be applied to a development proposal of this minor scale and nature. On this basis I consider that its decision to refuse planning permission amounted to unreasonable behaviour, resulting in an appeal which should not have been necessary.
11. 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

12. 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 Carmarthenshire County Council shall pay to Rhiw Las Limited the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Carmarthenshire 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, 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