
Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 29/05/14
Ymweliad â safle a wnaed ar 29/05/14

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/7/14

Costs Decision

Hearing held on 29/05/14
Site visit made on 29/05/14

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11/7/14

Costs application in relation to Appeal Ref: APP/P9502/A/14/2213204

Site address: Lleuad Newydd, Station Road, Clydach, Abergavenny

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 Brecon Beacons National Park Authority for a full award of costs against Mr Ian Pickering.
 - The hearing was in connection with an appeal against the refusal of planning permission for a detached dwelling.
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Decision

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

The submissions for Brecon Beacons National Park Authority

2. The costs application was made orally at the hearing and a full award is sought. The Authority refers to paragraphs 3 and 5 of Annex 3 of Circular 23/93. The Authority contends that the appeal was unreasonable and that the Appellant has not produced substantial evidence to support the contention that there are material considerations which would justify an exception to the policies in the development plan.
3. Policies LGS LP1 and LGS LP2 of the Brecon Beacons National Park Authority Local Development Plan (LDP) define the village as a Level 4 settlement which is identified for limited growth. The basis of the LDP policies indicate that in Level 4 settlements the creation of new dwellings to meet an identified local need for affordable housing is supported but not general market housing. The Authority asserts that no evidence has been provided to show that there is no need and to support the contention that there are material considerations that would outweigh the development plan.
4. The Authority contends that the appeal is unreasonable because it must have been obvious from planning policy that it had no reasonable prospect of success. The Authority refers to national guidance on LDPs, where it is indicated that the development plan becomes operative from the date of its adoption. Upon adoption the planning policies for the area restricted development to affordable housing and without evidence of need there was no real prospect of the appeal succeeding. The fact that Clydach is within the Heads of the Valley and Rural South submarket area

where no affordable housing contribution is needed is irrelevant since such contributions do not relate to Level 4 settlements.

5. The Authority's reasons for refusal are not disputed in the cost application. The change of policy came about following the adoption of the LDP in December 2013. The Appellant could have appealed in the 4 month period prior to the LDP adoption and have his appeal considered under the previous planning policy regime.
6. The Authority has incurred unnecessary expense in officer time in the preparation for the appeal. Such unnecessary expense would not have occurred had the appeal been made in August 2013, when the Authority's decision was issued. The Authority drew attention to the Appellant of the change of policy when the appeal was lodged that affordable housing in a limited growth settlement was a relevant consideration in the determination of the appeal.
7. Although the Authority initially applied for a full award of costs no particular application is sought in relation to the two reasons for refusal on character and appearance and highway safety. A partial award of costs is therefore sought limited to the LDP planning policy issue.

The response by Mr Ian Pickering

8. The response was made orally at the hearing. The appeal should be considered against issues raised in the reasons for refusal and not against matters of principle. It is considered that the LDP is not the prevailing document in this appeal.
9. In relation to the question of an identified need, the village is located in an area where no affordable housing contribution is needed. Given there is no identified need the development is not contrary to policy. In any event, it is requested that the appeal is determined in relation to the Brecon Beacons National Park Unitary Development Plan (UDP) (2007), as it is an appeal against the Authority's decision in August 2013.
10. Many of the Authority's statements on LDP policy are irrelevant since the appeal site is located in area where an affordable housing contribution is not required. Similarly the time spent by the Authority in preparation is also irrelevant, and so is the Authority's letter warning the Appellant of the policy change, because no affordable housing contribution is needed in the area.

Reasons

11. 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 expense in the appeal process.
12. I have concluded in the decision that the operative development plan is the LDP for the determination of the appeal and that LDP planning policies seek affordable housing in a limited growth settlement. I also concluded that there was no evidence submitted to corroborate the Appellant's claims of no identifiable local housing need for affordable housing. The appeal site is located in area where no financial contribution is needed for affordable housing. However, this mechanism as a contribution for affordable housing does not relate to limited growth settlements. This is set out in my decision having regard to relevant LDP planning policies.
13. However, paragraph 3 of Annex 3 of Circular 23/93 indicates that an appeal may be considered unreasonable where the planning authority can show that their determination of a planning application for a proposed development is in accordance

with an operative plan and they have substantiated this in their reasons for refusing permission and in their written statement on an appeal.

14. Given the timing of events, the Authority determined the planning application in accordance with the preceding development plan and did not focus its reasons for refusal on matters of principle. The Appellant therefore exercised his statutory right of appeal in a reasonable manner. Matters of principle were introduced later and whilst fore-warned by the Authority, the Appellant could have produced evidence on the day of the hearing on whether there was an identifiable need. The fact that I was not persuaded that the evidence was compelling, did not alter the point that it was a reasonable appeal in relation to the reasons why it was refused planning permission.
15. The general conditions for an award for unreasonable behaviour against the Appellant has not been met, having regard to paragraph 6(2) of Annex 1 and paragraphs 3 and 5 of Annex 3 of Circular 23/93. Given my conclusions on the issue of unreasonable behaviour, there is no need for me to go on and consider whether there has been a waste of expense on the part of the Authority in the appeal process.
16. I therefore find that unreasonable behaviour as described in Circular 23/93 has not been demonstrated. A full or partial award is not therefore justified in this case.

Iwan Lloyd

INSPECTOR