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## **Penderfyniad ar gostau**

Gwrandawriad a gynhaliwyd ar 14/02/17

Ymweliad â safle a wnaed ar 14/02/17

**gan Joanne Burston BSc MA MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 23.03.2017**

## **Costs Decision**

Hearing held on 14/02/17

Site visit made on 14/02/17

**by Joanne Burston BSc MA MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 23.03.2017**

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**Costs application in relation to Appeal Ref: APP/Z6950/A/16/3161658**

**Site address: Lettons House, Lettons Way, Dinas Powys CF64 4BY**

**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 Mr Peter Hayman for a full award of costs against The Vale of Glamorgan Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
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### **Decision**

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

### **The submissions for Mr Peter Hayman**

2. The submissions were provided in writing.

### **The response by The Vale of Glamorgan Council**

3. The submissions were provided in writing.

### **Reasons**

4. Circular 23/93 – Awards of Costs Incurred in Planning and Other Proceedings (the Circular) 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. In essence the appellant states that the Council has demonstrated unreasonable behaviour for the following three reasons: Decision based on lack of evidence; unreasonable approach to affordable housing; and unlawful obligation request.

#### Decision based on lack of evidence

6. Although I have reached a contrary view to the Council on the merits of the case, the authority has provided sufficient evidence to support its reason for refusal, which was based on reasonable planning grounds. In particular, by reference to the development
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plan and other material considerations, the Council has adequately demonstrated how it considers that the variation of the planning permission would result in harm. Whilst some of the written evidence was brief and to the point, it was not apparent that the Council had been 'keeping its powder dry' on any of the matters, which would have been unreasonable. Nevertheless, such brevity falls short of the unreasonable behaviour needed to warrant a finding of unreasonable behaviour.

#### Unreasonable approach to affordable housing

7. I am broadly satisfied that the basis for the Council's assessment and deliberations on the planning application were reasonable in the context of the Development Plan and it would appear that the Council also had regard to relevant national planning policy in making its decision. The arguments put forward were not completely without foundation. Therefore, on balance, the Council's submission was not so lacking in detail or merit to amount to unreasonable behaviour.

#### Unlawful obligation request

8. The appellant considers that the Council's approach to requiring a section 106 obligation was unlawful and this had led to him incurring costs in securing Counsel's Opinion to demonstrate that the Council's approach was flawed. Nevertheless, the Council placed considerable reliance on national planning policy and guidance to justify its position. The Council also accepted that the Affordable Housing Supplementary Planning Guidance had not yet been adopted to supplement its development plan.
9. The Council provided a reasonable explanation of why they came to the view that they did. Whilst I have not found this to be convincing I consider it was sufficient to discharge the requirement to explain their case and the basis on which it was founded. I am satisfied that both parties submitted evidence which sought to reasonably substantiate their respective positions. It was not unreasonable for the Council to seek comfort in national planning policy and guidance and it was not in my view a situation where the Council clearly acted rashly.

#### *Conclusion*

10. Even though I reached a different conclusion on the planning merits of the case, taking into account all of the circumstances, I consider that the Council was able to substantiate its case to a reasonable extent on the evidence presented. In any event, for costs to be awarded unreasonable behaviour must also have resulted in unnecessary or wasted expense. It is not the case here that the appeal could have been avoided. I have found that the Council had reasonable concerns about the impacts of the proposal. The appellant had to address those concerns.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, has not been demonstrated.

#### **Overall Conclusion**

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

*Joanne Burston*

INSPECTOR