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## Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 03/08/21

gan **J P Tudor BA (Hons), Cyfreithiwr (ddim yn ymarfer)**

Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad: 16.09.2021

## Costs Decision

Site visit made on 03/08/21

by **J P Tudor BA (Hons), Solicitor (non-practising)**

an Inspector appointed by the Welsh Ministers  
Date: 16.09.2021

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**Costs application in relation to Appeal Ref: APP/X6910/A/21/3276988**

**Site address: Maes y Dderwen, Charles Street, Tredegar NP22 4AF**

**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, 322C and Schedule 6.
  - The application is made by Mr Dean Richards (Shaw Healthcare) for a full award of costs against Blaenau Gwent County Borough Council.
  - The appeal was against the refusal of planning permission for 5 bedroom supported living unit and associated works.
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### Decision

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

### The Submissions

2. The applicant's submission was made in writing. The Council has not provided a response to the costs application.

### Procedural Matter

3. As advised in the main appeal decision, Council Officers recommended approval of the proposed development but the Council's Planning, Regulatory and General Licensing Committee (the Planning Committee) took a different view, deciding to refuse planning permission. The Council Officer's Report<sup>1</sup> to the Planning Committee prior to its final decision advised, among other things, that a refusal of planning permission in this case would lead to a realistic prospect of an award of costs against the Council, unless substantive evidence to support the reasons for refusing planning permission was provided. It also indicated that it would not be possible for Council Officers to defend the decision if it was appealed.

### Reasons

4. The Welsh Government's Development Management Manual - Section 12 Annex: Award of Costs (the Annex) states that an appellant or applicant is not awarded costs

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<sup>1</sup> Officer Report for Committee Meeting 15 April 2021

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simply because their appeal succeeds. An award of costs may only be made where one party has behaved unreasonably and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense<sup>2</sup>.

5. Referring to examples of unreasonable behaviour by local planning authorities given in the Annex, the applicant alleges that the Council has failed to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so)<sup>3</sup>. The applicant also maintains that the Council has acted contrary to, or not followed well-established case law<sup>4</sup>.
6. The crux of the applicant's case is that, despite the professional advice of Council Officers that the development should be approved and was in accordance with the development plan, the Council refused the application for reasons not supported by evidence and which do not represent sound planning considerations.
7. The Council gave 5 reasons for refusal in its decision notice. Further detail of my assessment of those reasons is contained within the main appeal decision. The first related to concerns about parking. However, it had been made clear to the Planning Committee by Council Officers that in providing 3 new parking spaces, the proposal complied with relevant parking requirements set out in the Council's Access, Car Parking and Design Supplementary Planning Guidance (SPG)<sup>5</sup>. Furthermore, the highway authority (HA) did not object to the proposal. Although the Council, through its Planning Committee, decided to disagree with the advice of its Officers and the HA, it did not provide any substantive evidence to justify its assertion that there were major parking problems in the area or explain how the development would add to parking demand or jeopardise highway safety.
8. The second and fifth reasons for refusal both referred to the proposed location of the unit next to a public house but provided no clear explanation of the nature of any alleged harm. Instead, the decision notice referred vaguely to customers smoking outside the public house and potentially '*harmful situations outlined by residents who live in the area*'. The Council's appeal submissions do not elaborate on those concerns while representations from local residents did not provide persuasive or objective evidence of likely harm arising from the proximity of the unit to the public house. The applicant had provided reasonably comprehensive information prior to the relevant Planning Committee meetings to address concerns that had been expressed by members of the committee. It confirmed, for example, that the relevant regulatory body, the Care Inspectorate Wales, had no concerns about the location of the existing facility adjacent to the public house. Case law has established that it is not appropriate for Councils to stray into areas covered by other legislation, such as the regulation of care facilities, when considering a planning proposal.
9. The third reason for refusal characterised the grassed area next to the car park on which the new unit would be built as an 'amenity space' and appeared to suggest that its loss would harm the well-being of existing residents of the care facility. However, given its location on the far side of the car park away from the care home building, it is unlikely that it would be used by existing residents of the facility who, in any case, had access to a larger private rear garden. Therefore, the reasoning is flawed and unsupported by evidence.

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<sup>2</sup> Paragraph 1.2 Development Management Manual - Section 12 Annex: Award of Costs: May 2017

<sup>3</sup> Paragraph 3.11(b)

<sup>4</sup> Paragraph 3.11(d)

<sup>5</sup> March 2014

10. The remaining reason for refusal simply asserted that the development would not be in the best interests of the surrounding community, but failed to explain why or in what way. Although the Council's reasons for refusal appear to allude to or reflect concerns expressed by some local residents, those had already been assessed in the Officer Reports, which concluded that they did not form relevant or sound planning reasons for refusing the proposed development.
11. Planning law requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. It is significant that none of the Council's five reasons for refusal allege conflict with policies within its Local Development Plan up to 2021 (LDP)<sup>6</sup>.
12. The Annex advises that: *'Local planning authorities are not bound to adopt 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.'*<sup>7</sup>
13. The Council's Planning Committee was advised by Officers that the proposed reasons for refusal lacked substance or supporting evidence. Nevertheless, it proceeded to refuse the application without showing reasonable planning grounds for taking a decision contrary to the professional and technical advice given by Officers and the HA. Given the above factors and in the absence of evidence to substantiate the reasons given for refusal, the only conclusion that can legitimately be drawn is that the Council has behaved unreasonably in refusing the proposal. That has led directly to unnecessary expense for the applicant in having to appeal. My findings here are consistent with those in the main appeal which I allowed.

## **Conclusion**

14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Annex, has been demonstrated and that a full award of costs is justified.

## **Costs Order**

15. 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 Blaenau Gwent County Borough Council shall pay to Mr Dean Richards (Shaw Healthcare) the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Blaenau Gwent County Borough 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.

*JP Tudor*

INSPECTOR

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<sup>6</sup> Adopted November 2012

<sup>7</sup> Paragraph 3.9