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## Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 28/02/20

gan Paul Selby BEng (Hons) MSc  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 08.04.2020

## Costs Decision

Site visit made on 28/02/20

by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 08.04.2020

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**Costs application in relation to Appeal Ref: APP/X6910/A/19/3243676**

**Site address: Star Fields, off Mountain Road, Grid Ref: 317718 209001, Ebbw Vale**

**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.
  - The application is made by Mr Lee Bowerman for a full award of costs against Blaenau Gwent County Borough Council.
  - The appeal was against the refusal of planning permission for the change of use of stable (building 4), outbuilding and containers for storage purposes; and the change of use of stable (building 1) to dog breeding kennels.
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### Decision

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

### Reasons

2. The Section 12 Annex 'Award of Costs' of the Development Management Manual advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  3. The costs application is made on substantive grounds. The applicant contends that development which should clearly have been permitted was prevented. It is argued that, when refusing planning permission owing to the appeal development's visual impact on the Special Landscape Area (SLA), the Council had evidence available to it that the structures on the appeal site existed prior to the SLA being designated via the Local Development Plan (LDP).
  4. I do not dispute this. Indeed, the Council officer's delegated report confirms that digital mapping systems dating back to 1999 show the main buildings on the appeal site and that images dated 2008 show the smaller buildings/containers. Nonetheless, an unauthorised structure erected prior to the SLA's designation does not mean that it is less objectionable to the designated surroundings than had it been erected following the SLA being designated. Whilst the issuing of a Certificate of Lawfulness of Existing Use or Development (CLEUD) on 10 December 2019 confirms the Council's view that, on the balance of probabilities, the structures on the appeal site are lawful in their
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'substantially completed' state, the applicant's CLEUD declaration post-dates the initial planning committee meeting on 5 September 2019, the further meeting on 3 October 2019 and the issuing of the Council's Decision Notice on 4 October 2019. The lawfulness of the structures on the appeal site was thus not verified and could not have been afforded weight when the Council made its decision.

5. Moreover, the roller shutter doors and windows in 'building 1' provide noise attenuation which is necessary for its use as dog breeding kennels. Whilst I have found that these features do not harm the SLA, they do have a material visual impact from public viewpoints. The Council's reason for refusing the development due in part to the prominence of materials used in the structure was thus not without foundation.
6. The Council has been able to reasonably substantiate its case in relation to its reason for refusal. The matter is thus one of disagreement between the parties which could only have been resolved at appeal. As the appeal could not have been avoided no unnecessary or wasted expense has been incurred.

### **Conclusion**

7. For the above reasons I conclude that an award of costs is not justified in this case. The application is refused.

*Paul Selby*

INSPECTOR