



Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 09/11/20

gan Paul Selby, BEng (Hons) MSc
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 1st December 2020

Costs Decision

Site visit made on 09/11/20

by Paul Selby, BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 1st December 2020

Costs application in relation to Appeal Ref: APP/X6910/A/20/3257588

Site address: Wauntysswg Farm, Abertysswg, Rhymney, Tredegar NP22 5BQ

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 Elgin Energy EsCo Ltd. for a full award of costs against Blaenau Gwent County Borough Council.
 - The appeal was against the refusal of planning permission subject to a varied condition.
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Decision

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

Reasons

2. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') 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 or delayed, having regard to its accordancy with the development plan, national policy and any other material considerations; and that in refusing permission, the Council took a decision contrary to professional advice without there being reasonable planning grounds to do so.
 4. In the decision letter of July 2019 granting permission for the original development (Ref: DNS/3213639), the Welsh Minister for Housing and Local Government (the Minister) accepted that a solar park on the appeal site would cause visual harm of a specific nature and magnitude. The permitted scheme is physically identical to the appeal scheme, the only difference being the period of operation. There is little evidence of changed circumstances, policy or physical, since the 2019 decision was taken.
 5. In the main decision letter I have found that the appeal scheme would conflict with policies of the Blaenau Gwent Local Development Plan relating to landscape, visual impacts and historic assets. It is for these reasons that the Council refused permission to vary condition No. 3. In its appeal submissions the Council has asserted that the
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proposed 33% increase in the operating period of the solar farm would be materially and significantly longer than that originally permitted, and that the identified harmful impacts of the development would be unacceptably prolonged as a result. Whether or not 10 years amounts to a 'significant' time period in the operating life of a solar farm is a matter of planning judgement and the Council is entitled to come to that view.

6. Nonetheless, the solar farm's proposed extended period of operation would result in around 33% more CO₂ being offset than the permitted scheme. A key factor in the Minister's decision was the solar farm's climate change and energy security benefits over a specific period, which were found to clearly outweigh the temporary and fully reversible, albeit harmful, impacts over the same time period. I accept that Members of the Council's Planning Committee were entitled to come to their own view about the weight to be attributed to the appeal scheme's beneficial and harmful impacts. Yet irrespective of letters exchanged since the application was lodged with the Council, or the un-minuted discussions which may have taken place at the County Borough's Planning Committee, there is little in the submitted documentation to explain how the substance of the Minister's 2019 decision bore on the 'planning balance' underpinning the Council's decision.
7. There was no reason for the Council to be bound by the decision of Caerphilly County Borough Council to permit its part of the overall development, particularly given that the majority of the wider site lies within Blaenau Gwent County Borough. Nonetheless, the Annex advises that local planning authorities are at risk of an award of costs being made against them where they refuse or object to particular elements of a scheme that the Welsh Ministers have previously determined to be acceptable.
8. The Minister's 2019 decision is an important material consideration in this case, yet there is little evidence that the Council afforded it due weight when coming to its decision. This is a significant oversight which I consider amounts to irrationality in the decision-making process. I therefore conclude that the Council's decision to refuse planning permission was unreasonable and resulted in an appeal which should not have been necessary. Consequently I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Annex, has been demonstrated, and that a full award of costs is justified.

Costs Order

9. 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 Blaenau Gwent County Borough Council shall pay to Elgin Energy EsCo Ltd the costs of the appeal proceedings described in the heading of this decision.
10. 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. 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.

Paul Selby

INSPECTOR