



Penderfyniad Costau

Gwrandawriad a gynhaliwyd ar 04/03/08
Ymweliad â safle a wnaed ar 04/03/08

Costs Decision

Hearing held on 04/03/08
Site visit made on 04/03/08

gan/by David Sheers BA (Hons) DipTP MRTPI

Arolygydd a benodwyd gan y Gweinidog
dros yr Amgylchedd, Gynaliadwyedd a
Thai, un o Weiniogion Cymru

an Inspector appointed by the Minister for
Environment, Sustainability and Housing,
one of the Welsh Ministers

Dyddiad/Date 18/03/08

Costs application in relation to Appeal Ref: APP/M6825/C/07/1201895

Site address: Pen-yr-Allt, Mountain Road, Trimsaran, Kidwelly SA17 4EY

The Minister for Environment, Sustainability and Housing has 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 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Carmarthenshire County Council for a full award of costs against Dr P Devichand.
- The hearing was in connection with an appeal against an enforcement notice alleging the unauthorised construction of an extension.

Summary of Decision: The application is refused.

The Submissions for the Council

1. Reference was made to WO Circular 23/93 on awards of costs and, more specifically, to paragraph 1 of Annex 3 which states that where there has been a recent appeal in respect of the same, or substantially the same, site and the same or a very similar development proposal and a Planning Inspector has made it plain that the development should not be allowed, an appellant may be at risk of an award of costs against him if he persists with a further appeal, despite a previous decision.
2. In this case a section 78 appeal found that the proposal was contrary to the relevant UDP policies and well as national policy guidance. In the absence of any change in circumstances or new material considerations, it is considered that the appellant has acted unreasonably in lodging this appeal. This has incurred considerable and unnecessary costs on the Council.

The Response by the Appellant

3. In response it was pointed out that the previous Inspector did not have the plans that have now been submitted nor did he have the plans that would enable the extension to be allowed. Since the previous hearing an architect has been employed and negotiations carried out with the Council. However the Council determined that the proposed development would not be considered under section 70A.

4. There was every right therefore to persist with this appeal on the basis that substantial changes have occurred. The previous appeal was mainly concerned with the roof design which the planning application now sought to address. An enforcement appeal has a wider ambit which can address the Council's concerns in respect of any loss of amenity. It is not therefore unreasonable to challenge the enforcement notice as the plans were not available when it was served. Thus the appellants have not acted unreasonably.

Conclusions

5. I have considered this application for costs in the light of Circular 23/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
6. It is accepted that the development the subject of the enforcement notice is identical to that the subject of the section 78 appeal decision made fairly recently in March 2007. In addition the planning policy context has not changed. However there are 3 matters which were not before the previous Inspector; the plans relating to the 1979 planning permission, details of other extensions and developments in the area, and plans and details of an alternative scheme that seek to address some of the concerns expressed by the previous Inspector and the Council. To this extent, therefore, the circumstances appertaining to the current appeal against the serving of an enforcement notice are somewhat different from those current at the time of the previous section 78 appeal.
7. I would conclude, therefore, that in appealing against the serving of the notice the appellants did not act in an unreasonable manner. Accordingly the application fails and no award of costs is made.

Formal Decision

8. I refuse the application for an award of costs.

David Sheers

Inspector