4. Penderfyniadau Apeliadau/Appeal Decisions

04-08-2022 - 07-09-2022

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	APP/D6820/X/21/3267729	A200386	Ms Sharon Bradley	Refused to grant a certificate of lawful use or development	Pantmeillion, Llangrannog, Llandysul, SA44 6RP	Dismissed	11-08-2022
2	CAS-01539-Y3C6H7	A201027	D Jones (Towyn Marine Properties Ltd)	Against refusal of permission	Garn Rhos, Maesceiro, Bow Street, SY24 5BG	Dismissed	18-08-2022
3	CAS-01595-S1J5V3	A210392	Mckay Brothers	Against refusal of planning permission	Land At Plynlimon Fawr Eisteddfa Gurig, Ponterwyd, SY23 3LE	Dismissed	30-08-2022
4	CAS-01943-Z8T3W1	A211126	Mr and Mrs J & M Dunn	Against refusal of planning permission.	Ty Hana, Beach Parade, Aberaeron. SA460BE	Dismissed	30-08-2022

5. Apeliadau a Dderbyniwyd/Appeals Received

04-08-2022 - 07-09-2022

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	CAS-01854-W2J4N9	A210041	Mrs S V Evans Davies	Against refusal of planning permission	Llwynteg Fields, Blaenplwyf, SY23 4DH		
2	CAS-01875-G8V1T5	A210615	Mr E Jones	Called in	Plot Adj Dolau Gwyn, Dole, Bow Street, Aberystwyth, SY24 5AE		
3	CAS-01920-Z8J4P4	A200631	Mr and Mrs Jarvis	Against non determination	Goetre Isaf, Betws Bledrws, SA48 8NP		

PCAC PEDW
Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar yr Apêl	Appeal Decision
Ymweliad a gynhaliwyd ar 26 – 27/5/22	Inquiry held on 26 – 27/5/22
Ymweliad â safle a wnaed ar 27/5/22	Site visit made on 27/5/22
gan Vicki Hirst BA (Hons) PG Dip TP MA MRTPI	**by Vicki Hirst BA (Hons) PG Dip TP MA MRTPI**
Arolygydd a benodir gan Weinidogion Cymru	**an Inspector appointed by the Welsh Ministers**
Dyddiad: 11.08.2022	**Date: 11.08.2022**

Appeal Ref: APP/D6820/X/21/3267729

Site address: Pantmeillionen, Pantmeillionen Fach, C1012 from junction of the C1159 to the junction of the B4334, SA44 6RP

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Bradley against a refusal to grant a certificate of lawful use or development (LDC).
- The use for which a certificate of lawful use or development is sought is a static caravan for human habitation.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Inquiry was carried out virtually with an accompanied site visit carried out on 27 May 2022. All evidence was given under affirmation.
3. The description in the banner heading above has been taken from the application form and refers to the use of the caravan for human habitation. It is the appellant's case that the caravan has been used as an overflow annexe to the property Pantmeillionen. It is on this basis that I have determined the appeal.

Main Issue

4. The main issue is whether the Council's decision to refuse the application was well-founded as a result of considerations as to whether:

- the caravan is lawful as a result of it being located within the same planning unit and/or curtilage and used for incidental purposes to the residential use of Pantmeillionen; or
- in the event that it is not lawful by virtue of the above, whether the appellant can show, on the balance of probabilities, that the change of use of the land sought occurred more than ten years before the date of the application (13 May 2020) and has continued without material interruption thereafter so as to be immune from enforcement action.

Reasons

Background

5. The appeal site is located to the north-west of the residential property Pantmeillionen and its associated holiday cottages. Access to Pantmeillionen is via a driveway to the north of the dwelling. Two separate gateways into the land in which the caravan is located are positioned off the driveway, one at the northern extremity of the drive adjacent to the public highway and the other approximately a third of the way along the driveway. The appeal site is segregated from the garden area of the residential property by a row of mature trees with pedestrian access through a gap in the trees adjacent to a storage building. A residential property Brithdir is located to the west of the appeal site.
6. There is no dispute between the parties that a caravan has been stationed on the land for the requisite ten years (prior to May 2020 when the application for an LDC was made). It is common ground that the caravan was on the appeal site for a continuous period of 10 years prior to its removal in September 2018 and that the relevant time period for the purposes of taking enforcement action is 2008 to 2018. The parties also agree that the period after the caravan's removal in September 2018 is not relevant as the 10 year immunity had already been reached prior to this date with no abandonment of the use since September 2018. I have no reason to disagree.
7. The parties disagree as to the use of the caravan during the requisite ten years. The appellant's case is predicated on the caravan being used as an overflow annexe to the main dwelling and which the Council disputes.
8. Whilst the appellant contends that the caravan is lawful by virtue of its use over the ten years, she has also advanced a case based on a fallback position. She contends that the caravan is lawful as a result of it being within the same planning unit/curtilage as the dwelling and being used for purposes incidental to the main dwelling. In this regard the appellant's witness, Mr Richards, agreed under cross examination that the courts have found that for a use to qualify as incidental to the primary use, the secondary use must fall within the same planning unit.
9. As such, if I find the caravan to be within the same planning unit and its use to be incidental to the use of Pantmeillionen, there would not be a material change of use or breach of planning control and it would be lawful. In such circumstances the use of the caravan over the ten year period would not fall to be considered. Therefore, in reaching my decision, I have firstly considered whether the caravan falls within the same planning unit (and curtilage) as Pantmeillionen.

Planning Unit

10. In respect of whether the site falls within the same planning unit as the residential property, the leading case (as agreed by the parties) in this regard is *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207.* This established that the planning unit is

normally the unit of occupation, unless a smaller area can be identified, which as a matter of degree, is physically separate and distinct and occupied for different and unrelated purposes. This would comprise a separate planning unit. It was held that the concept of physical and functional separation is key.

11. In respect of the physical characteristics, I noted on my site visit that the main dwelling, Pantmeillionen is set in an area of cultivated and maintained garden, with a mixture of lawn and ornamental shrubs. The appellant contends that this land is only a short distance from the caravan land and is physically connected to it. I noted on my site visit that a stone path provides access from the house via the more maintained garden to the caravan land. The path is of some length, and also provides access to a storage shed located close to the tree line between the garden and caravan land. From my observations on the site visit, the shed appeared to be used for storage in connection with the residential use.

12. Despite the physical connection of the path between the two areas, a mature tree line provides a continuous and distinctive boundary feature between the maintained garden and the caravan land. This boundary is broken only for a short stretch to facilitate the path entering the land.

13. The land on which the caravan is situated comprises an area that is largely laid to grass, albeit with a small group of orchard trees. Both from my own observations on site and from the land and aerial photographic evidence presented to the Inquiry, the land is maintained in a very different manner to the land around the dwelling itself.

14. I note the appellant's contention that this is due to having varied management regimes to encourage wildlife, and the grass was not mown recently due to the "No Mow May" campaign. However, the land containing the caravan has a wholly different appearance and characteristics to the garden to the south. Whilst it is physically connected to the larger grounds of Pantmeillionen by a small path, it has its own accesses and is not viewed in the context of the larger garden area. It has the essential characteristics of a small grassed paddock area.

15. I find the characteristics of the two areas to be distinctly different from each other and to be clearly physically separate.

16. In respect of functional separation, I note the contention that the caravan land is used as a less formal part of the domestic garden and as an orchard. It is also the appellant's case that the caravan is functionally connected to the residential use of the main dwelling as it is used for purposes incidental to it. However, the evidence before me indicates differently. As set out above, the land appears more as a paddock and has done for many years from the photographic evidence before me. Whilst there are some fruit trees within the land and fruit may be taken from them by the occupants of Pantmeillionen, I am not persuaded that this in itself is conclusive that the land as a whole is used as any integral part of the wider garden. I have no compelling evidence before me that the land is used as a garden area associated with the residential use of the property.

17. The original caravan was clearly capable of occupation as a residential use in its own right with all of the services required for separate occupation. The replacement now on the land is also similarly equipped with independent living facilities. Whilst this is not in itself determinative, I note the appellant posted on social media on multiple occasions over a period of more than a year advertising the availability of the caravan for short term rent. Whilst Ms Bradley stated under cross examination that the caravan was never actually rented out, the posts provided specific details of available weeks and the cost of rent. They also referred to the caravan standing within its own paddock, albeit part of the

appellant's larger grounds. This evidence provides considerable doubt as to whether the caravan was used for incidental purposes to the dwelling.

18. Whilst three of the appellant's witnesses at the Inquiry referred to staying in the caravan as an annexe to the main dwelling and parking by the main house, their evidence suggests they were based in the caravan for their stays, albeit going to the main dwelling for meals and entertainment. Snacks, including breakfast and washing and sleeping were undertaken in the caravan. The submitted written evidence does not provide sufficient detail to ascertain how the caravan was used with no particular references to the periods it was used, the way in which it was occupied or by whom. Contentions that the caravan was used by visiting friends and family appear from evidence given at the Inquiry to be largely based on conversations held with the appellant rather than any first hand knowledge of the use of the caravan. The submitted text messages to the appellant cover a short period of time and are not clearly related to the use of the caravan for incidental purposes. Furthermore, I have no particular evidence before me as to the use of the replacement that was put on the land after the caravan was removed in 2018.

19. Taking the evidence as a whole, I am not persuaded that it has been demonstrated the caravan is functionally used as part of the same planning unit nor has been used for purposes wholly incidental to the house. In the absence of conclusive evidence of incidental use, I am not persuaded that the caravan was anything other than a separate residential use in its own planning unit.

20. I find the field to be a separate planning unit to the residential garden of the dwelling, and the stationing of the caravan within the field to have created a further separate planning unit clearly physically and functionally separate to the residential property and its land.

21. As such I conclude the appeal site does not comprise part of the same planning unit as the residential dwelling Pantmeillionen. The caravan has not been used for purposes incidental to the dwelling house and I have no evidence that the replacement is used for such purposes. Therefore, the use is not lawful by virtue of the definition of development set out in Section 55(2)(d) of the 1990 Act. On the evidence before me a material change of use has clearly occurred.

Curtilage

22. The appellant's fallback position also contended that the appeal site lies within the curtilage of the dwellinghouse and as such the incidental use of the caravan would comprise permitted development.

23. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) specifies that the provision within the curtilage of a dwellinghouse of any building, enclosure, raised platform, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such or the maintenance, improvement or other alteration of such a building, enclosure, platform or pool comprises permitted development.

24. I have found above the caravan is not within the same planning unit as the residential property, nor has it been used for purposes incidental to the dwelling. The appellant's witness Mr Richards agreed in cross examination that if the caravan is found not to be in the same planning unit then the argument as to whether it is within the curtilage is lost.

25. In any event in finding that the use is not incidental to the dwelling, permitted development rights afforded by the GPDO do not apply to the development before me irrespective of whether the site lies within the curtilage of the dwellinghouse.

26. As such, the use of the caravan cannot be lawful as a result of permitted development rights and on this basis, I have not considered the issue of curtilage any further.

Evidence of use

27. In the absence of the caravan being lawful as a result of the above considerations, it falls to be considered whether it has been demonstrated that the use of the caravan as an annexe to the dwelling has occurred for more than 10 years prior to the date of the application (13 May 2020). Whilst the appellant seems to advance a case that any gaps in the use can be taken into account, the courts have held that in demonstrating whether a material change of use has occurred, the unlawful use must have been ongoing throughout the requisite period such that the local authority could have taken enforcement action. Where no breach was taking place and the local authority could not therefore have taken any action such periods cannot count towards the rolling period of years which gives rise to the immunity. (*Thurrock Borough Council v Secretary of State for the Environment [2002] EWCA Civ 266; Islington London Borough Council v SSHCLG [2019] EWHC 2691 (Admin).* The appellant's references to case law in Section 3 of Mr Richards's statement of case do not alter this position but merely confirm that once immunity is gained a use cannot be lost except by factors such as abandonment, a new material change of use or some other event such as the creation of a new planning unit.

28. As such, in considering whether a material change of use has occurred for the relevant period, the evidence should demonstrate continuity. It is a matter of fact and degree as to whether any breaks in the use result in the unlawful use ending. In this regard I note the findings of *N Devon DC v SSE and Rottenbury [1998] PLCR 356* which held that a seasonal occupation whilst intermittent could be regarded as the normal, regular pattern of use of the property which in the absence of any alternative or intervening uses remains subsisting throughout any period of non-occupation.

29. It is common ground that the appellant did not purchase the property until July 2016. Whilst it is agreed the caravan was on the land from June 2008, the only evidence relied on by the appellant in respect of its use between 2008 and 2016 is a statutory declaration by the previous owner Mrs McMullen. Whilst the declaration states the caravan was used continuously for human habitation for at least 8 years up to July 2016 no further information is provided as to who occupied the caravan and how it was used. Mrs Rees, who has lived at the adjacent property Brithdir for 27 years, stated in evidence that the previous occupant had advised the caravan was used for overspill accommodation. However, Mrs Rees's evidence is that it was occupied rarely. When Mr McMullen died at the end of 2014, Mrs Rees stated the caravan was not used until the appellant's purchase in 2016.

30. The appellant contends that Mrs Rees would not have been fully aware of the use of the caravan due to the presence of a hedgerow, the orientation of Brithdir's living rooms within the house, and the position of the entrance doors into the caravan. However, from Mrs Rees's evidence and my own observations on site I am satisfied that given the proximity of Brithdir and its garden (including a glazed living area) and a number of gaps in the hedgerow, Mrs Rees would have been fully aware of the presence of occupants in the caravan as a result of their associated activities close to the boundary. Whilst I acknowledge she may not have been aware of who was occupying the caravan, she would have been aware of the regularity of its use. Under cross examination she stated that she was aware of significant periods when the caravan was not used. She acknowledged it was more frequently used after the appellant's purchase, but stated it was still not frequently used. This was corroborated by the appellant's own witnesses

who, from the evidence before me and given at the Inquiry, only stayed in the caravan very infrequently since 2016.

31. Furthermore, for the reasons above in considering the planning unit, I am not persuaded that the use was only for an overspill annexe as claimed by the appellant. In any event, from the evidence before me I have nothing to suggest that the use was anything other than an intermittent and sporadic use with no regularity or pattern to demonstrate a continued use.

32. In conclusion, from the evidence before me I am not persuaded the caravan was used continuously as an annexe to the house during the requisite ten years. There is much ambiguity as to what use the caravan was put to and there appear to have been substantial periods of time when the caravan was not in use and the local authority could not therefore have taken any action. As such, those periods cannot count towards the rolling period of years which gives rise to the immunity.

33. Circular 24/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements", December 1997 advises that where a local planning authority has no evidence of its own or from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. I do not find the appellant's evidence to be sufficiently precise or unambiguous for the reasons given. The Council has provided persuasive evidence to the contrary.

Conclusion

34. I have taken into account all other matters raised. For the reasons above, I conclude that the Council's refusal was well-founded and that the appeal should fail. The caravan is not lawful as a result of it being in the same planning unit as the dwelling and used for purposes incidental to it. The appellant has failed to show on the balance of probabilities that the use of the caravan as an overflow annexe to Pantmeillionen occurred more than ten years prior to the date of the application. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

VK Hirst

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr W Richards	(Agent for the Appellant) - Advocate and Witness
He called	
Ms S Bradley	Appellant
Mrs K Bradley	Appellant's daughter-in-law

Mr J Palmer	Appellant's friend
Mr A Bradley	Appellant's son

FOR THE COUNCIL:

Ms K Barnes of Counsel	Instructed by Ceredigion County Council
She called	
Mrs L Rees	Neighbour to the appeal site
Mrs S Holder	Development Management Team Leader, Ceredigion County Council

DOCUMENTS RECEIVED AT THE INQUIRY

1. Photographs of the caravan submitted by the Council
2. Social media posts in respect of the caravan submitted by the Council
3. Ceredigion County Council closing submissions
4. Appellant's closing submissions

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 30/3/22

gan Declan K Beggan BSc (Hons) MSc DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18.08.2022

Appeal Decision

Site visit made on 30/3/22

by Declan K Beggan BSc (Hons) MSc DipTP DipMan MRTPI

an Inspector appointed by the Welsh Ministers

Date: 18.08.2022

Appeal Ref: CAS-01539-Y3C6H7

Site address: Garn Rhos, Maesceiro, Bow Street, SY24 5BG

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Daniel Jones of Towyn Marine Properties Ltd against the decision of Ceredigion County Council.
- The development proposed is described as 'Erection of 7 dwellings (2 blocks of semi-detached and one block 3 terraced dwellings)'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The scheme was originally submitted for eight dwellings, however prior to determination it was amended to reflect that shown in the above banner heading; it is on this basis that I have determined the appeal.

3. An application for costs has been made by Mr Jones against the decision of Ceredigion County Council. This application is the subject of a separate Decision.

Main Issue

4. I consider the main issue is whether or not the proposal would be viable in light of a requirement for affordable housing.

Reasons

5. ''Future Wales' The National Plan 2040' (FW) identifies the delivery of affordable housing as a key priority and makes clear that the planning system must facilitate the provision of additional market and affordable homes. Policy 7 of FW promotes the delivery of affordable housing and states that planning authorities should identify sites for affordable housing led development and explore all opportunities to increase the supply of affordable

housing. 'Planning Policy Wales Edition 11 (PPW) states 'Where development plan policies make clear that an element of affordable housing or other developer contributions are required on specific sites, this will be a material consideration in determining relevant applications'. National planning advice in the form of Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006) refers at paragraph 10.6 to site viability being a critical factor when considering threshold, particularly on small sites. The Welsh Government letter dated November 2021 to all local authorities states that whilst Wales is building the number of market homes needed, it is falling short of the number of affordable homes that are 'desperately required'.

6. Policy SO5 of the adopted Ceredigion Local Development Plan 2013 (LDP) identifies a requirement for the provision of 1100 new affordable houses to be provided in the County over the plan period. This requirement would be delivered through a combination of on site provision and/or commuted sum payment. The policy aims, inter alia:

I. To seek to negotiate a proportion of 20% affordable housing on all housing development in accordance with the Local Housing Needs Assessment for 9% discount for sale at 70% market value, 32% at 50% market value, 59% social rented at 35% market value, or a scheme equivalent to the above to meet a mix of current needs in the locality.

II. Requires that where, as a result of criterion 1, proposals yield an affordable housing requirement which is not a whole unit or where the mix cannot be provided as whole units then a scheme of equivalent value shall be determined to the satisfaction of the Local Planning Authority (LPA) or at the discretion of the LPA, a commuted sum at the equivalent value of 10% of the open market value of the development.

7. Policy SO5 is supplemented by an adopted guidance entitled 'Supplementary Planning Guidance Affordable Homes' (SPG). The SPG sets out guidance for developers regarding affordable housing provision.

8. The Council in their appeal statement makes clear that there is an acute need for affordable housing within the county. This is supported by evidence in the Local Housing Market Assessment 2019.

9. In this instance, in order to satisfy policy S05, there is a requirement for the equivalent value of 1.4 affordable dwellings to be provided either on site or by a commuted sum. As such the Council has sought the provision of one dwelling on site as a discount for sale property to be sold to a qualifying person at 70% of open market value, and to be secured in perpetuity as an affordable dwelling via a section 106 legal agreement. While the equivalent value of 0.4 of a dwelling is to be secured as a commuted sum secured via a section 106.

10. The appellant does not dispute the need argument, rather, in summary, he argues that given escalating build costs, he disputes whether a financial contribution towards affordable housing provision is necessary and reasonable. The appellant maintains that meeting the Council's affordable requirements would ultimately render the scheme unviable. For the same reasons he considers the Council's requirement that in addition to a financial contribution, the affordable unit proposed as part of the development should be sold at a 30% discount of open market value is wholly unreasonable.

11. The appellant argues two main factors are considered to impact on the scheme's ability to meet the Council's affordable housing requirement, namely, build costs and costs associated with acquiring third party land.

Build Costs

12. The appellant cites a build cost figure of £1,480 per m2 as opposed to the Council's figure of £1204 per m2. The appellant argues that his build cost figure would result in a forecasted profit that would be significantly below the generally expected developers profit margin of 17.5% to 20% should the Council's financial contribution be required. The appellant has derived his build cost figure from his architect, along with other estimates garnered to support this figure from local sources such as builders, and various housebuilder websites all of which appear to indicate the Council's build cost figure is set too low.

13. The Council argue the appellant's quoted build rate figure is overstated and pessimistic in terms of the true cost as reflected in their own figure which they have derived from both the LDP candidate site assessment process and viability assessments submitted to the Development Management Viability Group (DMVG). The DMVG is made up of 8 local authorities in the southwest and mid-west of Wales and was established to ensure a consistent approach in terms of viability appraisals across all authorities. The Council's build rate of £1,204 per m2 derived from the DMVG for June 2021 had been adjusted by a 10% increase to reflect reported material cost increases. Based on the Council's figure the scheme would allow for a commuted sum contribution of £27,421 and the delivery of one affordable unit at a discounted sale of 30% of open market value with a developer profit margin of 17.5%.

14. The current build cost from the appellant is not justified in any meaningful way in terms of the methodology employed to arrive at that figure. It appears the figure was derived from various sources, however they lack substance as they appear to be anecdotal in nature Others costs cited by the appellant such as those from online sites such as 'Checkatrade' are not referenced in terms of their source material and how the figure was derived.

15. Similarly, I note the appellant's reference from a firm of property consultants regarding Welsh build costs of approximately £1,350 m2 in 2016 and updated to give 2021 costs to get an average figure of approximately £1,500 m2. The updated figures were not actual 2021 RCIS guide prices but were achieved by adding 12-13% onto the 2016 figures, however it's not fully clear how this uplift percentage figure was derived apart from reference to the 'building cost index' or for that matter the provenance of the any of the 2016 figures. Whilst the average cost per m2 is indicated to be around £1,500, nonetheless the statistics show a large variation with the minimum build cost per m2 being approximately £878 and a maximum of £2,441. I do not consider it appropriate to simply apply a broad-brush average uplift figure especially as 'actual' regional variations are likely to vary significantly.

16. As further justification of his build cost case, the appellant also refers to the 'Monthly Statistics of Building Materials and Components for 2021' published by the Department for Business, Energy & Industrial Strategy which show the price of building materials has gone up by 23.6% in the past 12 months. Nonetheless this information lacks precision, as it appears to apply to the whole of the UK and does not include any variations between countries or within national regions which are likely to be subject to fluctuations.

17. Whilst I note the appellant's comments regarding the lack of methodology for the DMVG build rate, nonetheless that rate is supported by data obtained from the Building Cost Information Service (BCIS). The BCIS emanates from the Royal Institute of Chartered Surveyors (RICS) and for many years has been acknowledged industry wide as the leading provider of cost and price information to the construction industry and anyone else who needs comprehensive, accurate and independent data. The BCIS data regarding average costs for residential development such as that proposed indicate a figure of

£1,217 per m2 for the period of June-August in 2021 and that includes a Ceredigion location factor being applied; applying this figure allows for one affordable dwelling at a discount sale of 30% of open market value along with a significant contribution of £27,421.

18. The Welsh Government's September 2009 publication, '*Delivering affordable housing using section 106 agreements: A Guidance Update*' (DAU) is aimed at maintaining the delivery of affordable housing and is relevant to the consideration of this appeal. The guidance at paragraph 4.29 states that one of the main ways to test whether a scheme has become unviable because of factors such as increased costs is to evaluate the developer details via an 'open book' approach using an independent assessor such as the District Valuer (DV).

19. In the absence of an assessment from an independent assessor such as the DV, I prefer and attach more weight to the Council's build rate figures as they are based on the collective knowledge of a number of planning authorities in Wales and also crucially, these figures, notwithstanding the appellant's comments in regard to how they were derived, are reflective of actual RCIS figures which are widely acknowledged as setting industry standards in this regard.

20. The appellant questions the robustness of the Council's build rate figure as it is maintained it is five years out of date. This evidence appears anecdotal, however even if such a figure was being used five years ago that does not necessarily mean its use then was appropriate.

21. The appellant refers to various sources to support his claim that building costs are rising such as the forecast data from the BCIS published in October 2021 that highlighted cost rises for 2021 and projected cost rises upto 2025. The Council also state BCIS figures from the previous quarter in 2021 which in contrast to the appellant's figures refer a marked decrease in build costs. Whilst the evidence would indicate general build costs are rising, however the Council have already factored in a 10% increase in their costings owning to the reported increase in the cost of building materials.

22. Whilst the BCIS figures indicate that projected build costs are likely to rise over the next few years, nonetheless these are forecasted figures and can be subject to change either up or down, as indicated by the Council quarterly figures referred to above. In light of the above, I do not consider it prudent to rely on projected costs in terms of determining affordable provision on the appeal site and the issue of scheme viability; I prefer actual costs and as detailed above I find the Council costs more persuasive. The use of the Council's build rate would therefore allow for the stated commuted sum payment to be made along with the stated on-site affordable provision in the form of discounted property, thereby satisfying the requirements of policy SO5 of the LDP and the SPG.

Other Costs

23. In terms of other costs, the appellant argues the need to acquire third party land at a cost of £15,000 as part of the implementation of the scheme impacts on his ability to meet the Council's affordable housing requirement; the Council have not challenged this figure.

24. The Council, notwithstanding their case in terms of the build cost, highlight that even if the appellant's costs were accepted, regard must be had to whether the price paid for the land was appropriate. In this case and bearing in mind this greenfield site benefits from an extent permission for six dwellings, the Council's surveyor indicates a Benchmark Land Value for (BMV) for the site of £450,00 per hectare (based on for greenfield land with the benefit of outline consent); this figure has not been challenged by the appellant. This results in a BMV of £94,500 for the site. The land registry purchase price for the land was

£132,000, although the appellant indicates £140,000 on his viability assessment. The appellant has confirmed that he is in negotiations to purchase further land to facilitate the scheme at a cost of £15,000; the viability assessment refers to enabling costs of £16,500 for a strip of land owned by the Council, however I cannot be certain it is the same land being referred to by appellant.

25. DAU at paragraph 4.21 states, '*Where the developer had paid a realistic price for the land taking into account existing plan policies, but either market change or changes in development costs have rendered the scheme uneconomic, then the local authority needs to consider its priorities and take a pragmatic view on affordable housing sought which will enable the site to come forward'.*

26. The Council highlight, that even with the lower of the figures cited above, the land value at £147,000 far exceeds the BMV for the site and this calls into doubt whether the developer paid a realistic price for the land. Once again, in the absence of any definitive evidence to indicate otherwise, or a valuation from an independent assessor such as the DV who is a widely accepted arbitrator in these matters [also referred to in the SPG when disputes arise], it appears that the appellant, irrespective of any other costs, has paid too high a price for the site at a time when other factors such as affordable housing were known at the time of acquisition.

27. The SPG is quite clear that in instances where too high a price is paid for land, then a viability challenge is unlikely to be successful; the evidence points towards this being the case. Therefore, in this instance the appellant's arguments that his costs associated with the acquisition of third-party land or for that matter any other costs do not support his stance, as such costs should have been adequately assessed from the outset. The issue of land valuation also undermines and brings into question his arguments in terms of overall site viability.

28. Pulling the threads of the above together, for the reasons stated, I am satisfied the proposal would be viable whilst making a policy compliant provision for affordable housing; the appellant's arguments in terms of relaxing those requirements has not been justified. The Council's requirements in terms of meeting affordable housing provision are necessary, reasonable, and proportionate, and are also in line with national planning policy and advice.

Other Matters

29. In favour of the scheme, the appellant refers to its overall compliance with other policies of the LDP, and the fact that the proposal is meeting a housing need along with an affordable element albeit not what the Council envisage, however for the reasons given above, these arguments would not outweigh the lack of compliance with the local and national affordable housing policy and advice.

30. Third party objectors have raised matters such as highway safety, parking provision, drainage, land stability and harm to amenity via construction noise. The Council have raised no objections to the proposal on these matters; based on the written evidence and my site observations, I have no reason to take a contrary view on these issues or any others that have been raised.

Conclusions

31. After taking account of all the evidence before me, and for the reasons given above, I conclude that the appeal should be dismissed.

32. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in

accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives as required by section 8 of the Act.

Declan K Beggan

Inspector

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 4/7/22

gan Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30/08/2022

Appeal Decision

Site visit made on 4/7/22

by Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30/08/2022

Appeal Ref: CAS-01595-S1J5V3

Site address: Land at Plynlimon Fawr, Eisteddfa Gurig, Ponterwyd, SY23 3LE

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by McKay Brothers against the decision of Ceredigion County Council.
- The development proposed is the installation of a 2.4m high wood-clad container supporting 1 x 1.2m and 1 x 2.4m transmission dishes.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The above description of development differs from that on the application form. The parties agree that the above description more accurately describes the development, and it is on this basis I have determined the appeal.
3. The appellant submitted an updated Ecological Impact Assessment (EcIA) with the appeal. I sought the parties' views on its content. I have taken it and the responses into account in reaching my decision.
4. The Council states that it did not refer to policy DM18 of the Ceredigion Local Development Plan (the LDP) in its reasons for refusal in error. The policy relates to development within Special Landscape Areas (SLAs) and the appellant has referenced the policy in its submissions. The inclusion of the policy does not alter the issues to be considered, and I find no prejudice in taking it into account and I have done so in reaching my decision.

Main Issues

5. The main issues are the effect of the development on the character and appearance of the area and on ecological interests.

Reasons

Background

6. The appeal site is located within the Cambrian Mountains on the slopes of the highest peak, Plynlimon Fawr. It is situated in an area of open heathland on high ground with a coniferous plantation to the south west. A 30 metre high lattice mast and associated equipment allowed for three years under appeal reference APP/D6820/A/21/3272441 is located a short distance to the south east. The appellant states that this provides an interim solution for hosting the transmission equipment.

7. The appeal proposal comprises the installation of a shipping container clad in waney edge timber with a 2.4 metre diameter and a 1.2 metre diameter transmission dish, and four solar panels attached to it.

Character and Appearance

8. The site is located within an area designated as an SLA. It lies within the Northern Uplands SLA whose key characteristics are described in the Council's SLA Supplementary Planning Guidance (the SPG) as an expansive upland area comprising moorland with a rugged texture of "peaks" and "knobs" interspersed with conifer plantations and reservoir. It is also located in an area registered by Cadw as a Historic Landscape of Outstanding Importance. The key policy and management issues for the SLA include management of historic landscape elements and habitats.

9. The appellant has provided a Landscape and Visual Impact Assessment (the LVIA) with the appeal which I have taken into account. I also observed the viewpoints in the LVIA and the general surroundings on my site visit.

10. The LVIA concluded the proposal would result in a moderate adverse effect on the otherwise substantially natural and open upland landscape. However, it found this would be limited by both the small scale and elevation of the scheme and its reversibility.

11. It was apparent from my own observations that the proposed development would be highly visible within the open heathland landscape. It would be located close to several Public Rights of Way, including the Cambrian Way (which the Council contends it would be located upon) and the open common that has public access rights under the Countryside and Rights of Way Act 2000 (CROW Act). It would be particularly visible from locations in the vicinity of Viewpoints 2 and 4 with its effects diminishing from more distant locations and when viewed further away from the east due to the backdrop of the plantation. Nevertheless, this is a commercial plantation, and the trees are likely to be harvested and are unlikely to continue to provide the existing backdrop to the proposed development in years to come.

12. The landscape has an open, mountainous heathland character. Whilst there are man-made structures within it, it is an extremely attractive and scenic area. The proposed development would be an alien presence in the landscape and despite its relatively small size and cladding in timber, it would be considerably out of place within its context, and a discordant feature in the surroundings.

13. Whilst the LVIA takes account of the reversibility of the development, the proposal before me is for a permanent structure which would be a feature in the landscape in perpetuity.

Given the reasons for its presence, I have no reason to believe that it would be removed and do not find this a persuasive argument in its favour.

14. I have taken account of the previous findings of an Inspector in relation to the impact of the nearby mast. However, the conclusions reached were based on the provision of a temporary structure of a wholly different design. I do not find that the conclusions drawn for that proposal are directly applicable to the development before me.

15. I concur with the findings of the appellant's LVIA that there would be moderate adverse effects to the landscape character and visual amenity of the area. I find the development would be harmful to the character and appearance of the area and the qualities and characteristics of the SLA. As such it would not be in accord with policies DM06, DM17 and DM18 of the LDP in that it would be insensitively and unsympathetically sited in the landscape, would fail to harmonise with it and would not be able to be accommodated without significant damage to the characteristics of the SLA.

Ecology

16. The site is located within the Pumlumon Site of Special Scientific Interest (the SSSI) which is of national importance for its upland habitats comprising acid grassland, blanket bog communities and dwarf shrub heath and the associated upland bird breeding assemblage.

17. The appellant's updated EcIA dated December 2021 found that the site and access track support the *Nardus stricta-Galium saxatile* grassland which is an Annex I habitat. It concluded the proposal would result in the unavoidable loss of approximately 20m^2 of this habitat with the potential to result in further damage to the access track. However, it found this damage would not exceed the damage that occurs to the track from routine management by the occupiers. The assessment also identified that the habitats offered the potential to support reptiles, breeding and wintering birds, foraging and commuting bats and invertebrates. Mitigation measures are recommended including seasonal restrictions on development and compensatory planting to ensure there is no net loss to the ecological value of the site and to safeguard protected and notable species. Enhancements to biodiversity could also be delivered by the scheme whilst other designated statutory sites would not be affected by the proposal. Overall, it concluded that there would be negligible impacts to biodiversity interests.

18. The EcIA did not update the vegetation survey carried out in December 2019 but merely reviewed the existing survey data. I share NRW's concerns that due to the time of year the surveys were undertaken it is possible that habitats and species, including migratory birds, were dormant or not evident. Furthermore, a detailed assessment of the impact of access to the proposal has not been provided. I noted on my site visit that whilst much of the access is via an existing stoned track, there is a section leading to the site itself that is not stoned and crosses vegetation. Whilst the appellant contends that access will be by using farm machinery and with maintenance undertaken by foot or quadbike, I have little information about the frequency of visits and the associated impact on the SSSI's features.

19. I have taken into account the intention to position the proposed container onto timber sleepers with bracing by support poles to minimise damage. Notwithstanding, the EcIA accepts that damage will occur as a result of the proposal. It concludes that the presence of the container would remove a part of the SSSI habitat and there would be some further damage arising from use of the access. Given the limitations of the study identified above, I cannot be certain there would not be other damage resulting from the impact of the proposal on other habitats and species. Whilst mitigation measures have been

proposed, in the absence of full surveys, I cannot be satisfied that these measures would be sufficient to mitigate for the arising damage to the SSSI.

20. The appellant acknowledges the limitations of the study due to the time of year of the surveys. It is suggested that a condition requiring a Construction and Environmental Management Plan be imposed to control how the development proceeds and to require further surveys to be undertaken. However, consideration of the impact of development on a SSSI is a material consideration and should be taken into account prior to granting permission. The Wildlife and Countryside Act 1981, amended by the CROW Act 2000 places a duty on public bodies to take reasonable steps to further the conservation and enhancement of the features by reason of which a SSSI is of special interest. Planning Policy Wales states that development should be refused where there are adverse impacts on features for which a site has been designated.

21. In the absence of full information, and on the basis of the evidence before me, I conclude the proposal would damage the SSSI's features by reason of which it is of special interest. The proposal would not be in accord with policies DM14 and DM15 of the LDP as it would not protect biodiversity.

Other Considerations

22. I have taken into account the need for the development to provide a communication link for financial firms between London and Ireland. Planning policy supports the provision of communication technology and associated infrastructure. Nonetheless, whilst I give the benefits of connectivity from communications technology considerable weight given their contribution to the economy, this needs to be balanced against the harm that arises from the proposal and whether other options would result in lesser harm.

23. I note the appellant has sought other options and alternatives for providing the communication link, two of which have had the benefit of planning permission. Whilst the option of providing a solution within the Cefn Croes Wind Farm has not proven tenable, and the nearby lattice tower mast only has the benefit of a temporary three year permission, I am not persuaded on the evidence before me that the particular development before me is the only option available, in particular in relation to the proposed design of the supporting structure and its location within the SSSI.

24. I also note the Council has not cited any of its own adopted policies in respect of telecommunications development. Nevertheless, national policy is clear that in arriving at the best solution of an individual site, the use of sympathetic design and camouflage to minimise the impact of the development on the environment should be considered. Particularly in designated areas, the aim should be for the apparatus to blend into the landscape (Paragraph 67, Technical Advice Note 19, Telecommunications).

25. For the reasons given above, in this instance I find the particular proposal before me would not blend into the landscape and it would result in harm to the SLA and nationally designated SSSI. In balancing the competing interests, I do not find this harm to be outweighed by the benefits arising from this particular proposal.

Conclusions

26. I have taken into account all other matters raised, including the various reports submitted by the appellant in relation to the provision of telecommunications development but find none that outweigh the harm that I have identified would arise from the proposal. For the reasons above I dismiss the appeal.

27. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in

accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

VK Hirst

INSPECTOR

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 4/7/22

gan Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30/08/2022

Appeal Decision

Site visit made on 4/7/22

by Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30/08/2022

Appeal Ref: CAS-01943-Z8T3W1

Site address: Ty Hana, Beach Parade, Aberaeron, SA46 0BE

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs J & M Dunn against the decision of Ceredigion County Council
- The development proposed is a two storey extension to the existing dwelling.

Decision

1. The appeal is dismissed.

Costs Application

2. An application for costs has been made by Mr and Mrs Dunn against Ceredigion County Council (the Council). This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site is located within Aberaeron Service Centre. It occupies a beachside location to the south-west of Aberaeron harbour. The appeal dwelling is a c1960's bungalow which sits within a row of four similarly styled bungalows. The main dwelling comprises a gabled roof structure with flat roof subservient elements to its south-western end with a conservatory to the rear. The adjacent properties Dolwylan and Eglin are of similar designs. The bungalow is accessed via a single track road that is also a Public Right of Way (PROW) and is divided from the beach by both the lane and a pebbled bank. The site lies within the Aeron Valley Special Landscape Area (SLA) and borders the Ceredigion Coast – New Quay to Llanrhystud SLA.

5. The proposal would provide a first floor over the existing bungalow with a new curved zinc roof. The first floor walls would be finished in wooden cladding and alterations would be made to the fenestration on both floors with the provision of new balconies on both the front and rear elevations.

6. Policy DM06 of the Ceredigion Local Development Plan (the LDP) and the associated Built Environment and Design Supplementary Planning Guidance support the principle of innovative design whilst having regard to local distinctiveness. The policy requires development to complement the site and its surroundings respecting views into and out of the site, producing a cohesive form in relation to the scale, height and proportion of existing built form. Policy DM17 requires, amongst other things, for development not to be permitted where it fails to harmonise with, or enhance the landform and landscape.

7. The area contains a mixture of designs and scales of buildings. Within the vicinity of the site are the adjacent bungalows, a row of Victorian terraced houses, (one of which has been altered with modern extensions including large areas of glazing and balconies), a single storey utilitarian toilet block and larger community buildings including a school, a care home, police station and the Council's offices.

8. I note the Council's contention that the row of bungalows has a uniformity, scale and design that is distinctive in their prominent location fronting Cardigan Bay and which provide value to the landscape through their cohesive form. However, whilst acknowledging the bungalows have a uniformity of design and scale, in my assessment, they have little architectural value and make very little positive contribution to the surrounding landscape or nearby townscape.

9. In the context of the surroundings and the character of the bungalows themselves, I find no objection to the alteration of the bungalow with an innovative design solution. The design approach taken reflects other similar designs in the county and the proposed curved roof and wooden cladding would be appropriate in this beachside location. The curved roof shape would be less imposing than more traditional roof shapes. The proposed balconies and fenestration would be similar to those evident in the nearby terrace and as agreed by the Council would not cause an impact to the living conditions of neighbouring properties subject to the provision of privacy screens.

10. Notwithstanding, the extensions would result in a two storey building covering all of the existing footprint of the bungalow. This would include those elements that are at present small, flat roof and subservient elements. Whilst I acknowledge that there would be a relatively little difference in the footprint overall, at present the smaller elements of the bungalow are distinct from the main dwelling and serve to reduce the overall scale and massing and provide a sense of space around the existing dwelling. They are important in providing a visual and physical break between the appeal dwelling and the neighbouring properties.

11. I noted on my site visit that the appeal site is relatively small, and the dwelling has minimal space around it. Whilst the roof would be stepped back on the front elevation behind a projecting balcony, I find the provision of a two storey building covering the total footprint of the existing bungalow would result in the dwelling appearing too large in the space available. It would dominate its limited space and would be of a discordant scale and mass in the context of its own plot and when viewed with the two neighbouring bungalows. It would be highly visible from the adjacent PROW and to a certain extent from the beach.

12. As such it would not complement the site and its surroundings nor respect the views into the site. It would not produce a cohesive form in relation to the surroundings and would

fail to harmonise with the localised landscape. As such it would not accord with policies DM06 and DM17 of the LDP.

13. I have had regard to the impact of the proposal on the landscape character of the SLAs. The Aeron Valley SLA covers the river valley which runs into the sea at Aberaeron. The SLA includes Aberaeron town and its associated coastal edge. The town is described as an attractive Georgian town typified by a regular street pattern with terraces and groups of brightly coloured houses adding to the interest, variety and quality of the place.

14. Whilst the proposal would be out of scale with its immediate surroundings and public views would be available, given its relatively confined impacts away from the historic town and wider landscape, I do not find it would be harmful to the key characteristics, qualities or features of the Aeron SLA in which it is located. Given the localised effects I am also satisfied that it would not impact on the characteristics, qualities or features of the adjacent Ceredigion Coast – New Quay to Llanrhystud SLA. As such I am satisfied that the proposal would be in accord with LDP policy DM18 which seeks to ensure that development can be accommodated without significant damage to the valued visual, historic, geological, ecological and cultural characteristics of the SLAs.

15. Notwithstanding, my findings on the impact on the SLAs does not outweigh the harm that I have found would occur to the character and appearance of the localised area.

Conclusion

16. I have taken into account all other matters raised including examples of similar designs in the area, and an appeal decision stated to raise similar issues (APP/Z6950/A/21/3282767). However, I find no matters that outweigh the harm that I have identified would arise from the proposal before me which I have determined on its own merits and with regard to its particular context. For the above reasons I dismiss the appeal.

17. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives as required by Section 8 of the WBFG Act.

VK Hirst

INSPECTOR

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 30/3/22

gan Declan K Beggan BSc (Hons) MSc DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18.08.2022

Costs Decision

Site visit made on 30/3/22

by Declan K Beggan BSc (Hons) MSc DipTP DipMan MRTPI

an Inspector appointed by the Welsh Ministers

Date: 18.08.2022

Costs application in relation to Appeal Ref: CAS-01539-Y3C6H7

Site address: Garn Rhos, Maesceiro, Bow Street, SY24 5BG

The Welsh Ministers have transferred the authority to decide this application 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 Daniel Jones of Towyn Marine Properties Ltd for a full award of costs against Gwynedd Council.
- The appeal was against the refusal of planning permission for 'Erection of 7 dwellings (2 blocks of semi-detached and one block 3 terraced dwellings)'.

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 ('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. The Annex states that local planning authorities are at risk of an award of costs being made against them if they behave unreasonably with respect to procedural matters or the substance of the matter under appeal. The thrust of the costs application is twofold based on procedural and substantive grounds.

3. In terms of the procedural ground, in summary it is argued that the Council failed to engage with the Applicant during the course of the Council's consideration of the scheme to explain their concerns regarding the issue of site viability as related to affordable housing contributions, and thereby assist with resolving the matter without recourse to an appeal.

4. Prior to making the final decision on the proposal, I note the Council engaged over an extended period in multiple e mail correspondence with the Applicant, albeit that was not to the Applicants' satisfaction. Irrespective of the degree of communication during the

course of the Council's consideration of the application, once the application was submitted the proposal had to be assessed on its own merits, and to that end the Council highlighted and elaborated on several occasions its stance regarding build costs and viability. Whilst the Council could have been more forthright in regard to the stance it took, nonetheless, I do not consider it approach constitutes unreasonable behaviour.

5. In regard to the substantive matter, consideration of planning applications and appeals involves matters of judgment which are at times finely balanced. As discussed above, the primary issue in this appeal was whether or not the proposal would be viable in light of a requirement for affordable housing. Having considered the parties respective views on the matter and in particular build costs associated with the scheme, ultimately for the reasons given in the main decision I was not persuaded that the Council's arguments for refusing the scheme were unreasonable.

6. Notwithstanding the views of the Applicant, the Council's reason for refusal was adequately reflected in the substance of the planning officer's report supported by additional comments in their appeal statement and this was confirmed in my main decision. Overall, I consider the Council provided adequate evidence and reasonable planning grounds to justify their stance. Ultimately these were matters of planning judgment/interpretation and balance, and this cannot be construed as unreasonable behaviour.

Overall Conclusions

7. Consequently, I do not consider the Council has acted unreasonably as set out in the Annex. An award of costs in this case is therefore not justified. The costs incurred by the Applicants in regard to the refusal reason arose out of the exercise of their right of appeal and was not wasted or unnecessary costs.

Formal Decision

8. The costs application is refused.

Declan K Beggan

Inspector

Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Penderfyniad ar gostau

Ymweliad â safle a wnaed ar 4/7/22

gan Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30/08/2022

Costs Decision

Site visit made on 4/7/22

by Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30/08/2022

Costs application in relation to Appeal Ref: CAS-01943-Z8T3W1

Site address: Ty Hana, Beach Parade, Aberaeron, SA46 0BE

The Welsh Ministers have transferred the authority to decide this application 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 and Mrs J & M Dunn for an award of costs against Ceredigion County Council.
- The appeal was against the refusal of planning permission for a two storey extension to the existing dwelling.

Decision

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

Preliminary Matter

2. The application by Mr and Mrs Dunn and the response by the Council were made in writing.

Reasons

3. I have considered the application in light of the advice in the Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex'). This 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.
4. The applicant's case is largely based on the contention that the Council failed to enter into any positive negotiation about the proposal during its determination. It is contended this led to a protracted determination period which resulted in the Council failing to have regard to its Development Plan and associated Guidance, a failure to determine in a consistent manner and a failure to comply with its own delegated powers protocol.
5. I note from the applicant's application form that no pre-application advice was sought prior to submitting the application. The Welsh Government's Development Management

Manual states that pre-application procedures aim to ensure that planning applications proceed smoothly and quickly once they are formally submitted. The idea is that any significant planning issues are raised prior to the submission of a formal application. This provides applicants with the opportunity to consider these issues, and, if necessary, amend their proposals before they are finalised and submitted. This option was open to the applicant and does not appear to have been pursued.

6. The Council explained its reason for not wishing to enter a dialogue following the application's submission on the basis that it considered significant amendments would be required. From the email correspondence it would appear that the Council considered a wholly different approach to extending the bungalow would be necessary. It is also clear from its submissions that it offered advice, in particular in its email dated 8 February 2022 as to what may be deemed acceptable. From the evidence before me, whilst the Council did not agree to a further meeting during the processing of the application it did offer the opportunity for further discussion on a future submission.

7. I have no evidence before me that the applicant attempted to amend the scheme along the lines the Council suggested but merely proceeded to request meetings to discuss the current scheme and put forward additional information supporting it. The Council responded with its position (and which was consistent with its earlier advice) and I do not find its approach to amount to unreasonable behaviour.

8. Despite the applicant's claim to the contrary, the Council states that the determination of the application was carried out under its newly approved Scheme of Delegation which came into effect prior to the determination of the application. Matters relating to whether the application should have been reported to the committee should be directed to the Council.

9. Notwithstanding, I have no reason to believe that the decision would have been any different had the application been determined by the committee or that this led to any wasted expense.

10. The Council's officer's report sets out the reasons for finding the proposed development unacceptable. It has full regard to the relevant policies of the Development Plan and associated guidance and explains why it considered the development to fall short of the policies' requirements. The report recognises there are other similar developments in the county but explains why, in the particular context of the appeal site and its location in and adjacent to two Special Landscape Areas (SLAs), the proposal was not supported. Whilst I do not find in favour of the Council's position regarding the impact of the development on the SLAs, I am satisfied that the Council set out its reasons as to why it found the proposed development to be unacceptable and substantiated its reason for refusal.

Conclusion

11. I have taken into account all other matters raised. No matters alter my conclusion that I do not find the Council's behaviour to be unreasonable or to amount to unnecessary or wasted expense as described in the Annex. The costs application is refused.

VK Hirst

INSPECTOR