

4. Penderfyniadau Apeliadau/Appeal Decisions

04-05-2023 - 07-06-2023

#	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-02122-V5K0N8	A210271	Mr Wynford Williams (Wynford Williams Car Sales)	Refusal of Certificate Lawfulness	Land Adjacent To Brynteg Primrose Hill, Llanbadarn Fawr, Aberystwyth, SY23 3AT	Dismissed	12-05-2023

5. Apeliadau a Dderbyniwyd/Appeals Received

04-05-2023 - 07-06-2023

#	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-02396-K1Z5R3	A211183	Mr Gary Fryar	Refuse planning permission for the proposed development	The Island Site, Beach Parade, Aberaeron. SA46 0BE		



Costs Decision

by A L McCooley BA (Hons) MSc

an Inspector appointed by the Welsh Ministers

Decision date: 12/05/2023

Costs application in relation to Appeal Ref: CAS-02122-V5K0N8

Site address: Land adjacent to Brynteg, Primrose Hill, Llanbadarn, Aberystwyth. SY23 3AT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mr Wynford Lloyd-Williams for a full award of costs against Ceredigion County Council.
 - The appeal was against the refusal of an application for a certificate of lawful use or development for a C3 Dwelling house - Building plot works in connection with planning permissions A100209 and A130735 have started on site prior to expiry date thus making permissions extant.
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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 ('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 appellant points out that the application took over 11 months to determine. This was considered unreasonable for an application of this type, that requires no consultations. The Council explained that this delay was due to manpower issues and heavy workloads. Whilst this is regrettable and not to be condoned, I accept that there are valid reasons for the delay. It is to be hoped that arrangements will be put in place to rectify this unfortunate situation. Apart from an unsubstantiated reference to prospective purchasers losing interest, the appellant did not explain how the delay in determining the application has led to unnecessary or wasted expense. I note that the original planning permission (Ref. A100209) is dated from 2010 and the material operation that forms the basis of the claim that development had commenced took place in 2011. Whilst I understand the appellant's reasons for not doing so, the fact remains that there is a right of appeal against non-determination, which was available to the appellant after the statutory determination period (8 weeks) had elapsed.
4. The appellant provided considerable evidence to prove a commencement of development had occurred. A material operation (as defined in Section 56 of the Town and Country Planning Act 1990) was undertaken within the time period specified in condition 1 of the above planning permissions. I concluded that this is correct.

5. However, the Council has pointed out that condition 2 required that details of 5 reserved matters be submitted for approval before development is begun. For the reasons set out in the main decision, I have concluded that condition 2 is a condition precedent, and that the material operation was undertaken in breach of the condition precedent. My overall conclusion is that the development did not lawfully commence within the timescales set out in condition 1.
6. The appellant's contention that the Local Planning Authority has erred in its consideration of the application and caused the appellant to incur unnecessary or wasted expense in the appeal process is therefore incorrect. The fact that the Local Planning Authority did not seek legal advice is not of any relevance in these circumstances.

Conclusion

7. I find that unreasonable behaviour resulting in unnecessary expense, as described in the Annex, has not been demonstrated. The application for an award of costs is refused.

A L McCooey

Inspector

Appeal Decision

by **A L McCooey BA MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 12/05/2023

Appeal reference: CAS-02122-V5K0N8

Site address: Land adjacent to Brynteg, Primrose Hill, Llanbadarn, Aberystwyth. SY23 3AT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 199) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Wynford Lloyd-Williams against the decision of Ceredigion County Council.
 - The application Ref A210271, dated 17 March 2022, was refused by notice dated 7 March 2022.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a C3 Dwelling house - Building plot works in connection with planning permissions A100209 and A130735 have started on site prior to expiry date thus making permissions extant.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the use or operation for which the Lawful Development Certificate is sought from the Council's Notice of Decision as it represents a more accurate description than the Application Form. Given that the appeal is against the Council's decision not to issue a certificate and bearing in mind the fact that the description used on the Notice of Decision is broadly consistent with that outlined on the Appeal Form, I am satisfied that there is no prejudice in this respect.
3. As the case related to legal matters and did not involve the need for any site-specific matters to be investigated, no site visit was undertaken.

Application for Costs

4. An application for an award of costs was made by the appellant against the Council. This application is subject to a separate Decision.

Main Issue

5. The main issue is whether the Local Planning Authority's decision not to issue an LDC was well-founded.

Reasons

6. Outline planning permission A100209 for a dwelling on the site was granted on 19 November 2010 subject to 19 conditions. Conditions 1 and 3 provide that the development must commence within 5 years or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, and that the reserved matters must be submitted within 3 years.
7. Condition 2 states:

The development hereby permitted shall be carried out only in accordance with detailed drawings (hereinafter called "the reserved matters") the approval of which shall be gained from the Local Planning Authority before development is begun. Such detailed drawings shall show:

 - a) *the design and external appearance of the proposed buildings;*
 - b) *their siting and layout;*
 - c) *the materials of which they are to be constructed;*
 - d) *the means of access from public highways and areas for vehicle parking;*
 - e) *the arrangements for landscaping the site, inclusive of surface treatments, providing details of all planted areas and the number and species to be provided.*
8. Application A130735 for the variation of conditions 1 & 3 of planning permission A100209 (Erection of a dwelling) to extend time for commencement of development by a further 5 years was approved on 10 December 2013. This planning permission did not alter the other 17 conditions on planning permission A100209, which remained in force.
9. The LDC seeks confirmation that the development approved under the above applications has lawfully commenced. The appellant's justification for this is that there was a building on the site which was to be demolished when the site was cleared for development. Condition 5 of planning permission A100209 stated that work to demolish the building and clear the site should not be carried out in the bird nesting season. It is common ground that the building on the site was demolished in 2011. The appellant argues that demolition of the building constitutes a commencement of development by virtue of being a material operation as defined in Section 56 of the Town and Country Planning Act 1990. This appears to be correct, and I am satisfied that condition 5 was not a pre-commencement condition.
10. However, that is not the end of the matter. Condition 2 clearly is a pre-commencement condition (or condition precedent), in that it requires the approval of the specified reserved matters to be gained from the Local Planning Authority before development is begun. The condition as worded is prohibitive in substance and effect. The need for approval of all the reserved matters clearly also goes to the heart of the planning permission.
11. The next question to consider is whether the works were carried out in breach of that condition. No reserved matters have been submitted for approval and so the requirement to obtain the approval of the reserved matters from the Local Planning Authority before development is begun was not met. As the material operation was undertaken in breach of the condition precedent, I conclude that the development did not lawfully commence within the timescales set out in condition 1.

Conclusion

12. I find that the development subject of planning permissions Ref: A100209 and Ref: A130735 did not lawfully commence within the prescribed timescales set out in condition 1. The planning permission is not therefore extant, meaning that the site cannot be lawfully developed under the terms of those applications. For this reason, and having considered all matters raised, I conclude that the Council's decision not to issue an LDC was well-founded. The appeal is therefore dismissed

A L McCooey

INSPECTOR