

4. Penderfyniadau Apeliadau/Appeal Decisions

11-01-2024 - 07-02-2024

#	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-02678-N1G3P1	A211174	Mr Simon Palmer	Against refusal of planning permission	10-11 High Street, Lampeter. SA48 7BG	Allowed with Conditions	16-01-2024
2	CAS-02717-R6Q4H3	A220308	Mr Wynford Williams (Wynford Williams Car Sales)	Refusal of planning permission	Land adjacent to Brynteg, Primrose Hill, Llanbadarn Fawr, Aberystwyth. SY23 3AT	Dismissed	31-01-2024

5. Apeliadau a Dderbyniwyd/Appeals Received

11-01-2024 - 07-02-2024

#	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-03013-C5H3D0	A220668	Ms Ann Broben	Refusal of planning permission	Ffynnon Oer, Rhyd Lewis, Llandysul. SA44 5PS		



Costs Decision

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

an Inspector appointed by the Welsh Ministers

Decision date: 16/01/2024

Costs application in relation to Appeal Ref: CAS-02678-N1G3P1

Site address: 10-11 High Street, Lampeter, SA48 7BG

Decision

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

Preliminary Matters

2. The application by Mr Simon Palmer and the response by the Council were made in writing.
3. The applicant has not stated whether he is seeking a full or partial award of costs. As the grounds relate to both procedural and substantive matters, I have determined the application on the basis it seeks a full award.

Reasons

4. 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.
5. The Council concedes that it failed to take the submitted viability assessment into account. It proceeded to refuse the application on the grounds that no affordable housing contribution was being made. Whilst I acknowledge the resources issues that the Council refers to, and its contention that it wrote to the appellant to seek information regarding viability, this does not account for the misplacing of the viability assessment. Whether or not the assessment was provided on the Council's calculation spreadsheet is not relevant to the submitted version not being taken into account.
6. Despite the applicant seeking further advice on the assessment following the decision, there appears to be a dispute as to whether the alleged correspondence took place. In any event, it appears that any response was limited to the Council seeking the assessment on the Council's viability calculator spreadsheet. Whilst this may be the preferred method of presenting the information, I find no reason why the Council could not comment on the information provided.
7. As a result, the applicant lodged an appeal. I have found in my appeal decision that the viability assessment provided sufficient information to reach a view on the acceptability of the proposal. I have no reason to believe the Council could not have provided such a view.

8. Whilst the outcome of the application may not have been any different had the Council taken the assessment into account, it has not substantiated its position on the acceptability of the proposal during the appeal process despite having this information before it. It has raised some concern regarding the lack of the use of the calculator and the reliance on the value of the property in its current use but provides no conclusive view on the evidence provided. Reference is also made in its statement of case to the need for weight to be given to the positive impacts arising from the development on the High Street and within the Conservation Area. No such weight or balancing exercise of the respective considerations appears to have been applied or carried out in reaching its decision to refuse the application or in making its case at appeal.
9. The Council clearly failed to take into account the viability assessment in determining the application. Once aware of its existence, it failed to provide any constructive feedback on its content to inform the applicant's next steps. It has not substantiated its reason for refusal at appeal. I find this behaviour to be unreasonable. It has resulted in the applicant incurring unnecessary and wasted expense in pursuing an appeal.

Conclusion

10. I have taken into account all other matters raised. I conclude that it has been demonstrated the Council's behaviour has been unreasonable and resulted in the applicant incurring unnecessary and wasted expense as described in the Annex.

Costs Order

11. In exercise of the powers under 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 Ceredigion County Council shall pay to Mr Simon Palmer the costs of the appeal proceedings referenced in the heading of this decision.
12. The applicant is now invited to submit to Ceredigion County 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, an application for a detailed assessment by the Senior Courts Costs Office should be considered.

VK Hirst

INSPECTOR



Appeal Decision

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

an Inspector appointed by the Welsh Ministers

Decision date: 16/01/2024

Appeal reference: CAS-02678-N1G3P1

Site address: 10-11 High Street, Lampeter, SA48 7BG

- 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 Simon Palmer against the decision of Ceredigion County Council.
 - The application Ref A211174, dated 16 December 2021, was refused by notice dated 8 November 2022.
 - The development proposed is change of use of an existing 10 bedroom HMO into 4 No. self-contained flats.
 - A site visit was made on 21 November 2023.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of an existing 10 bedroom HMO into 4 No. self-contained flats in accordance with the terms of the application, Ref A211174, dated 16 December 2021, subject to the conditions set out in the schedule to this decision letter.

Application for costs

2. An application for costs has been made by the appellant against Ceredigion County Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are whether the development should be the subject of an affordable housing contribution and its effect on the River Teifi Special Area of Conservation (SAC).

Reasons

4. The appeal site is located within Lampeter town centre and within its Conservation Area. The appeal building comprises a three-storey mid terraced property with the ground floor occupied by retail units and the second and third floors currently in use as a house in multiple occupation (HMO). The proposal would change the use to four flats.

Affordable Housing Contribution

5. The Council refused the application on the basis that no contribution was being made towards affordable housing as required by policy S05 of the Ceredigion Local Development Plan (the LDP). The policy states that where a reduction in affordable housing provision is sought, details showing a lack of viability will need to be submitted.

6. An affordable housing statement was provided with the application which states that it uses the Council's housing mix/commuted sum and viability calculator. It relies on residual and post development valuations provided by a local estate agent with comparable evidence, and costs for conversion based on RICS development costs and budget estimating. It concludes that the proposal would not be viable if the affordable housing contribution was applied.
7. I note the Council's contention that the statement does not use its calculator and the value of the building in its current use was used in the calculation rather than the purchase price. However, it concedes that it failed to take the statement into account in reaching its decision and offers no substantive evidence that challenges its findings.
8. I am satisfied the statement provides a robust and appropriate assessment of the viability of the proposed development using comparable market data and industry recognised costings. It provides the information that is required for such assessments under the Council's Affordable Housing SPG. I have no reason to disagree with its findings that the requirement for an affordable housing commuted sum would render the proposal unviable.
9. As such I find the development would comply with policy S05 in that it has been sufficiently shown that the provision of an affordable housing contribution is not required in this instance.

Effect on the River Teifi SAC

10. The site lies within the catchment area of the River Teifi SAC. The Council contends the proposed development has the potential to increase phosphates being discharged into the SAC as a result of increased occupancy and additional kitchens and bathrooms. No reason for refusal was provided in the Council's decision notice in this regard but it has raised the issue in its statement of case.
11. In any event, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) I must determine whether the proposal is likely to have a significant effect on the SAC.
12. The current HMO comprises ten separate double bedrooms. The proposal would result in six double bedrooms and two single bedrooms which the appellant states would reduce the maximum potential capacity of the accommodation from twenty to fourteen people. Whilst I acknowledge the Council's view that an HMO is more likely to have single occupancy in rooms, I have no evidence that this is the case, and it is evident the rooms have the capacity to be occupied by couples.
13. An increase in kitchens and bathrooms would not in themselves increase the amount of phosphates entering the SAC. This would be dependent on the number of occupants and the associated volume and phosphorous concentration of the wastewater produced. From the evidence, I am satisfied that the proposal would result in a decrease in the number of occupants within the SAC river catchment area as a result of the change of use to four flats. There would be an associated reduction in the volume and phosphorous concentration of the wastewater produced when compared with the current occupation levels.
14. On this basis I am satisfied that the proposal would not result in an increase in the amount of phosphorous entering the SAC catchment. As such the development would not have any likely significant effect on the SAC and an Appropriate Assessment is not required under the Habitats Regulations.
15. I conclude the proposal would not have an adverse effect on the River Teifi SAC.

Other Matters

16. Apart from the above issues, the Council has raised no objection to the principle of converting the appeal site into four flats. I concur with its view that the proposal would enhance the character and appearance of the Conservation Area through the proposed repair and redecoration works to the building. The improvements to the building would also be beneficial to the setting of nearby listed buildings and would secure the future use of the building in an important location within the town centre. The change from an HMO to four flats would also be a less intensive residential use of the property with associated benefits to neighbouring residents.
17. I conclude the proposal would be an acceptable development that would be in conformity with the adopted development plan.

Conditions

18. I have considered the Council's suggested conditions in light of the advice in Circular 016/2014 "The Use of Planning Conditions for Development Management" (the Circular). I have imposed the conditions set out in the attached schedule for the reasons given. I have amended the wording to require a scheme for the storage of refuse to be submitted to and approved by the Council as the suggested condition lacked precision.
19. I note in the Council's questionnaire that it did not consider conditions in relation to biodiversity enhancement and the installation of gigabit capable broadband infrastructure to be necessary. No reasons are provided for their omission. Policies 9 and 13 of Future Wales require development to provide a net benefit for biodiversity and to provide gigabit capable broadband infrastructure. Whilst I appreciate there is little land available with the appeal site, some biodiversity enhancement measures proportionate to the scale of the development could be provided within the courtyard and parking area to the rear. I have therefore applied a condition in this regard.
20. I have no reason to believe that broadband infrastructure is not already available in this town centre location. Furthermore, the property is already in residential use and as such I am satisfied in this instance that no requirement for broadband infrastructure is reasonable or necessary.
21. I also note the Council's officer's report contained recommendations from its highways and land drainage advisors. Neither of the suggested conditions were included in its list. I find the requirement for cycle parking provision to be reasonable and necessary in the interests of sustainable travel. A requirement for permeable surfaces and a scheme for the disposal of surface water to be agreed would be controlled under other consenting regimes and are therefore not required under condition.

Conclusion

22. I have taken into account all other matters raised but find none that alter my conclusions that subject to the imposition of conditions the development is acceptable. For the reasons given above I allow the appeal.
23. 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 development is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of the WCFG Act.

SCHEDULE OF CONDITIONS

Ref: CAS-02678-N1G3P1 - 10-11 HIGH STREET, LAMPETER, SA48 7BG

- 1) The development shall begin not later than 5 years from the date of this decision.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following approved plans: 044-01 – Existing site plan, dated 10/2021; 044-05A – Proposed Drawings (Floor Plans), dated 10/2021; 044-06A – Proposed Drawings (Elevations), dated 10/2021; 044 – 07A, Proposed Site Plan, dated 10/2021.

Reason: To ensure the development is carried out in accordance with the approved plans submitted with the application.

- 3) No development shall take place until a scheme for the storage of refuse has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained in perpetuity.

Reason: In the interests of protecting residential amenity and public health (LDP policy DM06 & LU07).

- 4) The proposed parking facilities shall be completed before the development is brought into use. The parking and turning area shall be kept free from obstruction and shall be available for parking and turning at all times.

Reason: In the interests of road safety (LDP Policy DM06)

- 5) No development shall take place until a scheme for biodiversity enhancement has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of maintaining and enhancing biodiversity (Future Wales Policy 9)

- 6) The bicycle parking facilities shown on plan number 044-07A, Proposed Site Plan, shall be provided prior to the first occupation of the development and shall be retained in perpetuity.

Reason: In the interests of providing facilities for a means of sustainable travel (LDP Policy DM03)



Costs Decision

by Vicki Hirst BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 31.01.2024

Costs application in relation to Appeal Ref: CAS-02717-R6Q4H3

Site address: Land Adj. to Brynteg, Primrose Hill, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3AT

Decision

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

Preliminary Matter

2. The application by Mr Lloyd-Williams and the response by the Council were made in writing.

Reasons

3. 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.
4. The Council took some 10 months to determine the application from its submission in April 2022. However, I note that it was not until August 2022 that the appellant provided an Access statement to the Council. The Council did not consult its Highways department on this statement and took a further 7 months to reach a decision. This decision was made under its officer's delegated powers and did not require a committee decision.
5. The Council cites resource issues with the delay in processing the application. Whilst this is acknowledged, I find this delay to represent unreasonable behaviour in line with the Annex. I note, however, that the appellant chose not to appeal against non-determination which was open to him, and I have no evidence that the delay, in itself, caused any wasted or unnecessary expense.
6. Whilst the Council did not consult its Highways' department on the Access Statement, no objection had been raised by this department and I have no reason to believe it would have made a different recommendation having had sight of this statement. Similarly, although the officer does not reference the appellant's Access Statement in its officer report, the report clearly sets out the Highway's officer's lack of objection, the changes made to the access since the previous appeal, the reasons why, in the officer's view, the proposal does not address the concerns raised by the previous Inspector and the reason for recommending refusal. The reduced speed limit did not come into force until after the

Council's decision, but in any event, the concern relates to obstruction of the visibility splay irrespective of the reduction in the speed limit.

7. I am satisfied that, whilst the Council's decision was contrary to its own Highways officer's advice, it has shown reasonable grounds for refusing the application. As such, I have no reason to believe that the outcome would have been any different had the Highways department been consulted on the statement or it had been referred to in the officer's delegated report.
8. I therefore conclude that whilst the Council has behaved unreasonably in terms of the time taken to determine the application without substantive reason, the appellant has not incurred any wasted or unnecessary expense in pursuing an appeal as the outcome of the application was highly unlikely to have been any different.

Conclusion

9. I have taken into account all other matters raised but find none that alter my conclusion that the Council's behaviour has been unreasonable in part. However, I find that this did not result in unnecessary or wasted expense, as described in the Annex.

VK Hirst

INSPECTOR



Appeal Decision

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

an Inspector appointed by the Welsh Ministers

Decision date: 31.01.2024

Appeal reference: CAS-02717-R6Q4H3

Site address: Land Adj. to Brynteg, Primrose Hill, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3AT

- 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 Wynford Lloyd-Williams against the decision of Ceredigion County Council.
 - The application Ref A220308 dated 22 April 2022, was refused by notice dated 7 February 2023.
 - The development proposed is the erection of a dwelling, entrance and associated works.
 - A site visit was made on 21 November 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The above description has been taken from the Council's decision notice. It differs slightly from the description in the application and appeal form but as it more concisely and accurately describes the proposal I have used it in making my decision.
3. The proposal was revised following a previous appeal being dismissed for a similar development. I am required to consider the proposed development afresh on the basis of current planning policy and the merits of the particular case. However, the previous appeal decision is a material consideration and I have taken it into account in reaching my decision.

Application for costs

4. An application for costs has been made by Mr Lloyd-Williams against Ceredigion County Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the proposed development on pedestrian and highway safety having particular regard to the access arrangements.

Reasons

6. The appeal site is located within the settlement area of Llanbadarn Fawr and is situated between other detached residential properties fronting Primrose Hill. Its frontage is divided from Primrose Hill by a layby used in association with a bus stop. The entrance to Coleg Ceredigion is located a short distance to the south-east on the opposite side of the road. A path is situated along the appeal site's north-east boundary.
7. The proposal is for one detached dwelling. No objections have been raised to the principle of the development within this location and I have no reason to disagree. The appellant has provided evidence in relation to the viability of developing the plot with the requirement to provide a contribution towards affordable housing. On the evidence before me, I concur with the previous Inspector's findings that the proposal would not be required to make such a contribution as this would render the proposal unviable. As the Council's adopted Local Development Plan (LDP) allows for a reduction in contributions in such circumstances there would not be a conflict with policy S05 of the LDP in this regard.
8. In response to the previous appeal decision, the proposed access has been repositioned to the south-east corner of the plot. The access would require vehicles to cross the layby to access the site and whilst the Highway Authority does not object to the development, the Council relies on the findings of the Inspector at the previous appeal (APP/D6820/A/20/3255496) in refusing the application.
9. The speed limit on Primrose Hill has recently been reduced from 30mph to 20mph. As a result, visibility splays of 2.4 by 25 metres are required by the Manual for Streets and Technical Advice Note 18 – Transport (TAN 18). I am satisfied from the evidence before me and from my observations on site that these can be achieved.
10. I note the appellant's highways statement states that the separation distance between the proposed access and a parked bus has increased three-fold from the previous proposal (from 1.8m to 5.8m). Nevertheless, this assumes a bus would stop at the south-west end of the layby. Whilst I acknowledge the bus stop is located towards this end of the layby, I note there are two other access points serving residential properties in close proximity to the bus stop. There is a high likelihood that this would result in a bus stopping further into the layby to provide clearance. In my assessment and taking account of the tapered ends of the layby, a bus could stop at any point within it and would not necessarily stop at the furthest point from the proposed new access. In any event it would stop within the required visibility splay. Given the large size of a bus, I find it would differ to cars parked on a roadside within a visibility splay as it would fully obstruct the view for the driver of an emerging car.
11. A bus in the layby would also obscure pedestrians emerging from a bus to drivers of cars turning into the access off Primrose Hill. The 20mph speed limit does not alter this fact or the possibility of a bus being parked in any part of the layby. Vehicles turning into the access would be slowing down irrespective of the speed limit but even at the appellant's anticipated 10mph speed when turning in, I am not satisfied the recommended stopping distances set out in Manual for Streets and TAN 18 would be met when a bus is parked further into the layby. As such, there would be an associated risk to pedestrian safety.
12. I have had regard to the frequency of use/timetable for the bus service. Whilst I acknowledge the appellant's contention that the timings would coincide with times when use of the access would be light, I have no evidence to demonstrate that this would be the case. From the evidence before me buses use the stop on a regular basis.

13. Furthermore, I noted on my site visit that Primrose Hill is a busy road and serves a number of residential properties and Coleg Ceredigion. Taking all matters together, I find the risk to highway and pedestrian safety to be unacceptable. I do not find the concerns raised by the Inspector at the previous appeal are altered by the revised scheme. As such I find the proposal would contravene policy DM06 of the LDP and the advice in TAN 18 in that the use of the layby would obstruct the visibility splay and required stopping distances and result in an unacceptable risk to highway and pedestrian safety.

Conclusions

14. I have taken into account all other matters including the correspondence between the appellant and the Council and the lack of accidents at the existing access into the appeal site and its use by slow moving agricultural vehicles. I do not find such matters to outweigh the harm that I have identified would arise from the new access to serve a residential development with the likelihood of more regular vehicular movements than are likely to arise from the use of the agricultural access. For the above reasons I dismiss the appeal.

15. 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