



Mr Graham Jenkins
SLR Consulting Ltd

By Email: gjenkins@slrconsulting.com

Ein Cyf/Our ref: qA1577264
Eich Cyf/Your ref:
Dyddiad/Date: 3 November 2022

Dear Mr Jenkins,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78.
APPEALS BY HANSON UK LTD. APPEAL REFERENCES 3265358 AND 3282880.

THE CONSTRUCTION OF A LANDSCAPE SCREENING LANDFORM AROUND THE EASTERN AND NORTHERN MARGINS OF THE EXTENSION AREA; CONSTRUCTION OF A SCREEN MOUND ALONG THE WESTERN BOUNDARY OF THE EXTENSION AREA; THE EXTENSION OF CRAIG YR HESG QUARRY VIA THE PHASED EXTRACTION OF SOME 10 MILLION TONNES OF PENNANT SANDSTONE; EXTRACTION OF THE REMAINING RESERVES OF SOME 5.7 MILLION TONNES OF SANDSTONE WITHIN THE EXISTING QUARRY; RETENTION OF EXISTING AGGREGATE CRUSHING SCREENING PLANT TO PROCESS SANDSTONE FROM THE EXISTING QUARRY AND EXTENSION SITE TOGETHER WITH RELATED ACCESS ROADS AND INFRASTRUCTURE; USE OF EXISTING APPROVED QUARRY ACCESS ROAD TO THE PUBLIC HIGHWAY; AND IMPLEMENTATION OF A COMPREHENSIVE RESTORATION SCHEME FOR THE APPLICATION SITE TO ESTABLISH AMENITY GRASSLAND, WOODLAND AND NATURE CONSERVATION USES;

AND

APPEAL B REF APP/L6940/A/21/3282880: CONTINUATION OF QUARRYING AND RELATED OPERATIONS WITHOUT COMPLYING WITH CONDITIONS 1-4 INCLUSIVE AND CONDITIONS 45 AND 46 IMPOSED ON THE ENVIRONMENT ACT ROMP SCHEDULE OF CONDITIONS ISSUED BY RCT COUNCIL ON 24TH APRIL 2013, REF 08/1380/10.

APPLICATION FOR AN AWARD OF COSTS.

1. I refer to the application made by you, on behalf of your client, Hanson UK Ltd, for an award of costs against Rhondda Cynon Taf County Borough Council, the Local Planning Authority ("LPA"), on substantive and procedural grounds for the

grant of planning permission following an appeal under section 78 of the Town and Country Planning Act 1990 ("TCPA").

2. I am authorised by the Minister for Climate Change to determine the application.
3. In planning and enforcement appeals the parties are normally expected to meet their own expenses. Costs are awarded only when unreasonable behaviour is held to have occurred and this has caused the party seeking costs to waste or incur expense unnecessarily.
4. The Planning Inspector's Costs Report ("IR"), dated 19 August 2022, has been considered along with the advice contained in Annex 12 to the Welsh Government's Development Management Manual ("the DMMS12A").

SUMMARY OF THE DECISION

5. The formal decision is set out in paragraphs 36-38 below. Your application on behalf of your client for an award of costs, save in respect those costs which relate to acoustic evidence and dust evidence, is successful.

BACKGROUND

6. I consider the following to be the relevant information contained in the IR to aid in determining your costs application.
7. Planning permission was refused for application 15/0666/10 by the LPA's Planning Committee in a decision notice dated 23 July 2020, contrary to the advice of officers. Your client subsequently appealed to the Welsh Ministers and the appeal was recovered for determination by the Welsh Ministers ("Appeal A").
8. An appeal on the grounds of non-determination was made in relation to application 21/0720/15, on the same site. The appeal was recovered for determination by the Welsh Ministers ("Appeal B"). Both appeals A and B were considered together at a Public Inquiry.
9. In relation to Appeal A, the Inspector noted where Members set aside the advice of the Planning Officers in coming to a decision, they must set out clear planning reasons for doing so. The LPA failed to do so (IR12).
10. The Inspector also noted the decision notice for Appeal A also failed to set out all planning policies which were relevant to the decision to refuse (IR13). This absence of policy justification to refuse planning permission has caused your client to pursue Appeal A (IR14-15).
11. In refusing planning permission, Members gave little weight to factual technical statements and assessments underpinning the application, giving greater weight instead to the representation of local residents, which whilst important, were underpinned by little evidence (IR16-17).
12. The Inspector found no basis to objections to the matters raised at the Inquiry. The Inspector assessed the application against the adopted Local Development

Plan ("LDP"), having regard to the technical evidence and representations from local residents, and concluded the proposal complied with national and local planning policy (IR18).

13. The Inspector concluded that permission should reasonably have been granted and your client had been faced with the unnecessary expense of lodging an appeal (IR19).
14. An application for an award of costs was made by you on behalf of your client during the appeal procedures for both appeals. The application is on "substantive grounds" as stated in para 4 of your application for costs, although the specific grounds as set out at paragraph 3.11 of the DMMS12A are not stated. I have interpreted the application as being made on grounds (a), (b) and (g). I also interpret the application for costs being made on ground (e) of the procedural grounds, set out at paragraph 3.10 of the DMMS12A.
15. I also interpret the application for costs in relation to appeal B being made on procedural grounds, as set out in paragraph 3.10 of the DMMS12A, on ground (c).
16. Your application for costs sought reimbursement for all costs, "save in respect those costs which relate to acoustic evidence and dust evidence".

REASONS FOR THE DECISION

17. The reason for making the application for costs relates to costs incurred directly as a result of Appeal A, following refusal of permission for application 15/0666/10, and as a result of Appeal B, which was submitted on the basis of non-determination of application 21/0720/15.
18. Paragraph 2.1 of the DMMS12A advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.

Appeal A

19. I have reviewed the procedural and substantive grounds on which you have sought costs, set out at Paragraph 14 above.
20. Of those which have been substantiated, I note there is merit in considering this application of an award of costs on the following basis.
21. Paragraph 3.11(a) of the DMMS12A states that an LPA may be at risk of an award of costs against it for substantive reasons, particularly "*Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations*".
22. Paragraph 3.11(b) of the DMMS12A also explains an LPA may be at risk of an award of costs against it due to "*Failure to produce evidence to substantiate the*

impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so)”.

23. Paragraph 3.11(g) of the DMMS12A also explains an LPA may be at risk of an award of costs against it for *“Failing to grant or support a further permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstances”.*
24. Paragraph 3.10(e) of the DMMS12A explains an LPA may be at risk of an award of costs against it for *“Only supplying relevant information when it was requested during proceedings, but not provided, at application stage (where applicable)”.*
25. In the view of the Inspector, the proposal was deemed to comply with the adopted LDP, and national policy. Furthermore, the Inspector considered there was no basis to the reasons given for refusal which were raised in the Inquiry (IR18). The Inspector concluded that, having regard to the LDP, national policy and other material considerations, the development should have reasonably been permitted, and that the refusal of permission constituted unreasonable behaviour (IR19).
26. I see no reason to disagree with the Inspector. On this basis, The LPA is deemed to be eligible for award of costs against it on substantive grounds (a) and (g).
27. The Inspector notes the failure of the LPA to provide substantive planning reasons for determining the application contrary to its own LDP policies and the advice of officers. The Inspector also notes the absence of substantive planning reasons for refusal from the decision notice (IR12-15). The Inspector considers this resulted in your client being required to address a wider range of issues at appeal than which were necessary, causing them unnecessary expense (IR15).
28. The Inspector notes the effort undertaken by the LPA to identify those with local knowledge who sought to challenge the evidence provided by your client. The Inspector considered that there was very little evidence submitted, beyond general supposition, to identify any issues with the technical assessments supporting the application. The Inspector considered that Members gave little weight to factual evidence in reaching their decision.
29. I see no reason to disagree with the Inspector. On this basis, The LPA is deemed to be eligible for award of costs against it on substantive ground (b) and procedural ground (e).

Appeal B

30. I have reviewed the procedural grounds on which you have sought costs, set out at Paragraph 15 above.
31. Paragraph 3.10(c) of the DMMS12A explains an LPA may be at risk of an award of costs against it for *“Failure to determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application”.*

32. Appeal B was lodged on the basis of non-determination of application 21/0720/15. The effect of application 21/0720/15 was to extend the timeframe for existing operations already permitted at the site.

33. The application was registered on 17 May 2021 and validated on 24 May 2021. Ultimately, your client's appeal prompted the LPA's decision to refuse planning permission on 8 October 2021, and the appeal was converted to an appeal against the refusal of the application. As a consequence, there was clearly no substantive reason to justify delaying the determination of the application.

34. I consider the LPA is subject to an award of costs against it on procedural ground 3.10(c), for failing to determine the application within the statutory time period.

Wasted and unnecessary expense

35. Due to the subsequent granting of planning permission for development for both applications on appeal, it is clear the costs relating to both appeals A and B under section 77 of the TCPA were wasted and unnecessary. Accordingly, I consider both appeals A and B caused wasted and unnecessary expense.

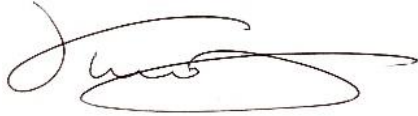
FORMAL DECISION

36. In exercise of the authority referred to in paragraph 2 above and for the reasons given above, your application for an award of costs is successful and an award of costs, save in respect those costs which relate to acoustic evidence and dust evidence, is being made.

37. The duty, set out in the Well-being of Future Generations (Wales) Act 2015, which requires each public body to carry out sustainable development, is noted. Consideration has been given to the application of the duty to this decision. It has been concluded within the narrow context of this decision that the application of the duty does not meaningfully direct the decision.

38. Accordingly, I enclose a formal order made under Section 322C of the TCPA, requiring the LPA to pay the costs of appeals A and B incurred by your client in an amount to be assessed in default of agreement. You are now invited to submit to the LPA, to whom a copy of this letter has also been sent, details of those costs with a view to reaching agreement to that amount. A guidance note on assessment is enclosed.

Yours sincerely,



Lewis Thomas
Pennaeth Penderfyniadau Cynllunio / Head of Planning Decisions
Y Gyfarwyddiaeth Cynllunio / Planning Directorate

Arwyddwyd o dan awdurdod Y Gweinidog Newid Hinsawdd; un o Weinidogion Cymru.

Signed under authority of the Minister for Climate Change; one of the Welsh Ministers.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.