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## **Penderfyniad ar gostau**

## **Costs Decision**

**gan A L McCooey BA (Hons) MSc  
MRTPI**

**by A L McCooey BA (Hons) MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**an Inspector appointed by the Welsh Ministers**

**Dyddiad: 21/12/2021**

**Date: 21/12/2021**

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**Costs application in relation to Appeal Ref: APP/B6855/C/21/3272584**

**Site address: 1 Waun Gron Close, Treboeth, Swansea, SA5 7DH**

**The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322C and Schedule 6.
  - The application is made by Mr J Collins for a full award of costs against City and County of Swansea Council.
  - The appeal was against an enforcement notice in relation to the erection of a detached garage including a raised platform base and the siting of an air conditioning unit.
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### **Decision**

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

### **Reasons**

2. The Section 12 Annex, Award of Costs, to the Development Management Manual advises that, irrespective of the outcome of the 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 expense in the appeal process.
  3. Planning permission had been granted for a garage on the site. In response to a complaint, the Council investigated and found that the garage had not been constructed as approved. It appears that the matter was ongoing for some time, as the Council has forwarded an email from June 2019 warning the applicant that the garage under construction was not in accordance with the planning permission and that further work may result in enforcement action. Further meetings and discussions took place before the Council wrote to the applicant in July 2020 inviting an application and specifying conditions and a planning obligation that would be required to address the impact of increased site levels on the adjoining occupiers. It was explained that in the absence of an application then an enforcement notice would be served requiring the removal of the garage and the restoration of the land to its previous level. The applicant took no further action until the EN was served in March 2021. He then indicated that he would submit an application if the EN were withdrawn. The Council was not prepared to withdraw the EN but would have agreed to hold the EN appeal in abeyance until an application was determined. The applicant chose not to submit an application in these circumstances because the EN appeal would have to be pursued anyway.
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4. I do not find the Council's actions as set out above to be unreasonable. I have concluded in the main decision that the development was in breach of the extant planning permission. There was a minor error in the reason for issuing the EN, which did not affect its validity. The other alleged errors were not substantiated. I consider that it was reasonable to issue the EN in the circumstances described above. The agent argues that the Council could have served a "positive" EN requiring the provision of a fence and restricting the use of the area to the rear of the garage. This appears to relate to the steps required by the EN. Whilst an EN can require the cessation of a use, it cannot restrict lawful use in the way that conditions can. In addition, the Council considered that a s106 obligation would be necessary to control the use of the area to the rear of the garage. I have not agreed with the Council on this point in the main decision, but it was a valid consideration.
5. In all these circumstances the requirements of the EN were not disproportionate. The Council's EN required the removal of the unauthorised development in order to remedy the harm to public amenity. This accords with the advice in paragraph 14.2.3 of the Development Management Manual. Before taking this action, the Council afforded the applicant ample opportunity to regularise the development. It was open to the applicant to have submitted a planning application following numerous requests to do so over a 2 year period. This would have avoided the need to serve an EN and the subsequent appeal.

### **Conclusion**

6. For the reasons given above, I find that that the Local Planning Authority did not behave unreasonably in refusing planning permission. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in the Section 12 Annex to the Development Management Manual, has not been demonstrated. The application for an award of costs is refused.

*A L McCooey*

**Inspector**