



## Costs Decision

Site visit made on 24 March 2017

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 May 2017**

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### **Costs application in relation to Appeal Refs: APP/D0840/C/16/3157870 & 3157871 - Terras Crossing, Sandplace, Looe, Cornwall PL13 1PH**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Cornwall Council for a full award of costs against Ms Susan Wilesmith and Mr Perry Davies.
- The appeals were made against the decision of the Council to issue an enforcement notice as fully described and corrected in the corresponding appeal decision.

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### **Formal Decision and Costs Order**

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, IT IS HEREBY ORDERED that Ms Susan Wilesmith and Mr Perry Davies shall pay to Cornwall Council the costs of the appeal proceedings described in the heading of this decision, but limited to dealing with the third and fifth main issues, wildlife and highway safety, respectively, as identified in my appeal decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.
2. The Applicant is now invited to submit to Ms Susan Wilesmith and Mr Perry Davies, to whom a copy of this decision has been sent, the details of those costs with a view to reaching agreement as to the amount.

### **The case for both parties**

3. The case for both parties is set out in writing and hence, since there is a public record of those submissions, I do not propose to rehearse them here.

### **Reasons**

4. The Planning Practice Guidance [the Guidance] advises that costs may 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.
5. The Guidance says the right of appeal should be exercised in a reasonable manner and that an award of costs might be made where an appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when, in enforcement appeals, the onus of proof on matters of fact is on the appellant<sup>1</sup>. In that context, dealing initially with ground (b), I have considered whether there is, as is claimed by the Council, inadequate supporting evidence to assist the Council or the Inspector, specifically in relation to ground (b).
6. In my main decision I have examined the respective arguments pursuant to ground (b) at some length. Although I have ultimately found against the

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<sup>1</sup> See paragraph 053 Reference ID: 16-053-20140306.

Appellants under that ground of appeal it was by no means straight forward to discount all of the evidence that was submitted by the Appellants. In my view substantial evidence was put forward, particularly in the form of photographs, to support lodging and pursuit of this ground of appeal. So whilst I have found that the onus of proof was not met and, amongst other things, the absence of a sworn statement or statutory declaration is significant, I cannot agree that it was unreasonable behaviour to bring the appeals on this ground of appeal. As such I find there is no basis to make the full award of costs that is sought.

7. Turning to the ground (a), the deemed planning applications, this appears to be the focus of the Council's costs application. In my main decision I have found a conflict with a number of Development Plan [DP] policies. However at the point when the appeal was lodged [2 September 2016] the Council was yet to adopt the Cornwall Local Plan [LP]. With two minor exceptions<sup>2</sup> I have not tested the development against the earlier components of the DP, as set out on the face of the notice, and in those circumstances it is not appropriate to conclude that the right of appeal was exercised unreasonably because it was "clearly" not in accordance with the DP [my emphasis]. Amongst other things the grounds of appeal asserted that those policies<sup>3</sup> were out of date because of the absence of a 5-year housing land supply. Whilst that argument was later withdrawn, following the adoption of the new LP, it would have been material to any assessment of the merits at the point that the appeal was lodged. As such it would be inappropriate to find that the right of appeal was exercised unreasonably because the development clearly contravened the DP.
8. In my main decision I have examined the other material considerations that have been advanced by the Appellants and, in the context of the above finding, I turn to consider the adequacy of the supporting evidence. The Appellants have produced the bus timetable and whilst it contains an anomaly I have given reasons in my main decision for finding that buses are an option for some residents for certain journeys, as is cycling. In addition the Appellants' unchallenged evidence is that this is previously-developed land. Whilst I have found that this does not meet the criteria in the relevant LP policy, there was supporting evidence to justify pursuit of this substantive rationale.
9. In terms of the other main issues, the Council do not appear to lay a basis for saying that no substantial evidence was advanced in relation to the issue of character and appearance. Inevitably that requires the exercise of judgement and I do not find that the Appellants' argument that the building was an improvement on what existed to have been advanced unreasonably. Contrary to the Council's claim there is supporting evidence, in the form of not one but two flood risk assessments, to address the flooding issue. In particular the Appellants commissioned a professional company to address this topic and whilst I have given reasons for disagreeing with it that flood risk assessment constitutes substantial or, at the very least, adequate supporting evidence.
10. Turning to biodiversity the argument was put, on behalf of the Appellants, that the appeal site was not within the designated wildlife site. Some evidence was provided to support that claim but it was very thin and I have given reasons in my main decision for rejecting that claim. No evidence was provided to address the contrary view that the Council was right and the site was within the wildlife site; the Council was correct to adopt a precautionary approach. Moreover the Circular, as quoted in my main decision, is clear about the sequence of when a survey is required and no exceptional circumstances were advanced. For these

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<sup>2</sup> Policies CL8 and CL9 of the Caradon Local Plan First Alteration.

<sup>3</sup> As cited on the face of the notice that was issued.

reasons, even in the absence of LP Policy 23 at the point the appeal was lodged, I find the Appellants' approach to this issue was not reasonable.

11. In a similar vein no substantial evidence was advanced to support the claim that the accesses were safe and instead reliance appears to have been placed on the ground (b) claim, that no such development had occurred, succeeding. However the grounds of appeal are lodged in the alternative and supporting evidence should be advanced to support each of the grounds of appeal. At no stage, not even in outline in the grounds of appeal, have the Appellants dealt with the merits of the vehicular accesses. In the absence of any argument or supporting evidence the Appellants' approach to this issue was unreasonable.
12. The Guidance<sup>4</sup> makes clear that the list of types of behaviour is not exhaustive. I consider that the failure to provide substantial evidence to address these two issues was unreasonable behaviour. However, given my earlier reasoning in respect of the other main issues, I am not satisfied it goes beyond that to support a finding that the ground (a) had no reasonable prospect of success. My view on this point is supported by my finding that I have not found a clear conflict with the DP, as it existed when the appeal was lodged, and the fact that other considerations, such as those dealt with in paragraphs 72-74 of my main decision, were advanced as part of the deemed planning applications.
13. It is clear that the unreasonable behaviour in relation to the third and fifth main issues, as identified in my main decision, has caused the Council to incur additional expense in terms of addressing these issues in its statement and at final comments stage. However, having regard to the basis on which the application is put, the expense does not go beyond that to an earlier stage.

### **Conclusion**

14. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated. Although, for the reasons identified previously, it would not be appropriate to make a full award of costs, it is appropriate to make a partial award of costs as set out in the formal decision and costs order.

*Pete Drew*

INSPECTOR

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<sup>4</sup> Paragraph 053 Reference ID: 16-053-20140306.