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## Costs Decision

Site visit made on 4 October 2022

**by Tom Bristow BA MSc MRTPI AssocRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2022**

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### **Costs application in relation to Appeal Ref: APP/D0840/W/22/3298828 Storage Facility, Truthwall, St. Just TR19 7QN**

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972 as amended, section 250(5).
  - The application is made by KTMP Developments Ltd. for a full award of costs against Cornwall Council.
  - The appeal was against the Council's refusal of planning application Ref PA21/06739, via decision notice dated 16 November 2021, the development proposed being the demolition of commercial buildings and construction of five dwellings with associated amenity space.
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### **Decision**

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

### **Reasons**

2. Parties to planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.<sup>1</sup>
3. The appellant's application for a full award of costs is on substantive grounds. Essentially they argue that the Council's case was founded on 'vague, generalised or inaccurate assertions'.<sup>2</sup> Various arguments are advanced in support of that position, which I address in broadly the sequence in which they are made (in the absence of overarching themes).
4. The proposal had been amended relative to an earlier iteration. It was recommended for approval by officers. However neither of those factors, in and of themselves, indicate unreasonable behaviour. An amended scheme may still be unacceptable. Members are not bound to accept the recommendations of officers.
5. The appellant states that the decision of Members at Committee on 15 November 2021 was 'based, at least in part, on spurious information regarding the marketing of the site'. That appears to relate to a Member mentioning

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<sup>1</sup> Reference ID: 16-028-20140306.

<sup>2</sup> PPG Reference ID: 16-049-20140306, alternatively the contention is that the Council's objection to the scheme was 'spurious, without foundation and indefensible.'

receiving correspondence from Vickery Holman, commercial agents instructed to search for a client's site in the area.

6. There is reference in the notes of the foregoing committee before me which states 'it was understood that there was currently a local business seeking a site of this size for commercial use.'<sup>3</sup> That appears to have been partially accurate (albeit by way of a flyer rather than anything more definitive).<sup>4</sup> I understand the appeal site was rejected in that context 'primarily due to its size', i.e. around 0.72 acres, whereas the flyer indicates that a site area of 1.6 to 2 acres was sought.
7. The appellant states that 'it is understood that the Ward Member promoted the appeal site to Vickery Holman as available.' There is no evidence on that point. In any event it is not within the remit of a costs decision to investigate matters related to individuals' conduct or adherence to Council procedures. Even if there were shortcomings with the handling of the foregoing information, that point is mentioned only cursorily in the meeting notes, and features neither in the Council's reason for refusal nor case at appeal.
8. I accept that the Council's case in respect of policy 5 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016, the LPSP) could have been more clearly articulated. However, insofar as it is relevant to this costs application, I found that it had not been demonstrated that marketing fulfilling the terms of LPSP policy 5, section 2, criterion (i) had been undertaken. There was evidently an arguable point there.
9. The appellant takes issue with the council's logic in terms of the implications of the Covid-19 pandemic on marketing. They state in their costs application that 'the market was buoyant in Cornwall during that period...'. However, contrastingly, in their statement of case they say 'it is acknowledged that the marketing took place during the pandemic at a time when commercial space was in less demand.'<sup>5</sup>
10. In my view the foregoing contradiction is unconscious and simply illustrates that the implications of Covid-19, which no plan could account for, are nuanced. Pressures arose for different uses in different locations, some of those pressures have abated, and others have changed. It was not unreasonable for the Council to consider a global pandemic as material.
11. The appellant sets out that 'the LPA has not explained why an industrial use would be acceptable in the context of the residential properties that surround the site...'. The onus falls principally on an appellant to substantiate their case.<sup>6</sup> Moreover it is the appellant's argument that the authorised use of the site is already 'industrial', in close proximity to residential properties.<sup>7</sup> Whether criterion (iv) of LPSP policy 5 is met is inherently a matter of judgement, rather than of absolutes.

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<sup>3</sup> Appellant statement of case, RM.6.

<sup>4</sup> Appellant statement of case, RM.5.

<sup>5</sup> Appellant statement of case, paragraph 6.1.2.

<sup>6</sup> Section 62(3) of the Town and Country Planning Act 1990 as amended.

<sup>7</sup> Appellant statement of case, paragraph 6.1.3.

12. I am not of the view that the appellant has been disadvantaged by the Council referring to its own documents at appeal, related principally to the Cornwall Area of Outstanding Natural Beauty and the Cornwall and West Devon Mining Landscape World Heritage Site in which the appeal site falls. Indeed the appellant states that 'the LPA acknowledges that the impact on heritage assets is neutral'. Moreover, logically, if development has some effect on one designation, it would also have some effect on an overlapping designation.
13. I have dealt with policy CD3 of the St. Just-in-Penwith Parish Neighbourhood Development Plan 2021-2030 (made 2022, the 'NDP') in the associated appeal decision. In my view it does apply to the development proposed, therefore I cannot support the appellant's argument that it was unreasonable for the Council to have applied that policy in reaching a decision. Even if I am wrong in that, again there is an arguable point there.
14. I understand the appellant's motivation for applying for costs. However, turning to matters of fact, the dwellings proposed would be taller than existing buildings on site and some nearby. Their location within the appeal site would also differ, units 1 and 2 projecting further southwards to the rural fringe of Truthwall than the existing footprint of buildings. As set out in the appeal decision, it would be difficult to identify many sites similarly tightly protected on account of their historic and landscape character.
15. Therefore in essence the appellant's claim, insofar as I am legitimately able to pursue it, boils down to a disagreement over the merits of the scheme. I reached a different view to the Council. However, the Council have supported their case at appeal with accurate observations of the site and its surroundings. Their statement of case actively tussles with relevant elements of the development plan. I cannot therefore agree with the appellant that the scheme should clearly have been permitted or that the Council's opposition to it was insufficiently justified.
16. On account of the foregoing reasons based on the evidence before me I find that no action or inaction taken by the Council amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense at appeal.

## **Conclusion**

17. Having taken account of all other matters raised, and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

*Tom Bristow*

INSPECTOR