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## Costs Decision

Inquiry held on 6 December 2023

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 15 December 2023**

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### **Costs application in relation to Appeal Ref: APP/D0840/C/22/3298025 Land at Trevone Quarry, Trevone, Penryn, Cornwall, TR10 9JQ**

- 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 Mr Rob Higgs for a full award of costs against Cornwall Council.
  - The appeal was against an enforcement notice alleging a material change of use of land and buildings and operational development to a mixed use for purposes including residential, studios and workshop uses.
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### **Decision**

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

### **Reasons**

2. The Planning Practice 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.
3. The appellant made his costs application in writing. This consisted of some 26 pages of detailed comment set out in a format based on PINS guidance. In contrast the Council's response is brief in which they do not respond to all the matters raised individually but respond by addressing the main categories of appellant's case.

#### *The appellant's case*

4. In summary, the appellant considers that the Council has been unreasonable through lack of co-operation by not responding to email requests, taking a long time to agree matters of compliance; officers and councillors being advised not to have contact with anyone from Trevone Quarry; declining to attend a meeting on design or to explain its position on paragraph 80 of the NPPF; failure to follow the Council's own enforcement flowchart; failure to supply information on sustainability and other matters needed to understand the Council's position on appeal; failure to uphold any of the complaints submitted by the tenants; failure to allow the submission of a formal complaint regarding child welfare; refusal to respond to the appellant's submitted Statement of Common Ground (SoCG) despite numerous attempts to do so; the late acceptance by the Council that all the units are deemed to be compliant with ground (a) and that the LPA is "content to regularise" or "deem no longer expedient to enforce"; providing information that is inaccurate regarding sustainability and harmful to the landscape; untrue

allegations being referred to other Council departments; not revealing information or advising the appellant that live-work units are a different category to residential use; failure to carry out adequate prior investigations which could have avoided the need to serve a notice coupled with reasonable diligence; the need to commission landscape and design assessments and live-work research; no engagement with the tenants; the development should clearly have been permitted; requests for objective analysis of opinion's expressed by the enforcement officer rejected; conditions could have allowed the development to proceed; not following case law in respect of planning units, the definition of a dwelling and the periods of immunity from enforcement action; not determining similar cases in a consistent manner; a more helpful approach could have avoided the appeal or narrowed the issues; and, that planning permission was granted for the cutting shed in 2013 but the carving shed is no different.

5. The appellant believes that there was ample evidence for approval on the grounds of a high level of sustainability embodied in the NPPF and the Cornwall Local Plan (CLP). The Climate Emergency DPD and the Mabe Neighbourhood Development Plan are more recent but their direction of travel has been well known for some time and discussion could have taken place to regularise the development. The unnecessary or wasted expense includes the SoCG; responding to Planning Contravention Notices and formulating the appeal for the units; commissioning the Location and Visual Impact Assessment, live-work report and the NPPF paragraph 80 report; payments to planning advisors; providing evidence for the ground (d) appeal; payment to a barrister regarding the legality of the notice; the preparation of the grounds of appeal; costs associated with relevant agencies and Council departments; and those connected to complaints made to the Council.

#### *The Council's response*

6. The majority of the complaints relate to the LPA's inability to work with the appellant proactively or produce an argument at appeal. Once the appeal was submitted it is for the Inspector to determine the case. Unfounded assertions are made regarding inappropriate behaviour of Council Officers.
7. The complaints regarding the stresses of the appeal process stem from his own failure to apply for planning permission before commencing development, which are the fault of the appellant. Many complaints relate to non-planning matters and grievances against the Council which are irrelevant to a costs claim.
8. The appellant has produced evidence to support his case at appeal. While the Council might anticipate success on the ground (a) appeal, it is for the Inspector to conclude and the evidence remains necessary and of value.
9. Given that the appellant is self-representing, the Council has acted in what could be considered an unusual manner. It has taken steps to ensure the appellant has remained informed of the appeal documents, including the SoCG. The Council also questions whether the appellant has had support from planning agents/and/or barristers and fiercely rejects any unevidenced costs in this area.

#### *Comment*

10. I find the approach taken by both the appellant and the Council in this appeal to be somewhat unconventional. The appellant clearly has a long-standing issues and grievances with the Council, not just over planning matters but over

matters relating to other services of the Council. On the Council's part, they have remained relatively silent in addressing in detail many of the complaints and allegations made by the appellant which suggests there is a backstory to their relationship with the appellant upon which they have chosen either to reserve comment or do not regard it to be material to the appeal.

11. The appellant is self-representing and has submitted a considerable amount of evidence and supporting documentation which is repetitive and does not appear to reflect the fact that the appellant has had the support or advice of planning agents or other advisors. He is unfamiliar with the planning and inquiry process and has benefitted from a degree of latitude from the Council and has had detailed advice from PINS in advance of the inquiry. There is no harm in this but the appellant's lack of understanding of the process has caused problems, such as in respect of the SoCG.
12. The parties submitted a signed SoCG dated 9 November 2023. This described the site, the planning history and relevant planning policies. It also indicated the parties' acceptance that in respect of the ground (b) appeal, the alleged development had occurred as a matter of fact. It also confirmed in respect of the ground (c) appeal, no planning permission has been granted for the mixed use or operational development or that it was permitted development. Notwithstanding the appellant's agreement to the SoCG, he subsequently objected to its contents on the basis that he had misunderstood them.
13. In correspondence with PINS, the appellant advised that his purpose in lodging the appeal on grounds (a), (b), (c), (d), (f) and (g) was to maximise his case but indicated that he would withdraw the appeal on all grounds except ground (a) if the Council amended the SoCG to refer to 'all' of the alleged breaches rather than 'most' of the breaches aligning with planning policies. In reply, the Council indicated that it would not be making any changes to the SoCG "at this time" and that it was not accepted that the ground (a) appeal would not be acceptable in any form at this time.
14. I should also add that the appellant's 'maximisation of his case' by appealing on unnecessary grounds is unreasonable.
15. However, at the inquiry, in view of the Council's changed position in respect of the ground (a) appeal, Mr Higgs's withdrawal of the appeal on the other grounds and flagged up in his email of 16 November 2023 was accepted and I therefore proceeded to consider the appeal on ground (a) alone.
16. Had both the Council and the appellant made their positions clear at an earlier date then this would have prevented a degree of wasted time and effort on everyone's part.
17. It is apparent from the appellant's costs application that he has had a very high expectation of what the planning system should provide in terms of assisting him to overcome the legitimate reasons identified by the Council for taking enforcement action at Trevone Quarry against unlawful development. As an example, he has unrealistic expectations that the costs associated with the Planning Contravention Notices should be reimbursed. The PCN is part of the enforcement process that assists the Council in considering the expediency of enforcement action but it is separate to the appeal process.

18. The appellant appears to resist professional judgements not in accord with his own assessments, such as those of the enforcement officer or relating to the impact of the development on the character and appearance of the area, the quality of design and indeed, on the issue of sustainable development. Whilst I recognise that the appellant's objectives for Trevone Quarry are grounded on sustainability principles these do not necessarily over-ride all other material considerations relating to the acceptability of development.
19. Whilst the Council drafted the notice and the allegation in a certain way, it was based on their assessment of the planning unit and the steps required to overcome the harm caused by the unauthorised development. Although this may have led to difficulty for the tenants in understanding what the implications meant for their own circumstances, it was nevertheless a legitimate approach by the Council.
20. Although the Council could have withdrawn the notice in the light of the changed Development Planning policies, this would have left the unauthorised development, both operational and change of use, totally unfettered in the future. Whether the appellant would have submitted a planning application to regularise the development is unknown. Had such an application been made appropriate restrictive conditions could be attached to a permission to make the development reasonably acceptable and generally to accord with planning policies. Accordingly, the Council chose not to withdraw the notice but instead relied on the ground (a) appeal to ensure necessary conditions could be imposed.
21. Part of the appellant's justification for a costs award relate to a failure to achieve an outcome satisfactory to himself in respect of earlier complaints to the Council but these matters are totally irrelevant to this application for a costs award.
22. Although the Council can be criticised for not making it clear at the appropriate time where it stood on the ground (c) issues, the appellant's behaviour can also be criticised for him resiling on the agreed SoCG and in his general approach to the appeal.
23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

***P N Jarratt***

**Inspector**