The Planning Inspectorate

Costs Decision

Site visit made on 6 November 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 9TH JANUARY 2024

Costs application in relation to Appeal Ref: APP/J1155/X/22/3311906
Overton Quarry, Codden Hill, Bishops Tawton, Barnstaple, Devon EX32 0DX

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Taw Valley Contractors Ltd for a full award of costs against Devon County Council.
- The appeal was against the refusal of a certificate of lawful use or development for 'Use of minerals extracted from Overton Quarry sites on land farmed in the vicinity for agricultural purposes. See attached statement for further details'.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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 alleges that the Council has acted contrary to and failed to follow well established case law. The appellant does not specify the case law in question in their costs claim, however, from cross reference to their appeal representations, it would appear that this is the case of *Mansi*[1]. It is possible though that the appellant refers in this respect also to the *Duguid*[2] case and I therefore address both below.

4. The Council has addressed in significant detail as to why it does not consider *Mansi* to be applicable to this case, primarily on the basis that this case relates to savings in an enforcement notice in respect of lawful uses whereas the saving in this case is not in respect of a use. As regards the *Duguid* case, the Council addresses this in written representations and makes an understandable assessment on the basis of this.

5. Whilst I have not wholly agreed with the Council's approach on these cases, it was not unreasonable for the Council to take a different stance bearing in mind the distinguishing factors in the present case as

[1] *Mansi* v *Elstree Rural DC* [1964] 16 P & CR 154
[2] *Duguid* v *SSETR & West Lindsey DC* [2001] JPL 323

compared to the established case law referred to; neither of these relates to permitted development rights in respect of mining operations. In my view, it was also not unreasonable for the Council to misinterpret the requirement in *Duguid* relating to the ceasing of the permanent purposes of the enforcement notice prior to exercising permitted development rights as this was a fairly subtle point in the *Duguid* judgment.

6. Since I have found no unreasonable behaviour on the part of the Council, it is not necessary to consider the matter of wasted expense.

Conclusion

7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

V Bond

INSPECTOR