



Costs Decision

Hearing held on 1 and 2 April 2025

Site visits made on 1, 2 and 3 April 2025

by Tom Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2025

Costs application in relation to Appeal Ref: APP/D0840/W/24/3355210

Dean Quarry, St. Keverne, Helston, Cornwall TR12 6NY

- 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 Wilderness Escapes/Hieronymus Gruff Ltd. for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of Cornwall Council to grant planning permission in relation to application ref. PA22/09928 for development described on the application form as: 'Change of Use application for the existing use of the site as a stone quarry to be rescinded and replaced by a holiday park for 53 eco-lodges, for holiday use only, together with a further 3 holiday eco-lodges for the sole benefit of charitable causes, in addition to the offer to build up to 20 affordable homes within the parish of St. Keverne'.
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Decision

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

Reasons

2. Parties to planning appeals normally meet their own expenses. The Planning Practice Guidance ('PPG'), however, explains that costs may be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense at appeal.¹ Although costs applications may relate to events before an appeal is made, an award cannot extend to costs incurred beforehand.²
3. The appellant's application for costs was made via their statement of case. That was responded to by the Council via correspondence of 28 March 2025, in respect of which the appellant made comments in writing of 31 March 2025. Neither party altered or added to their positions at the hearing. The appellant cites 15 concerns with how the Council administered or determined application ref. PA22/09928. I address those concerns, or grounds, broadly in order.
4. In the same way that the appellant referred to the site as previously developed, it is understandable, and forgivable, that the Council's officer report refers to Dean Quarry as dormant. That is addressed in paragraphs 7 and 8 of the associated appeal decision and, at its highest, might be characterised as a loose turn of phrase (as opposed to affecting the Council's position in terms of the materiality or weight of any fallback position).

¹ Reference ID: 16-028-20140306.

² Reference ID: 16-032-20140306.

5. Many of the implications of the scheme are discernible without entering the 44ha site itself. There is nothing to substantiate that an officer not entering the site led to an unreasonable position in respect of the proposal's likely effects. I dismissed the associated appeal, including on the basis of adverse landscape effects readily apparent from the south west coast path cutting through the site.
6. It is unclear how the contended lack of posting the 'Appellant's Notes' on the Council's website influenced the course that the proposal has taken through refusal to appeal. Even if had certain notes not been publicly available, and even if they had not been passed to the relevant consultee for further comment, there was the opportunity for comment on all documentation at appeal.
7. The Council did not object to the proposal on grounds of contamination. I cannot therefore discern how any unnecessary or wasted expense has been incurred by the appellant even if the response from the Council's Public Protection Officer was not posted on the Council's planning website. The appellant did not object to conditions ventured in that respect in any event.
8. As in paragraph 44 of the associated decision the onus falls principally on an applicant to substantiate their case. The encouragement of proactivity and early engagement in paragraphs 39 to 41 of the National Planning Policy Framework (last updated 7 February 2025, the 'NPPF') can only go so far; some differences are irreconcilable.
9. Whilst the appellant notes that they were not informed that the scale of the proposal was inappropriate during a meeting with the case officer on 6 February 2024, they were nevertheless told at that juncture that compliance with policy 5 of the Local Plan Strategic Policies 2010-2030 was at issue.³ Council resources are finite and the appellant could, but did not elect to, undertake earlier pre-application engagement in line with NPPF paragraph 41.⁴
10. The appellant's sixth ground for an award of costs relates to points regarding conflict of interest and apparent bias detailed in section 11 of their statement of case. In short they allege that the Council's position was tainted by being informed by, or by unduly relying upon, organisations which the appellant argues are conflicted (in terms of commenting on the scheme, but having other interests that would skew their comments). Conflict of interest and apparent bias was the subject of discussion at the hearing, previous to which relevant organisations were invited at my request to be represented in the interests of fairness.
11. It is not within my remit to establish the veracity of the appellant's allegations.⁵ It is also not within my remit to establish whether in the first instance such concepts would apply to those organisations referenced. As set out in the associated appeal, I reached an independent view of the proposal's effects.

³ Criterion 3 to which refers to tourist facilities attractions and accommodation being supported in principle 'where they would be of an appropriate scale to their location...'.
⁴ To which the appellant's ninth ground for an award of costs also relates.

⁵ Noting the appellant has in that context brought to my attention the judgement in *Magill v. Porter* [2001] UKHL 67 (13 December, 2001).

12. More fundamentally, however, a Council decision does not necessarily have to fall in line with the views of anyone who has made representations in respect of it (statutory consultees or otherwise). Based on all I have read, and all that I heard during the hearing, the Council's opposition to the scheme was based on a suitable assessment of the scheme and its likely effects. There is legitimate room for divergence of professional opinion in those respects.
13. I am told by the appellant that mention was made by the Council in the meeting of 6 February 2024 referenced above of the intention to refuse the application on the basis of 'minerals, landscape and ecology'. The appellant contends that was a predetermination of the outcome of the application given that the Council's ecology consultee response had not yet been received. To some extent that reinforces my reasoning in respect of the appellant's sixth ground for an award of costs above, in that neither the decision reached by a Council nor position taken by officers necessarily flow from the advice of others.
14. Nevertheless there is no clear evidential trail in that respect. There is nothing to substantiate that the Council's decision was not in actuality informed by the relevant ecology consultee response. The Council's decision in respect of application ref. PA22/09928 is dated 6 September 2024, many months after the Council's ecology consultee response was returned. The adequacy of ecology evidence is also addressed in paragraph 40 of the associated appeal decision.
15. The appellant's position that, whilst refusing permission in part on the basis of landscape effects, the Council did not criticise their Landscape and Visual Impact Assessment, is untenable. Refusing permission on the basis of adverse landscape effects inherently indicates that the Council did not agree with the appellant's position or evidence. As addressed in paragraphs 19 and 30 of the associated appeal decision, I was also of a different view to the appellant. That is similarly the case of the appellant's tenth concern; given the Council's Climate Emergency Development Plan Document was adopted in February 2023 it became part of the statutory development plan by the time a decision was reached.⁶
16. Whilst potentially the Council could have explicitly tussled with certain issues identified in ground 11 of the appellant's application for an award of costs, those issues nonetheless informed my assessment of the scheme (at paragraphs 43, 50 and 55 of the associated appeal decision). I reasoned that they were, along with all other relevant material considerations, clearly insufficient to justify allowing the scheme. It cannot therefore logically be said that any wasted expense was incurred by the appellant in those respects.
17. Similarly, potentially the Council could have determined application ref. PA22/09928 more expediently. It appears, however, that the determination time was at least in part to enable the appellant to address contended shortcomings in the associated evidence. I have noted above how the appellant submitted a number of notes, and in paragraph 40 of the associated appeal decision that Natural England remained unsatisfied with the appellant's ecological evidence. Moreover the appellant's twelfth ground for an award of costs argues against itself

⁶ The statutory basis for decision-taking being set out in section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

in that the Council ‘contracted an outside consultant’, ostensibly in an effort to progress the application.⁷

18. The appellant’s thirteenth ground for an award of costs is the allegation that the Council’s officer report inaccurately portrayed the Cornish Chamber of Mines and Minerals as a consultee. They are referenced at page 47 of the report under a section entitled ‘minerals planning’, but are not stated to be a consultee, statutory or otherwise (but rather as having ‘commented on the application’). If there were any ambiguity on that point, they are not included within the officer report under the heading ‘consultee representations’ which are covered in pages 1 to 23.
19. The appellant’s fifteenth ground for an award of costs contains an error, namely that the proposal ‘included the provision to build 20 affordable homes’. Whilst that may refer to an earlier iteration of a planning obligation, provision accorded its ordinary definition is the action of supplying something. Instead, as reflected in the description of development reproduced in the banner heading above, the scheme was an ‘offer’ in that respect. Offer, again accorded its ordinary definition, is to present something to someone to accept or reject as they wish.
20. The offer of building affordable homes is referred to in paragraphs 48 and 49 of the associated appeal decision. I reasoned that there was no evidence before me of how that offer was intended to be fulfilled or achieved practically, of that being necessary to make the development acceptable in planning terms or directly related to it (tests for the use of planning obligations in NPPF paragraph 58). By the time of the hearing that element of the initial scheme was, moreover, not reflected in any agreement under section 106 of the Town and Country Planning Act 1990 as amended. I further reasoned that it could rationally be conditioned.

Conclusion

21. In short, although everything could always be done more thoroughly and efficiently, in my view no action or inaction taken by the Council is either demonstrative of unreasonable behaviour or has resulted in unnecessary or wasted expense at appeal with reference to the approach in the PPG (or both). Having taken account of all other matters raised, and notwithstanding the lengthy and complex history to the proposal, I therefore conclude that an award of costs is not justified.

Tom Bristow

INSPECTOR

⁷ Paragraphs 15, 38 and 42 of the associated appeal decision addressing implications in respect of bats which are not critical in respect of the overall outcome of the scheme, noting that no further bat surveys were undertaken in relation to the appellant’s fourteenth ground for an award of costs in any event.