



---

## Costs Decision

Hearing held on 7 & 8 May 2025

Site visit made on 8 May 2025

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

---

### Costs application in relation to Appeal Ref: **APP/X1165/W/24/3354507**

#### **Copythorne Road, Brixham**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Peloton Land Limited for a partial award of costs against Torbay Council.
  - The appeal was against the refusal of planning permission for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access.
- 

#### **Decision**

1. The application for partial 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 applicant seeks a partial award of costs for two reasons. The first is that the reason for refusal about the prematurity of the scheme is unreasonable. The second is that the landscape and heritage rebuttals were necessitated by the Council introducing or advancing new points by a newly appointed specialist in relation to landscape and heritage matters, particularly in respect of Lupton Park Grade II\* Registered Park and Garden (Lupton Park).
4. The applicant alleges that the Council have been substantively unreasonable by adding an unarguable reason for refusal on prematurity. The considerations around prematurity are set out in paragraphs 50 and 51 of the National Planning Policy Framework (the Framework). At the time of refusal of the appeal proposal, the Regulation 18 Local Plan had not been submitted for examination, which means that it could not have been considered at an advanced stage. A further material change in circumstances has affected the related timetable again, so its progression has slipped back rather than moved forward.
5. The scale and effect of the proposal and any potential to undermine the plan-making process are matters of planning judgement. At the time of the decision, the scale of the proposal represented a greater proportion of the housing growth that the then emerging Local Plan was planning for. The significance of the scale of the development has been affected by the implications of the Framework which is a matter beyond the control of the Council. The decision as to whether to allow major

- development/s in the National Landscape is also one of the more difficult decisions that the emerging Local Plan will need to address.
6. Paragraph 51 of the Framework states that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination and adds that where developments are refused on prematurity grounds, Council's need to indicate clearly how granting permission would prejudice the outcome of the plan-making process. The essence of the Council's response is that even if 'unlikely' or 'seldom' justifiable, that does not equate to 'never' justifiable. The Council sought to clearly indicate how granting permission would prejudice the outcome of the plan-making process. In this instance I have not agreed with the Council but it does not mean that the reason was entirely without merit. As such, I do not consider that the Council has been unreasonable for adding the reason for refusal on prematurity grounds and seeking to justify it in the way that it did.
  7. On the second point about the landscape and heritage evidence, I do not consider it unusual that the professional view of the officer, endorsed by the Planning Committee was ultimately explained through the preparation of landscape evidence by an appropriately qualified and chartered landscape architect. This is a relatively typical process in the response to the submission of a planning appeal and I find nothing in the way that the evidence deviates from the WSP Peer Review findings or challenges the methodology and findings of the appellant's landscape and visual impact assessment (LVIA) that amounts to unreasonable behaviour of a procedural nature.
  8. The introduction of Lupton Park within the Council's landscape evidence as a notable feature should not have come as a surprise as it had already been identified in the appellant's evidence, including the originally submitted LVIA. The Council's landscape evidence noted the position of Lupton Park and its relationship with the site in a similar way to the appellant's own LVIA and landscape evidence. It did not allege that setting effects would give rise to heritage harm. It does not appear that any clarification was sought through agreement with the Council before the appellant elected to ward off any potential suggestion of such through the submission of a report outside of the timetable which I did not decline to accept. As such, I do not consider that behavioural unreasonableness has occurred in respect of this matter.

## **Conclusion**

9. For the above reasons, I have found that unreasonable behaviour has not been demonstrated either substantively or procedurally in respect of the appeal case. Consequently, the application for partial costs is refused.

*H Nicholls*

INSPECTOR