



# Costs Decision

Inquiry held on 2 – 23 March 2010  
Site visit made on 4 March 2010

by **Colin Tyrrell MA(Oxon) CEng MICE**  
**FCIHT**

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

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Decision date:  
1 April 2010

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## **Costs application in relation to Appeal A Ref: APP/N1160/A/09/2114798 & to Appeal B Ref: APP/N1160/A/09/2116843 Land at Baylys Road, Oreston, Plymouth PL9 7NQ**

- 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 on behalf of Captain Nigel Boston for a full award of costs against Plymouth City Council.
- The appeals were made against the refusals of outline planning permission for residential use, the introduction of A3/A2/B1 floorspace, the erection of a water taxi pontoon and the erection of new buildings for the existing GEOSA Oceanographic business that currently operates from the site (Appeal A) and for the erection of new buildings for the existing GEOSA Oceanographic business that currently operates from the site and related marine sciences, research and development, training and educational floorspace, the erection of a water taxi pontoon and residential development (Appeal B).

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### **Decision**

1. I allow the application for costs in part in the terms set out below.

#### **The Submissions on behalf of Captain Nigel Boston**

2. The appellant's costs application was submitted in writing at the Inquiry [Document APP/20]. The following additional points were made orally.
3. In relation to the misdirection of itself by the Council as regards to the weight to be given to the Hooe Lake Planning Study, this document was not mentioned in either committee report despite its status as formally adopted Council policy. There is a much broader history of misdirection than that directly referred to in the submission.
4. In relation to the over-reliance on the "20 house-worth" principle, the Council has indicated at the Inquiry its acceptance of increased traffic generation from GEOSA, extra industrial occupiers, and any housing.
5. In relation to the Council's failure to have regard to the viability of the appeal site, this was despite the problems made clear in the report of agents Stratton Creber.
6. Overall, the Council has behaved unreasonably and its behaviour has led to additional costs. An application is made for a full costs award.

#### **Response by Plymouth City Council**

7. The response was made orally at the Inquiry.
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8. The appellant's complaint about pre-application discussions is typical of that received from developers who don't know what to do and want the Council to design the scheme. It is for the developer to put forward a proposal, and although the Appeal B scheme, put forward after the refusal of the first scheme (Appeal A), has a little less housing it still fails to safeguard the land for marine employment. The appellant's criticism is disingenuous and is rejected.
9. As regards the application of Core Strategy Policy CS05, it was never accepted by the Council that the safeguarding of the site was only for marine industry of a heavier nature.
10. When the draft Statement of Common Ground (SoCG) was submitted it was a 70 page document [disputed by the appellant, who said it was a 25 page document – perhaps page formatting explains the difference?]. It should have been a pithy document rather than a repeat of much of the evidence of the appellant's witnesses. It naturally took much time to be considered by the various Council staff who were involved. The meeting was not wasted, as the s106 issues could be and were discussed at the same time. It was the developer's fault in submitting such a large and unwieldy document as SoCG which wasted time.
11. The appellant also behaved unreasonably (though no counter application is made) in introducing huge tracts of evidence on housing land supply, which was not in his statement of case. This required significant work by the Council to refute, which is now accepted by the appellant who has withdrawn a large section of proof on the subject.
12. As regards traffic, the Council was right to consider the "20 house-worth" principle as a starting point to be tempered by current standards and by the current use of the site, which is for marine employment.
13. The planning applications had been properly considered on the planning merits of the cases. The application for costs has not been substantiated and should be wholly rejected.

### **Reasons**

14. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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. The appeal process is regarded for costs purposes as starting with the submission of the appeal.

### *The Pre-Appeal Correspondence*

15. The two appeals were submitted on 14 October 2009 (Appeal A) and on 13 November 2009 (Appeal B). I saw some correspondence from the appellant's agent to the Council before these dates asking for information. The appellant states that these letters were never answered, or even acknowledged, by the Council. The Council's witness at the Inquiry was unable to explain why this was, perhaps because his involvement with the site was relatively recent.
16. If confirmed, such failure by a public body to respond to correspondence, or even to acknowledge it, seems to me to be at the very least discourteous if not

downright unreasonable. However, this behaviour occurred before the start date of the appeal, and is therefore not admissible for costs.

#### *The Statement of Common Ground*

17. My task at the Inquiry was not aided by the late arrival of the SoCG, which was only put in on the first day of the Inquiry, despite the requirement in the Planning Inspectorate (PINS) procedural letter for submission no later than four weeks before the Inquiry (ie by 2 February in this case). This procedural requirement was included in the PINS letter of 8 January 2010 to the Council. The appellant reports that the draft SoCG was e-mailed to the Council for comments on 13 January, with six further e-mails before 2 February chasing up comments.
18. Finally, a meeting was fixed for 3 February 2010 for the express purpose of settling the SoCG, but the Council were not ready to respond despite having had the draft document for nearly three weeks (albeit that it was a multi-page document), and had not even notified the appellant's agent of their difficulty before the agent travelled to Plymouth.
19. Although it was possible to discuss some other matters, the production of the final SoCG was further delayed leading to inconvenience for all the parties at the Inquiry. I consider this behaviour by the Council was unreasonable, and led to additional costs to the appellant from delay and wasted time.

#### *Marine Employment Policy and Site Allocation*

20. Neither officer's report to the Council's Planning Committee at the time of the original applications referred to the Hooe Lake Planning Study, despite its status as "formal policy" at the time and its confirmation as being saved in the Local Development Scheme (adopted April 2009). The reference in the officers' reports to Core Strategy Policy CS05 referred to only one of the five criteria to be considered when assessing whether a change of use of the site should be permitted. It took little account of the other criteria or whether there were any potential uses of the site which could be properly described as "marine industrial uses that genuinely require a waterfront location."
21. The viability of the site for such marine industrial uses was not checked by the Council until just before the Inquiry, when their own marine adviser confirmed that the site would be uneconomic to dredge even though a degree of marine activity would be possible. Such incidental marine activity does not, in my view, accord with the expectation of Core Strategy CS05 of "marine industrial uses that genuinely require a waterfront location."
22. In my opinion, the Council officers failed to alert their Planning Committee to all the material policies and issues relating to the site, and this behaviour was unreasonable. It led to additional costs to the appellant in responding to this reason for refusal.

#### *Highways Issues*

23. The site has always been recognised as having poor access ever since the railway was removed in the 1950s. The development proposals (at about 40 dwellings per hectare of developable residential land) take no account of the access constraints which apply. I consider that it was entirely reasonable for

the Council to be concerned about access problems, and to take as its starting point the "20 house-worth" principle that can be inferred from its own Hooe Lake Planning Study.

*Conclusion*

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated in relation to the delay in the Statement of Common Ground and to the reason for refusal based on marine employment, and that a partial award of costs is justified. I do not find that the Council behaved unreasonably in respect of highway issues, and no award is made on those grounds.

**Costs Order**

25. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Plymouth City Council shall pay to Captain Nigel Boston the costs of the proceedings so far as they related to the delay in the Statement of Common Ground and to the reason for refusal based on marine employment, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
26. The applicant is now invited to submit to Plymouth City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Colin Tyrrell*

INSPECTOR