

Case Name: *Hayle Town Council, R (On the Application Of) v The Cornwall Council* [2023] EWHC 389 (Admin) (24 February 2023)

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Commentary: This unsuccessful claim for judicial review sought to challenge the decision of Cornwall Council (the “Defendant”) to grant planning permission for the erection of 85 dwellings (the “Development”) in Cornwall on 17 May 2022 (the “Decision”).

In parallel to the grant of planning permission, the Defendant’s Leader made a decision on 8 March 2022 which would result in the Defendant losing £12.9 million of Housing Infrastructure Funding which would have been used towards the upgrading of a nearby roundabout. The Leader’s decision was taken after the Defendant’s planning committee had decided to grant permission for the Development subject to conditions and entry into a section 106 agreement.

The court was asked to determine:

1. If the Leader’s decision was a new factor capable of causing the Defendant to reach a different conclusion, such that the new factor should have been taken into account before granting permission.
2. If yes, is it highly likely that the outcome for the claimant would not have been substantially different if the Defendant had taken the Leader’s decision into account in the determination of the planning application?
3. If yes, the court was invited to apply a suitable remedy.

The officer’s report relating to the Development considered the additional burden on the transport network generated by 85 additional dwellings, concluding that the small traffic increases were unlikely to adversely impact the existing operation of the nearby junctions and the Development was considered to be acceptable from immediate and wider transport perspectives. However, the report specified that the Council’s Highway Development Management Officer did not object to the application, which was partly informed by further funding being secured to deliver the roundabout.

There was some discussion as to whether the officer’s report stated that funding had been secured or would be secured in the future to deliver the transport upgrades. The court found that “the inescapable conclusion must be that the members of the Committee were being specifically alerted to the fact that the upgrading scheme might not come to pass.” Therefore, members were not misled by the officer’s report, and the Leader’s decision resulting in the loss of funding had been considered at the time of the Decision.

In making its decision, the court reiterated the principle set out in *R (Patrick Hardcastle)*

v Buckinghamshire Council [2022] EWHC 2905 (Admin), which cited the previously established principle that an authority's duty to "have regard to" material considerations is not to be elevated into a formal requirement that with every new material consideration arising after passing a resolution to grant permission, but before the issue of a decision notice, there has to be a specific referral to planning committee. The duty is discharged if at the date of the decision notice, the authority has considered all material considerations, albeit the application was not specifically placed before it for reconsideration.

The court considered whether the planning committee's decision would have been the same in the event that the Leader's decision was communicated to the committee prior to the Decision. In light of the content of the officer's report, stating that the effect of the Development was unlikely to adversely impact the existing transport network, and the fact that the committee minutes referred to the report as reasoning for the Decision, the court considered that the Leader's decision would have no effect on the Decision. Accordingly, the claim failed upon the first question asked of the court.

Case summary prepared by Matt Speed