

Our ref: DT/TOTA
Your ref:
Date: 31 March 2023

Cornwall Council

BY EMAIL

Rebecca Mabelle Rebecca.Mabelle@cornwall.gov.uk

Dear Madam

Proposed claim for judicial review

We are instructed by Totally Truro in relation to an unlawful decision that was taken on or after 10 March 2023, being the date on which the council provided pre-application advice on the proposed works in respect of heritage matters.

This letter is a formal letter before claim in accordance with the pre-action protocol for judicial review under the Civil Procedure Rules.

The claimant

Totally Truro (Company number 06070111)

Defendant's reference details

The Cornwall Council.

Details of the claimant's legal advisers, if any, dealing with the claim

Stephens Scown LLP, Curzon House, Exeter, EX1 1RS

planning@stephens-scown.co.uk

Details of the matter being challenged

The decision of the Cornwall Council to undertake works to the highway along the Newham Road to effect a widening of the footway to provide a shared use facility for pedestrians and cycles and a consequent narrowing of the vehicular carriageway.

The issue(s)

A decision of a public authority may be challenged on the basis that it is irrational, being outside the range of reasonable responses to the circumstances facing that authority. Part of that can be the consideration of irrelevant factors (extraneous circumstances) or a failure to consider relevant factors and a decision that fails to balance relevant considerations, or that is particularly onerous or oppressive, may be irrational or unreasonable (R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence [2003] QB 13987).

In 2016, an application was made by Cornwall Council for funding from the Cornwall & Isles of Scilly LEP for what was termed the "Newham & The Port of Truro Gateway Project". The first line of that application described the proposed project as "unlocking the development potential of Newham & the Port of Truro through improving vehicle access.

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This accurately, in the prospective Claimant's view, reflected the reality of the presence of a large number of businesses at the southern end of the Newham Road involving the use of heavy vehicles including the Biffa transport depot, the storage yard for the Macsalvors crane hire vehicles and Truronian Coaches. These, and others, all require access along the Newham Road as well as vehicles servicing the fuel depot and the waterfront uses.

In 2018, Cornwall Environmental Consultants (CEC) Limited was commissioned to undertake a feasibility study for the Truro Loops Project. At page 63 of that report, it was noted that a desk study and non-motorised user assessment had been undertaken focusing on existing roads, pavements and personal injury data for pedestrians and cyclists. At page 83, it was recorded that "Existing uses along Malpas and Newham Roads mean that there is significant potential for conflicts....Along Newham Road, there is significant use by large lorries as well as cars. There are corners along Newham Road which do not have any or very limited pavements, which in combination with lorry traffic creates an environment that feels less safe to pedestrians and cyclists and creates a conflict of user groups."

The overview of projects and suggested priorities listed the Newham Road works as the lowest priority owing to its complexity in terms of land ownership and highways.

In 2023, a very short consultation was held (between 6 and 27 February 2023) as prompted by an offer of an additional £1.6m in European funding for a project to be delivered no later than June 2023. The stated objective of that project was to enable the design and build of walk and cycle interventions along Newham Road.

The consultation documents consisted of two plans and a covering letter. It is noted that in order to widen the footway along Newham Road it would be necessary to reduce the width of the vehicular carriageway.

Nowhere in the 2023 consultation is there an assessment of the traffic implications of the narrowing of an already constrained vehicle route. Having identified vehicular access as being both currently unsatisfactory and key to unlocking the potential of the commercial activities of the area, it was irrational and unreasonable for the Council to nevertheless proceed with a project to narrow the vehicular highway and make that situation worse.

It seems clear from the statement in the consultation that this project has only come forward because of the unexpected availability of £1.6m in European funding. The very narrow window in which it must be spent also seems to have influenced matters. In short, the Council has either failed to balance the competing consideration of the weakened state of the vehicular route that will be left or it has been irrationally influenced by the extraneous circumstance of a significant 'pot' of money becoming available and needing to be spent within weeks.

Action(s) that the defendant is expected to take

The Council is requested to cease all of the current works and carry out a competent assessment of the impacts of these proposed works before releasing that assessment for consultation and not to recommence works until the outcome of that consultation process has been properly considered.

Details of any information sought

The proposed Claimant requests disclosure of any recent specific traffic assessments or other impact or risk assessments carried out for these works.

If the decision to undertake these works was taken on a date other than 10 March 2023 (the date given on the consultation portal for the publication of the result) the Council is requested to notify that date to the proposed Claimant and any documents associated with the formalities of that decision.



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The address for reply and service of court documents

Documents may be served by email to planning@stephens-scown.co.uk

Proposed reply date

The Council should respond by 1600 on Thursday 6 April.

We look forward to your response.

Yours faithfully,

Duncan Tilney

Partner

For and on behalf of STEPHENS SCOWN LLP

