

**HIGH COURT JUDGE CASTIGATES CORNWALL COUNCIL'S UNREASONABLE DECISIONS LEADING TO THEIR 'UNLAWFUL' APPROVAL TO RE-OPEN DEAN QUARRY ON THE LIZARD PENINSULA. PLANNING CONSENT 'INFECTED WITH ILLEGALITY' WILL BE QUASHED.**

Action group Cornwall Against Dean Superquarry (CADS) are pleased to report the relevant details of The Hon Mr Justice Dove's ruling against Cornwall Council's 8th April 2015 approval of PA14/12081. The Judicial Review Judgement document can be found in the press release section at [www.cads2015.com](http://www.cads2015.com).

Silke Roskilly, represented by Stephens Scown LLP, challenged, via Judicial Review, planning permission granted to Shire Oak Quarries Limited by Cornwall Council to re-open Dean Quarry without an Environmental Impact Assessment (EIA).

Prior to the granting of planning permission to re-open Dean Quarry, CADS had formally challenged the decision made by Cornwall Council planning officers that the development DID NOT need the support of an Environmental Impact Assessment. The action group requested a screening direction from the Secretary of State. Mr Justice Dove notes: 'It was hard on the heels of that screening direction being sought that the defendant granted permission without awaiting the outcome of that process'. (para 41)

Mr Justice Dove concludes: 'I am satisfied that (para 37) it is rendered unlawful by the subsequent issuing of the Secretary of State's positive screening direction'. He states: 'It was a vital ingredient of that challenge (para 41) to know the outcome of the Secretary of State's decision on the screening direction'. 'If (para 39) the planning authority chooses to grant consent and prior to the resolution of a direction requested of the Secretary of State then they run the risk that if that direction is positive they will have granted planning consent which is infected with illegality'.

Mr Justice Dove continues: 'No reasonable planning authority, knowing (para 39) at the time when they formed a resolution to grant planning permission that there was an outstanding request of the Secretary of State to make a determination on a screening direction (for an EIA), would proceed to grant planning permission without knowing the outcome of that screening process'.

Mr Justice Dove is highly critical of Cornwall Council's screening opinion to re-open Dean Quarry in which they concluded there were not likely to be significant environmental effects such as to warrant the preparation of an Environmental Impact Assessment.

Clearly, Cornwall Council's screening decision was not in accord with the opinion of either the Hon Greg Clark, Secretary of State for Communities and Local Government nor Mr Justice Dove, who states: 'The decision of the Secretary of State is conclusive as to whether or not the development is environmental impact assessment development'. (para 39)

No environmental information or statement was requested, prepared or considered prior to the planning decision being made. Dean Quarry is within the Coverack to Porthoustock Site of Special Scientific Interest (SSSI), an Area of Outstanding Natural Beauty (AONB) and extends seawards into the Manacles Marine Conservation Zone (MCZ). The quarry also immediately abuts a Special Area of Conservation (SAC).

Significantly, Mr Justice Dove cites the objections to the initial planning application of three statutory bodies, Cornwall AONB, Historic England and Natural England: 'The Cornwall AONB Partnership would like to take this opportunity (para 9) to express its disappointment on not being consulted by Cornwall Council on the screening opinion and not being invited by the Council to provide advice at pre-application discussion stage . . . '.

Mr Justice Dove (para 17) highlights the significant concerns of Historic England noted by the Secretary of State in his screening direction of 9 June 2015: 'With regard to potential impacts on nearby heritage assets, notably the Trebarveth Settlements Sites Scheduled Monument, the Secretary of State has also had regard to the views of Historic England. They consider that the proposed development is close to the eastern edge of the extensive settlement and field systems remains of the Trebarveth Scheduled Monument. As such, they conclude that there is the potential for harm through the setting and other associated uses such as dust and vibration, particularly through increased transport usage. The Secretary agrees with this conclusion and considers that there is the potential for the harm to be significant'.

At the Judicial Review held at Bristol High Court on Friday 13th November 2015, Mr Pugh-Smith, on behalf of Silke Roskilly, submitted two grounds of challenge to Cornwall Council's approval of the planning application.

Mr Justice Dove summarises the first as follows: 'By Ground 1 he submits that the planning permission which has been issued is unlawful as a result of Regulations 3(4) of the Town and Country Planning (Environmental impact assessment) Regulations 2011 ("The 2011 Regulations"). This is on the basis that the Secretary of State's screening direction is, by virtue of the Regulations, binding and determinative and leads to the conclusion that a planning permission has been granted by the defendant for environmental impact development which has not been accompanied by environmental information in the form of an environmental impact assessment which is required by the 2011 Regulations. Alternatively, he submits that the defendant acted unreasonably in the Wednesbury sense by proceeding to grant permission without waiting to see whether or not the Secretary of State was going to positively screen the proposed development.'

Mr Justice Dove concludes (para 42): 'In light of all of the matters which I have set out above I am satisfied that the defendant's decision should be quashed on the basis of the matter raised under Ground 1. In those circumstances the decision will have to be remade and there is no necessity for me to go on to consider the submissions raised under Ground 2.'

Cornwall Council must now determine the planning application PA14/12081 again, once Shire Oak Quarries Limited submits a full Environmental Impact Assessment.

Silke Roskilly and CADS are delighted with the outcome of this Judicial Review. According to Silke: 'This has been an incredibly testing time for our communities here on the Lizard. We have witnessed Planning Officers at Cornwall Council not following due process and their actions sadly tarnishing the reputation of the entire Council. A decision to defer the granting of planning permission would have been the only sound course to take by any reasonable planning authority in such a situation. It's such a shame that we, the tax payer, will have to foot the bill of an unlawful decision made by a few people in positions of authority and trust'.

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The small Cornish communities and local businesses on the Lizard Peninsula have, for months, been threatened with the re-opening and massive upsizing of Dean Quarry. The developer, Shire Oak Quarries Limited have well documented their plans to build a huge breakwater and jetties at Dean Quarry into the Manacles Marine Conservation Zone (MCZ). These structures are essential to supply the 60-80,000 tonnes of rock every month, throughout the year and beyond the next decade to build a Tidal Lagoon in Swansea Bay. Mark Shorrocks, co-owner of Shire Oak Quarries Limited and CEO of Tidal Lagoon Swansea Bay Limited plans a series of Tidal Lagoons and is currently in negotiation with the UK Government on a strike price for subsidy levels.

CADS will continue to scrutinise any future planning application to re-open Dean Quarry and the procedures of Cornwall Council's planning department.

## **ENDS**

Further information and imagery available from:

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## **EDITORS' NOTES**

The legal definition of Wednesbury unreasonableness, as referred to by Mr Pugh-Smith in ground 1 of Silke Roskilly's legal challenge (para 19): A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223). The test is a different (and stricter) test than merely showing that the decision was unreasonable.