



Costs Decision

Hearing Held on 20 and 22 April 2021

Site visit made on 19 and 21 April 2021

by Cullum J A Parker BA(Hons) MA MRTPI MCI IHBC

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

Decision date: 4 May 2021

Costs application in relation to Appeal Ref: APP/K2420/W/21/3266505 Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney, Nuneaton, CV13 0AJ

- 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 Elgin Energy EsCo Limited for a partial award of costs against Hinckley & Bosworth Borough Council.
 - The Hearing was in connection with an appeal against the refusal of planning permission described as '*Construction of a solar park, to include the installation of solar photovoltaic panels to generate approximately 35 MW of electricity, with DNO and Client substations, inverters, perimeter stock fencing, access tracks and CCTV. Landscaping and other associated works.*'
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Elgin Energy EsCo Limited

2. The application for costs was made in writing at the Hearing on Thursday 22 April 2021. The Local Planning Authority (LPA) is considered to have acted unreasonably by the introduction of two points at the Hearing – the possible presence of a medieval routeway and/or burial pits – without having raised these previously. This unreasonable action meant that the Appellant incurred unnecessary costs through having to prepare a written rebuttal for the Hearing on the second day of sitting.

The response by Hinckley and Bosworth Borough Council

3. The LPA provided a written response to the application. This details that the Council does not consider it acted unreasonably as it had sought additional archaeological investigation consistently throughout the planning process. This reason for refusal was not removed by the LPA. Moreover the claim does not relate to time preparing for the appeal, attending a hearing or inquiry, the use of consultant to provide detailed technical advice or witnesses. The case given at the Hearing has not caused additional costs in any of these areas.

Reasons

4. The application for costs was made and responded to on the basis of the national *Planning Practice Guidance* (the Guidance). The Guidance advises costs may only be awarded against a party who has behaved unreasonably and

- this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. In this case, the LPA raised specific observations at the Hearing itself as to what the geophysical survey might be interpreted to mean. In particular, that there might be evidence within the survey showing some form of routeway or road on an arc across the northern part of the site. Regardless of the planning considerations, which are dealt with in the Appeal Decision, this was specific information that does not appear to have been raised previously.
 6. The LPA and its advisers on archaeological matters (LCC) not only had sight of the geophysical survey work in July 2020, but had also commented on it. This is evidenced within the email dated 6 July 2020 @18:50 where in the (unnumbered) fourth paragraph it states: '*Having reviewed the submitted report on geophysical survey...*'.
 7. Moreover, LCC confirmed orally at the Hearing that the proposition that the geophysical survey might be construed as showing some form of routeway came to mind some weeks before the Hearing took place. It was suggested that this was because the metal detecting survey reports provided a further re-evaluation of the archaeological evidence submitted.
 8. Nevertheless, this did not prevent LCC from letting the LPA and/or the Appellant know of its re-evaluation of the evidence submitted. At the Hearing I was not directed to any specific document where the theory that the geophysical survey information was being interpreted that there was possible evidence of a routeway had previously been suggested.
 9. It was unreasonable for this to have been brought up no earlier than the afternoon of the Hearing. There was ample opportunity; both in July 2020 and in January 2021, for the LPA's archaeological advisers to have brought such matters to the attention of the LPA, and subsequently to the Applicant. Whilst I note the LPA's point that it has consistently sought further archaeological field evaluation work in the form of trial trenching, that does not negate the ability to have alerted the Applicant to the findings of their archaeological advisers on this matter earlier or for those advisers to have alerted the LPA.
 10. I find that the LPA acted unreasonably by not making these points earlier in the process; either in July 2020, more recently in January 2021 when the appeal was submitted, or indeed whilst preparing for the Hearing itself. Indeed, it could have been raised as part of the Statement of Common Ground (SOCG) process; with it being requested by myself on 15 March and an agreed version submitted by 7 April 2021. Put another way, there was plenty of opportunity for the observations of the LPAs archaeological advisers to have been raised well before the event took place.
 11. The failure to do so meant that the Applicant's heritage witness was placed in a position where they had to address the points made on the afternoon of the 20 April and follow this up with a written rebuttal. This was an unreasonable position for them to have been put in given that the matter could and should have been raised some time before the event.
 12. Moreover, I find that unnecessary and wasted expense resulted as a consequence of this. Whilst the Applicant was not requested to provide a

written rebuttal, they felt that it was necessary in order to address an important point raised by the LPA's advisers which had not been made before. The time involved in specialist advisers preparing such information for the Hearing could have been avoided or reduced considerably had this matter been raised in a timelier manner.

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified. For the avoidance of doubt, the partial award of costs relates solely to the time involved in the preparation, submission and presentation of both written and oral evidence to rebut the LPA's oral evidence given on 20 April and 22 April 2021 relating to interpretations of the geophysical surveys and possible features of archaeological interest.
14. Timewise, this amounted to approximately three hours on 20 April (15:05 to 17:50) and approximately an hour on 22 April 2021 (10:00 to 11:00) in relation to the Hearing itself: although there would have also been further wasted expense relating to time outside of the formal Hearing time as well in addressing the last-minute observations.

Costs Order

15. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Hinckley & Bosworth Borough Council shall pay to Elgin Energy EsCo Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation, submission and presentation of the *Hangmans Hall Rebuttal Note on Heritage* dated April 2021, and the presentation and rebuttal of oral evidence on both days of the Hearing sitting; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Hinckley & Bosworth Borough 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.

Cullum J A Parker

INSPECTOR