



Costs Decision

Site visit made on 16 December 2021

by L Gibbons BA (Hons) MRTPI

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

Decision date: 5 November 2021

Costs application in relation to Appeal Ref: APP/X1545/W/20/3259477 Land to the east of Bradwell Power Station, Bradwell-on-Sea, Essex CM0 7HP

- 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 Bradwell Power Generation Company for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission to carry out ground investigations, load test and associated works in connection with a proposed new Nuclear Power Station at Bradwell-on-Sea together with the creation of two site compound areas and associated parking areas.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG states that examples of unreasonable behaviour include preventing or delaying development which should be clearly permitted, failure to produce evidence to substantiate each reason for refusal on appeal, vague, generalised or inaccurate assertions about a proposal's impact, refusing planning permission on a planning ground capable of being dealt with by conditions and not determining similar cases in a consistent manner.
4. In respect of reason for refusal one relating to the historic environment, I have found that the proposed scheme would not cause harm to the non-designated heritage assets and archaeological remains and deposits. The Council provided details of the non-designated heritage assets from the List of Local Heritage Assets in Bradwell-on-Sea (June 2020) and further information relating to the use of the site as a World War II airfield. This was sufficient to outline the background to the locally listed structures and the important role that Bradwell played in World War II.
5. However, in respect of the runway and perimeter track the Council refers to potential loss of the features but provides no indication of the scale of the loss or effects or why any harm would be considerable. No reference is made to the numbers of proposed intrusive works or how much of the runway would be lost. This amounts to a generalised assertion as to the scheme's effects.

6. In terms of archaeology, as set out in my appeal decision, there is no specific requirement in Policy D3 of the Maldon District Local Development Plan (LDP) for in-situ preservation of remains. Although the Council refer to importance of the deposits and remains, there is no evidence in relation to the significance that would justify this element of the reason for refusal.
6. In relation to refusing the application which had agreed planning conditions, the minutes from the Committees where the application was discussed do refer to conditions. However, there is no explanation that would indicate why conditions were not acceptable in the matter of the first reason for refusal. The Council have not specified why the details of the Written Scheme of Investigation would not be sufficient.
7. The Council do not refer to the temporary nature of the scheme and restoration and other mitigation measures, other than a concern that the scheme could be abandoned without mitigation. There is no evidence provided by the Council to support this assertion or that the scheme was not necessary, and indeed they do not suggest that the scheme should not go ahead in principle. The Council have acted unreasonably by refusing planning permission on a planning ground capable of being dealt with by conditions.
8. I note that the Heritage Statement and the Written Scheme of Investigation was produced as part of the planning application process. Nevertheless, extra work was involved in responding to the Council's reason for refusal within the applicant's Statement of Case in sufficient detail such that unnecessary expense has been demonstrated.
9. In respect of the second reason for refusal relating to ecology and protected species, the Council refer to inadequate information to demonstrate that the appeal proposal would not have a negative impact on protected species. The additional comments provided by the Council in letter from D F Clark Bionmique (November 2020) does refer to particular concerns in respect of the golden plover although I accept no reference is made to the phasing proposed or other mitigation measures for the relevant species.
10. Nevertheless, the Council have provided further detail in respect of their concerns for other species and explained why they consider measures including conditions may not be sufficient in relation to other protected species. I consider they have provided sufficient justification for their concerns and have not behaved unreasonably in this matter.
11. In terms of whether the Council failed to determine the case in a similar manner to a comparable application which was granted consent in 2017 (17/01128/FUL). I note that the previous ground investigation works undertaken were fewer in number and covered a much smaller area. There was no Load Test Area of the size proposed. To my mind the appeal before me represents a different scale of proposal with potentially different effects and unreasonable behaviour has not been demonstrated in this respect.
12. In respect of reason for refusal one I 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.

Costs Order

13. 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 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Bradwell Power Generation Company the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's first reason for refusal.
14. The applicant is now invited to submit to Maldon District 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 Cost Office is enclosed.

L Gibbons

INSPECTOR