



Costs Decision

Site visit made on 22 January 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3319392 Land off Pond Lane, Minety

- 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 PD688IRO Ltd for a full award of costs against Wiltshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a battery storage facility. The use of the site would change from agricultural to energy infrastructure.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this instance, the applicant refers to the Council's alleged unreasonable approach in failing to determine the planning application within the prescribed period. The applicant states that this behaviour necessitated the submission of an appeal.
3. In this case the planning application was submitted on 23 December 2021 and the application was registered as a valid application on 26 January 2022 with a target determination date of 27 April 2022. Extensions of time were agreed with the applicant, the last of which expired on 28 February 2023. An appeal against non-determination of the planning application was submitted on 28 March 2023, some 14 months after the application was made valid.
4. Prior to the submission of the planning application the applicant had submitted an Environmental Impact Assessment (EIA) screening opinion. The Council's screening opinion stated that the proposal was not EIA development, though the screening opinion stated that it may need to change if it became evident that the proposal was an integral part of a more substantial development.
5. During the course of the planning application, the Council received further applications for battery storage facilities in the local area. Additionally, a request for pre-application advice to extend the Minety Substation was received. These proposals, in addition to the consented applications for battery storage schemes, led the Council to the view that the appeal proposal may be part of a single larger project being overseen by the National Grid, which may have cumulative effects which they considered should be the subject of consideration as part of an EIA screening opinion.

6. The Council states that, on 31 August 2022, it was agreed that legal advice should be sought on whether EIA development should cover all sites cumulatively. In these particular circumstances I do not consider that it was unreasonable for the Council to seek this legal advice. Additionally, I accept that, as a number of these other applications were received following the receipt of the proposal, there may have been a delay in the Council's decision that legal advice should be sought.
7. Nonetheless, there was a significant, 6 month, delay between the date it was agreed that legal advice should be sought and the Council's confirmation of their intention to re-screen the proposal and I have not been provided with any evidence that the screening opinion was issued prior to the submission of the appeal against non-determination on 28 March 2023. I accept that the requests for legal advice and for further information from the National Grid would result in delays in the determination of the application. Nonetheless, the reasons for the significant length of the delay are not satisfactorily explained.
8. I acknowledge that it was necessary for the Council to be satisfied that it had had full regard to all material considerations in making its decision. In this case that involved consideration of whether the application was EIA development, for which it was appropriate to seek legal advice. However, whilst I have sympathy with the Council and the staffing shortages it was facing, the delays in seeking this advice and re-screening the application for EIA development ultimately led to the submission of the appeal against non-determination. Moreover, as the Council has now confirmed that it has no objection to the proposal on the basis that it now accepts that the proposal is not EIA development, the appeal could have been wholly avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated.

Costs Order

9. 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 the Wiltshire Council shall pay to PD688IRO Ltd the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Wiltshire 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.

N Robinson

INSPECTOR