
Costs Decision

Hearing held on 27 November 2024

Site visit made on 10 January 2025

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2025

Costs applications in relation to Appeal Ref: APP/C4615/W/24/3345744

- The two applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- Application A - The application is made by Net Zero Eleven Limited for a full award of costs against Dudley Metropolitan Borough Council.
- Application B – The application is made by Dudley Metropolitan Borough Council for a partial award of costs against Net Zero Eleven Limited
- The appeal was against the refusal of planning permission for a battery energy storage system (BESS) together with associated infrastructure, site levelling works, access onto Illey Lane and ancillary development thereto.

Land at Illeybrook Farm, Illey Lane, Halesowen, B62 0HE

Decisions

1. **Application A** – The application for an award of costs is partially allowed.
2. **Application B** – The application for a partial award of costs is refused.

Reasons

3. 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. And the main points are set out below.
4. The Planning Practice Guidance (PPG) states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, the PPG includes the failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis as possible examples of unreasonable behaviour.

Application A

5. The application is made on substantive grounds. The applicant suggests that the Council acted unreasonably by refusing the original application which they consider to be policy compliant without adequate reasoning and justification for their reasons for refusal. The applicant maintains that a number of aspects of the Council's case

were pursued in an unreasonable way in so far as its case, at both the application and appeal stages, failed to grapple with the harms identified making glib unsubstantiated general statements in relation to the effects upon the Green Belt and landscape rather than providing robust evidence of its own.

The Green Belt evidence

6. It is argued that the Council relied heavily on broader assessments, which were at best of limited utility given the need to specifically address the impacts of this development at this specific location. Although it is likely that these strategic studies had probably residential and industrial developments in mind rather than energy developments, these studies were helpful in identifying the more sensitive parts of the Green Belt as well as highlighting the key qualities of certain parts of the Green Belt, including how the immediate area contributed towards the five Green Belt purposes. The Council's principal arguments related to the effects on openness. Although somewhat lacking in rigour, the Council identified the locations where views of the development would be possible. I do not consider that a GLVIA was essential in order to substantiate Green Belt harm. Neither do I agree that the Council failed to acknowledge the landscape mitigation that had been proposed although this analysis was scant. It was always going to be down to a detailed site visit to ascertain the level of harm to the effects on openness of the Green Belt and this was carried out.

The landscape evidence

7. There was a degree of uncertainty right up to the start of the hearing whether the Council's focus would relate to landscape impact or the effects on the heritage value of the site or both. When this was challenged by the applicant at the beginning of the event, it was clear that the Council was intending to focus only on the effects to the non-designated heritage asset (NDHA) and would be offering no evidence on landscape matters despite the agreed Statement of Common Ground that explicitly referenced that issue. The reason for refusal No.2 inferred that the Council believed that there would be both landscape harm and harm to the significance of the NDHA. This in turn triggered the applicant to undertake detailed work on landscape impact as well as heritage. A full landscape impact assessment would have been unnecessary had the Council focussed its reason for refusal entirely on heritage impact. It is particularly pertinent that the Council's second reason for refusal referred to "landscape context" and cited landscape planning policies in support of its reasoning. It is unsurprising therefore that the applicant commissioned unnecessary landscape impact assessments in order to defend its position.
8. Turning to heritage, I am satisfied that the Council had carefully identified the significance of the NDHA and that it assessed the appeal proposal against those characteristics of significance. The Council was clear that it agreed with the applicant that the relative size of the development in the context of the wider NDHA was small but that it was the level of impact on the NDHA that was of concern as it felt the ridge and furrow was an important feature of the asset's significance. Given that there would be a total removal of part of the ridge and furrow feature on site, it was a matter of judgement as to whether this loss would have an unacceptable impact on the significance of the wider NDHA. I agreed with the applicant that the ridge and furrow feature was not particularly important, given that there were numerous other better examples of these features elsewhere within the

wider NDHA, including on part of the site that would not be developed. That said the Council had every right to adopt its stance given the feature's total removal. I am satisfied that both parties carried out a heritage balance with differing conclusions.

The planning balance

9. I accept that the national energy imperative and the Council's own climate change emergency and the key role that battery storage will play in facilitating the roll out of renewable energy opportunities represents very special circumstances should be accorded substantial weight. I do not accept that the Council failed to carry out a balancing exercise despite not articulating this balance by applying a numeration weighting exercise. I do not consider this to be fatal and both the written material and the oral submissions at the hearing led to an understanding of the Council's balancing position.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted and abortive expense has occurred but that this relates to the landscape element of the additional work only. A partial award of costs is therefore warranted.

Application B

11. The applicant has sought a partial award of costs on what I would say are procedural rather than substantive grounds. The applicant is critical of the extraordinary volume of documents presented for the appeal. The applicant complains about the repetitive nature of the case as presented and alleges that the respondent was afforded the opportunity to present rebuttal evidence and provide commentary on the recent revised National Planning Policy Framework, which would have been best left to oral submissions at the hearing itself. The voluminous material submitted by the appellant resulted in the Council having to review and prepare responses for the hearing which involved the need for additional resources to be assigned by the Council.
12. Although the volume of documents was akin to that normally only seen at public inquiries, the applicants did not slavishly present those documents to the hearing but rather summarised their case orally by answering a series of questions posed by me and responding to the Council's case as the hearing unravelled. The weighty tome that comprised the applicant's evidence was only referred to from time to time during the event and there was nothing unusual in this. There was sufficient time for the applicant to present updated draft national policy analysis at the hearing event. It is irrational for the Council to suggest that the draft Framework placed it in a disadvantaged position. It had the opportunity to comment freely on the draft document both prior to and during the event.
13. The application has no foundation, and I cannot identify any unreasonable behaviour whatsoever. The respondent is critical of the alleged rather spurious nature of the application. But overall, this is a lesson for the applicant to better prepare for events of this nature and to take care in constructing reasons for refusal. It is also reminded of PINS guidance concerning Statements of Common Ground, which have great value in guiding areas of disagreement and must be carefully drafted to avoid wasted time and expense at hearings and public inquiries.

Conclusion

Application A

14. For the reasons set out above I conclude that the Council exhibited unreasonable behaviour in some respects in terms of the PPG. In particular, I find that the drafting of Reason No.2 did not reflect the Council's position and that wasted and unnecessary expense has been incurred by the applicant in the appeal process in relation to addressing matters of landscape only, and no other matters. I therefore conclude that a partial award of costs to cover the expense incurred by the applicant in contesting part of the Council's reason for refusal relating to landscape impact is justified.

Application B

15. For the reasons set out above, I consider that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted with regards to Application B.

Costs Order in respect of Application A

16. 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 Dudley Metropolitan Borough Council shall pay to Net Zero Eleven Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to landscape impact, such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant, Net Zero Eleven Limited, is now invited to submit to Dudley Metropolitan 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.

Gareth W Thomas

INSPECTOR