



Costs Decision

Inquiry Held on 5 November 2024

Site visit made on 20 November 2024

by SRG Baird BA (Hons) MRTPI

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

Decision date: 17th February 2025

Costs application in relation to Appeal Ref: APP/V4630/W/24/3347424 Land off Chapel Lane, Great Barr, Walsall

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Walsall Metropolitan Borough Council for a partial award of costs against Anesco Limited.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the construction of a temporary 49.35MW battery energy storage facility, with security fencing, access and associated works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance 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.
3. Section 16 of the Procedural Guide: Planning Appeals - England¹ provides guidance on amendments to a scheme once an appeal has been made. The general principal is, that the appeal process should not be used to evolve a scheme and there are no provisions within the Procedure Rules for amendments to be submitted. That said, paragraph 16.2 indicates that notwithstanding the above principle, the Planning Inspectorate (the Inspector) may, exceptionally, accept the amendments. Subsequent paragraphs provide guidance on the tests, substantive and procedural, to be applied when considering whether an exception can be made. Thus, requests to make amendments should be assessed on its own merits and the circumstances surrounding the case. This is particularly so in the case of appeals against non-determination.
4. The applicant's appeal was submitted in July 2024. The Council's Statement of Case (SoC) was submitted on the 22 August 2024, identifying putative reasons for refusal (RfR). This was the first time the applicant became fully aware of the planning officer's concerns. The putative RfRs were ratified by the Planning Committee on the 5 September 2024. In these circumstances, it was reasonable for the applicant to assess those concerns and determine whether any or all of them could be resolved by either amending submitted plans or

¹ The Planning Inspectorate.

- providing further technical information. To this end by the 25 September 2024, the applicant provided a suite of amended plans requesting that the application be determined on those plans. A course of action which I subsequently agreed to.
5. The Council highlight 2 particular areas where it considers the applicant acted unreasonably. These were the amended highways plan and ecology concerns.
 6. The appeal application was the resubmission of a scheme that did not generate a highways objection. On the latest application, the Highway Authority (HA) had no objection in principle. Rather, it sought clarification of the visibility splays and issued a holding objection. On the 25 March 2024, when the Council still had jurisdiction over the application, a revised plan was submitted. This plan moved the access some 30m to the east to ensure that the necessary visibility splays could be shown. The applicant emailed the Council on the 3 April and again on the 7 June 2024 querying whether the revised plan had been sent to the HA for comment. There is no indication of a response.
 7. It was not until the 2 August 2024, that the revised plan was sent to the HA who, it appears, responded promptly withdrawing the holding objection. The Council's SoC noted that withdrawal, but indicated that the Council, as local planning authority, did not accept the amended drawing or formally consult on it. That said, the SoC indicated that, subject to the amended drawing being accepted, the Council would withdraw RfR 4. It was confirmed on the 7 October 2024 that that dealing with the application on the basis of the amended plans would not result in the proposal being fundamentally changed or result in procedural unfairness to any party.
 8. There is no explanation why, the Council did not forward the March 2024 amended plan to the HA. Had the Council responded promptly to the submission of the amended plan, any residual concerns regarding access would have been resolved in the 3 months before the appeal was lodged and there would have been no reason to include a highways reason for refusal or instruct a highways witness to prepare evidence. The applicant did not act unreasonably.
 9. A key part of the Council's case on ecology, was a concern around drainage/fire safety, given that the site adjoined a Site of Importance for Nature Conservation (SINC) through which a watercourse containing the protected, White-Clawed Crayfish ran. Following initial objections, November 2023, by July 2024, the position of the Local Lead Flood Authority (LLFA) was that subject to the imposition of conditions, it had no objection.
 10. Noting the LLFA's lack of objection, the SoC identified a putative RfR relating to the failure to assess risks to groundwater and the water environment and a failure to ensure that robust mitigation was in place for the containment of contaminated water. This position was confirmed by the Planning Committee on the 5 September 2024. Whilst not intending to call a drainage witness this assessment formed a large element of the Council's objection on ecology.
 11. Given the previously stated position of the LLFA, it appears that the first time the applicant became aware of an ecological concern relating to drainage/fire safety was with the submission of the Council's SoC. Given that this was a fundamental technical concern, it was not unreasonable for the applicant to seek to address this. Following acceptance of the amended plans, which

- included the inclusion of a drainage pond, the LLFA, on the 10 October 2024, reverted to the November 2023 response i.e. that insufficient detail had been provided to show that an acceptable drainage strategy had been proposed.
12. The applicant's drainage and ecological evidence was submitted on the 15 October 2024 with rebuttals on the 24 October 2024, which contained further detail. The LLFA withdrew its objection to the scheme on the 25 October. The Statement of Common Ground, agreed the day before the inquiry opened, confirmed that drainage matters could be dealt with by a suitable condition, that the Fire Authority, who had previously not objected had been reconsulted and a response was awaited. That said the SoCG confirmed that a Fire Strategy could be controlled by condition. The Council withdrew the objection on drainage and ecological grounds the day before the inquiry opened. Subsequently the Fire Authority confirmed its lack of objection.
 13. The above, does not suggest that the applicant lodged an appeal on an inadequately prepared scheme. Rather, the appeal was lodged based on the information available at the time i.e. no drainage objection. Subsequent information provided by the applicant and on which the Council responded was based on the case the Council intended to pursue. Indeed, the further information provided on drainage, ecology and fire safety reduced the of the inquiry. Whilst the applicant produced a levels cross-section with the suite of amended plans, this was not something that the Council appeared to have sought during the time when it had jurisdiction over the application. Moreover, whilst it proved useful in the consideration of the proposal, it did not need to have been produced. Rather it is a matter that could have been dealt with by condition. The applicant did not act unreasonably.
 14. During the inquiry, it transpired that some of the amended plans contained conflicting details. However, although generating minor annoyance, this did not prejudice the Council in the preparation or presentation of its evidence.
 15. The Council include a Table referring to "New/Amended plans/Information submitted during the Inquiry." This table lists several documents, the nature of which are dealt with above. The Table also refers to several documents on matters that were already in evidence and on which I sought clarification and to address matters raised by third parties that the Council did not take issue e.g. battery safety and vibration risks from HGV movements. Responding to an Inspector's request for clarification cannot be said to be unreasonable behaviour. One new document was the West Midlands Region Agricultural Land Classification. The applicant introduced this plan to provided context during the assessment of the RfR on the use of agricultural land. This is a published document, which the Council should have been aware of and would not have been a surprise. On these matters the applicant did not act unreasonably.

Conclusion

16. Taking all of the above into account, unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

George Baird

Inspector