



Costs Decision

Site visit made on 11 June 2025

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Costs application in relation to Appeal Ref: APP/E2340/W/24/3356178

Land to the north of Spurn Clough Cottage, Greenhead Lane, Reedley, BURNLEY BB12 9DU

- 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 Moor Isles Farm Energy Storage Limited for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a battery storage facility with associated infrastructure.
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Decision

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

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.
3. The costs application alleges that:
 - In its second Reason for Refusal the Council found that the proposal would conflict with Local Plan policies ENV1 and ENV2 with respect to visual amenity but these policies do not refer to visual amenity within their text.
 - The Council introduced criticism of the site search exercise at a late stage in the appeal.

Second Reason for refusal

4. Policy ENV1 is concerned with the protection and enhancement of the natural environment and identifies that, with respect to landscapes, that proposals should respond to the areas landscape character. In seeking quality in design and conservation, policy ENV2 includes a range of design considerations, including its requirements of how development could achieve good design. It is noted that neither policy refers to visual amenity. However, in my main decision I found that the proposal would result in moderate harm to landscape character and adverse visual effects. As such, I subsequently found that the scheme resulted in conflict with the listed policies which respectively seek to safeguard or enhance the landscape character of an area and for development to make a positive contribution to the local character and identity of an area.

5. Accordingly, whilst visual amenity is not a specific listed objective within either policy, these policies include requirements that are sufficiently related to matters of visual amenity to demonstrate they are relevant policies in the consideration of the visual effects of this proposal.

The site search exercise

6. The application was supported by an alternative Site Search Report. The officer report (May 2024) explains that it was content that the appellants had demonstrated that there were no alternative sites feasibly available to serve this part of the network. Furthermore, the Council recognises within its Statement of Case that the absence of alternative sites is regarded as a benefit of the proposal at paragraph 5.15.
7. Nonetheless, the Council has asserted elsewhere in its Statement of Case that the site search is incomplete as a site at Old Hey Farm has since emerged as a potential battery energy storage site. However, this scheme was refused planning permission.
8. The Council has presented a confused position with respect to whether or not it found the site search to have been undertaken in a robust manner. However, despite the confused position, it is clear that as the Old Hey Farm scheme was refused it clearly does not represent an available alternative site for the appellants.
9. As such, the existence of a scheme at Old Hey Farm has had no material bearing on the matters in hand as whilst it may meet technical parameters for a battery storage use, it is not available as it has been refused planning permission. Accordingly, questions raised as to the robust nature of the alternative site search are moot as the Council has not demonstrated that an alternative site is available for the proposed use. Therefore, whilst I find it was reasonable for the Council to update the site search information, such information would need to be useful to justify the purpose of its update.
10. Nonetheless, as reference to the Old Hey Farm site was a small part of the Council's evidence and its consideration has had no material impact on any party's case, this does not manifest as unreasonable behaviour as identified by the PPG. Furthermore, I am also unconvinced that this singular matter resulted in wasted expense for the appellant.

Conclusion

11. Accordingly, whilst I have concluded that the Council's concerns were not sufficient to dismiss the appeal, I do not consider that its decision was so fundamentally flawed or without foundation as to amount to unreasonable behaviour. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

B Plenty

INSPECTOR