



Costs Decision

Site visit made on 17 June 2025

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2025

Costs application in relation to Appeal Ref: APP/F1040/W/25/3362049

Land South of Walton Road, Drakelow, DE15 9UA

- 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 Harmony DL Limited for a partial award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for Battery Energy Storage System with associated access, landscaping and ancillary works.
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Decision

1. The application for the 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.
3. The appellant considers that the Council has sought to raise new issues beyond which are set out in the reason for refusal in defending the appeal which is procedurally unreasonable.
4. The Council considered the planning application at its meeting on 22 November 2024. Although it was presented with a recommendation to grant planning permission, at the meeting the planning application was refused. The minutes of the meeting show that while a number of matters were discussed the application was refused due to the proposal resulting in a significant loss of Best and Most Versatile Agricultural land which was not outweighed by the benefits of the scheme, and this is reflected in the single reason for refusal on the Council's decision notice issued on 22 November 2024.
5. In its statement of case the Council also raise matters relating to the impact on landscape character and quality, biodiversity net gain and woodland planting, safety concerns, noise and the decommissioning and soil reporting as well as the loss of BMVAL.
6. As far as I am aware there has been no change in circumstances since the planning application was determined. Irrespective, it is my duty to consider all matters when determining an appeal and not just those raised in the reason for refusal. Furthermore, these are also matters raised by interested parties in response to the consultation exercise on both the planning application and the

- appeal. Therefore even if the Council had not raised the additional matters, I would have had to address them in my decision in any case.
7. Therefore, the fact that they have been raised by the Council is not unreasonable, especially as it has not unacceptably prolonged proceedings and the appellant has had the opportunity to respond to the concerns raised in their final comments. I appreciate that this time period was only two weeks, rather than the initial 6 month period in which to prepare an appeal statement, but my understanding is that these issues were not new, having been raised at the application stage. The appellant already had the benefit of a Landscape and Visual Impact Assessment, Noise Survey, Fire Water Management Plan and an Independent Report on the proposed fire measures prepared by HFR Solutions which had supported the planning application. The timescale to prepare a response was therefore reasonable and there had been no request for an extension.
 8. However, the Council also has to produce evidence to substantiate its comments and avoid vague, generalised or inaccurate assertions about a proposal's impact which is unsupported by any objective analysis. The issues raised by the Council in relation to noise, drainage and fire safety have not considered that no objections were raised by the Lead Local Flood Authority, the Environmental Health Officer or Derbyshire Fire and Rescue. No substantive evidence has been put forward to counter the expert opinion in the appellant's reports I outline above regarding noise and safety.
 9. The effect on the character and appearance of the area is a subjective matter and I have drawn my own conclusions on this matter having reference to both the Council and the Applicant's evidence. I am satisfied that the evidence put forward by the Council was sufficient to justify its case, even though it was not raised as a matter for refusal in the decisions notice. Indeed, I have found conflict with the development plan on this matter.
 10. The decommissioning and soil reporting can be simply dealt with by the imposition of a condition and the evidence demonstrates that this was not considered by the Council as an option. The matters raised regarding biodiversity are simply related to the allocation of weight and do not require lengthy rebuttal by the appellant. Therefore, there has been no wasted expense by the appellant on these matters.
 11. While the Council includes concerns raised by the Environment Agency regarding flooding in the local area, it is not clear in what context this advice has been sought or given.
 12. Consequently, I consider that the Council has been unreasonable in including these matters without producing evidence to support its concerns. This has caused the appellant unnecessary expense in seeking the expert views to counter the opinions of the Council. I therefore 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 in relation to matters raised regarding safety concerns, noise and the decommissioning and soil reporting.

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 1990 as amended, and all

other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Harmony DL Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending issues raised regarding safety concerns, noise and the decommissioning and soil reporting; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to South Derbyshire 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

Zoe Raygen

INSPECTOR