



Costs Decision

Inquiry opened on 23 April 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 4th August 2025

Costs application in relation to Appeal Ref: APP/U1050/W/24/3354670

Land adjacent to Willshees Depot 3, Keith Willshee Way, Swadlincote DE11 9EN

- 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 R&P Clean Power Ltd for a full or failing that a partial award of costs against Derbyshire County Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for the construction and operation of the Swadlincote Resource Recovery Park (SRRP) comprising an Energy Recovery Facility (ERF) and Aggregate Recovery Facility (ARF) together with ancillary infrastructure including grid connection cable and works, private electrical wire provision, substation, CHP off-take provision, internal vehicle circulation and yard areas, weighbridges, car parking, new access road, temporary construction compound and laydown areas, security fencing and gates, drainage, landscaping and off-site habitat compensation and biodiversity net gain.
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Decision

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

The submissions for the appellant

2. The appellant's application for costs was made in writing after the Inquiry closed, and final comments on the Council's response were made in the same way.

The response by the Council

3. The Council's response to the appellant's application for costs were made in writing after the Inquiry closed.

Reasons

4. The Planning Practice Guidance (PPG) tells us that parties in appeals and other planning proceedings normally meet their own expenses but where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. Such unreasonable behaviour might be procedural, relating to the appeal process, or it might be substantive, relating to the issues arising from the merits of the case presented. The PPG gives examples of the type of behaviour that might give rise to a substantive award of costs against a local planning authority. These 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; a failure to produce evidence to substantiate each reason for refusal on appeal; and making vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. As I have set out in the parallel decision on the appeal, the Council refused planning permission for the proposal at issue for a single reason, maintaining that the scale and height of the development would result in significant harm to the visual amenity and landscape character of the area, and that there would be no material considerations that would outweigh the harm. This decision was made by Members of the Council despite a recommendation from Officers that planning permission be granted. In the lead up to the Inquiry, the Council made it clear that, notwithstanding the reason for refusal that did not bring need into question, it would be contesting the need for the proposals.
6. There are three prongs to the application for costs made on behalf of the appellant. The first relates to the evidence provided by the Council to back up its assertion that there is no need for the proposal.
7. At the outset, I would observe that having accepted the Officers' assessment in terms of need when the decision was made to refuse planning permission solely on landscape grounds, it is incumbent on the Council to justify their new position in relation to need with clear and convincing evidence. That is especially so when Officers found that there was a significant need for the treatment of residual waste that far outstripped the capacity of the proposal, only for the Council to adopt the position at the Inquiry that there is no needs-based justification for the proposal.
8. Firstly, while the Council did produce evidence designed to justify this change of tack, I found it unconvincing for the reasons set out in my parallel decision on the appeal. In particular, I consider it far too fine-grained in its analysis, when as the Secretary of State has said, there is great uncertainty around assessing waste availability and consequently EfW treatment capacity. Moreover, the Planning Practice warns against what it terms 'unnecessary and spurious precision'. The evidence provided did not serve to substantiate the position adopted. That constitutes unreasonable behaviour.
9. On top of that, the fact that the Defra DCN and DMS (issued in December 2024) showed that the East Midlands region (as well as the East of England) had a significant capacity gap ought to have given the Council pause for thought. However, the Council ploughed on and sought to undermine the findings of the DCN by relying on consented rather than operational facilities, at odds with the findings of the Secretary of State decision on the North Lincolnshire Green Energy Park DCO, and by questioning the derivation of some of the figures relied upon in the overall analysis. An invitation to ignore or question clearly articulated Government policy, and the approach of the Secretary of State to decision-making, is very plainly unreasonable.
10. Further, in assessing the capacity gap in more local terms, the Council in my view placed an undue reliance on the capabilities of the facilities at Sinfin Lane and Drakelow to provide capacity and further sought to suggest that cement kilns could contribute, when it is clear that they rely on a more refined fuel source, for which they have existing supply contracts. In that way, the Council's evidence sought to paint far too rosy a picture of the capacity gap when in fact, the situation, as I have found in my appeal decision, is far less favourable. One can allow for a certain degree of flexibility in matters such as this, but in my view, the position adopted by the Council in relation to the capacity gap was unrealistically optimistic.

11. Bringing those points together, I am of the view that the 'need' case presented by the Council to the Inquiry, at odds with the findings of Council Officers, was doomed to fail. The evidence presented in no way justified the change of tack. That is palpably unreasonable, and the appellant has been put to the expense of dealing with 'need' at the Inquiry, when it should never have been an issue between the parties. On that basis, an award of costs is justified in relation to this matter.
12. The second prong is aimed at the manner in which the Council approached the benefits of the proposal, and as a result, their conclusion that those harmful impacts did not outweigh the benefits of the proposals.
13. The difficulty with the Council's approach to this balancing exercise is the acceptance that the benefits of the proposals are sufficient to outweigh the harm that would be caused to the setting and thereby the significance of Castle Gresley, the remains of a Norman Motte and Bailey Castle, and a Scheduled Monument. Scheduled Monuments are regarded in paragraph 213 of the National Planning Policy Framework (the Framework) as designated heritage assets of the highest order of significance. Paragraph 212 of the Framework tells us that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
14. If the benefits of the proposal are sufficient to outweigh that harm, harm that must attract great weight, and magnified further by the asset being of the highest significance, then the Council must have assessed them as being very significant indeed. That is very difficult to square with the Council's assertion that there is no need, in waste terms, for the proposal. If there is no need for the proposals, then surely the clear and convincing justification required by paragraph 213 of the Framework would not be present? Moreover, if the benefits of the proposal are so great that they can outweigh the harm to the setting and thereby the significance of a Scheduled Monument, an asset of the highest significance, then it is difficult to understand how the impact of the proposal in terms of landscape character and visual effects alone, could tip the scales against the proposals.
15. All that said, while this situation suggests some confusion on the Council's part, that might be perceived as unreasonable behaviour, I am not persuaded that it has led to the appellant incurring unnecessary or wasted expense in the appeals process. The impact of the proposal on the Scheduled Monument had to be addressed in the evidence in any event, but as things turned out, evidence was not called on the matter, so the Inquiry was not unnecessarily extended to deal with it.
16. The final prong of the appellant's application for costs relates to the landscape case advanced by the Council. The suggestion, in simple terms, is that while the assessment of impact is not disputed, the evidence presented on behalf of the Council mischaracterised the site and its context, which led to unreliable conclusions. It is fair to say that initially at least, the Council's evidence did make something of the 'tranquil' nature of the area. However, this suggestion was withdrawn after the submissions made by local residents about the nature of the existing operation at the Willshees Depot. That was a correct response to the evidence presented by others, in my view.

17. In terms of other aspects of the case presented, notably the focus on the influence of the A444 as the perceived boundary to Swadlincote, I have in my parallel appeal decision accepted that there is something in the suggestion that the proposal would give the impression of the settlement spreading westwards as a result of the proposal.
18. It is also fair to point out in this regard that there is very little between the parties in terms of the assessment of landscape and visual impacts. While the routes to assessment taken by the parties might have differed, the conclusions were much the same. It is the extent of those impacts, largely agreed, and the result in policy terms, that informs decision-making. In that overall context, I do not consider that the evidence presented by the Council to make their landscape case was unreasonable.
19. Summing up, I do not consider the conduct of the Council in relation to the balance between benefits and impacts, or the landscape evidence, justifies an award of costs in favour of the appellant. However, the Council's approach to the issue of 'need' was clearly unreasonable and the appellant has incurred unnecessary or wasted expense in producing evidence and addressing the issue at the Inquiry. On that basis, a partial award of costs, relating to this aspect of the case, is justified.

Conclusion

20. Bringing all those points together, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeals process, as described in the PPG, has been demonstrated in relation to the question of 'need'. As such, a partial award of costs is justified.

Costs Order

21. 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 Derbyshire County Council shall pay to R&P Clean Power Ltd the costs of the appeal proceedings described in the heading of this decision but limited to those incurred in dealing with the issue of the need for the proposal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Derbyshire County 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.

Paul Griffiths

INSPECTOR