



Costs Decision

Hearing held on 14 October 2025

Site visit made on 14 October 2025

by Helen Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2025

Costs application in relation to Appeal Ref: APP/P4415/W/25/3365059

Land off Moat Lane, Wickersley, S66 1DZ

- 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 TC Ltd for a full award of costs against Rotherham Metropolitan Borough Council
 - The appeal was against the refusal of planning permission for the erection of 100MW battery storage facility, creation of bund and associated earthworks.
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Decision

1. The application for a partial 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 application for an award of costs is set out in writing 13 October 2025. The Council submitted a Costs Mitigation Response in writing the same day. Oral updates were made by Legal Representatives at the end of the Hearing.
4. Having regard to advice on the PPG, the Case for Harmony TC Ltd is that the Council acted unreasonably in both a substantive and procedural sense and such unreasonable behaviour directly caused the Applicant to incur unnecessary expenses in the appeal process. If a full award of costs is not allowed, the Applicant seeks a partial award of costs relating to all costs incurred since 24 June 2025.
5. By reference to the PPG the Applicant's application for a full award of costs on substantive grounds is that the Council:
 - (1) prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations,
 - (2) failed to produce evidence to substantiate each reason for refusal on appeal,

- (3) made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis,
 - (5) did not review its case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management, and
 - (6) persisted with objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
6. The application on procedural grounds is that the Council withdrew a reason for refusal.

Reasons

7. The Officer Report to the Planning Board, 21st November 2024, recommended that planning permission be granted subject to conditions. It concluded that the proposed development was inappropriate development in the Green Belt by definition, but that very special circumstances had been demonstrated that overcame its inappropriateness and outweighed the limited harm to the Green Belt. The conclusions went on to state that the proposed development complies with the relevant paragraphs of the National Planning Policy Framework (Framework), as well as relevant policies of the Development Plan.
8. Notwithstanding the recommendation for approval, elected members resolved to refuse the application. Professional officers agreed two reasons for refusal with the Chair/Vice Chair of the Committee on 28 November as stated on the Decision Notice of the same date:

"01 The Council considers that the proposed battery storage facility would represent inappropriate development in the Green Belt, would have an adverse impact on the openness of the Green Belt, and would not safeguard the countryside from encroachment. The applicant has failed to demonstrate very special circumstances to justify this inappropriate development and the harm caused to the openness of the Green Belt, and any other harm. As such, the proposal is considered to be contrary to Local Plan Policies CS4 'Green Belt' and SP2 'Development in the Green Belt' as well as the guidance contained within the National Planning Policy Framework.

02 Green Lane by virtue of its restricted width and lacking in separate pedestrian facilities is inadequate to cater for the proposed construction traffic associated with the battery storage facility. As such the proposal would be detrimental to both highway and pedestrian safety."

9. The Applicant acknowledges that a comprehensive officer report recommending that permission be granted is not determinative in its own right and that elected members sitting on a planning committee will attribute weight to various factors and that they are entitled to reach different conclusions to their professional officers.
10. The weighing of the harms and the benefits to demonstrate very special circumstances is a subjective exercise. I find nothing unreasonable in the November 2024 Committee reaching a conclusion that the benefits did not outweigh the harm by way of inappropriate development and harm to the openness of the Green Belt.

11. A revised Framework published in December 2024 introduced the concept of 'grey belt'. Further guidance was provided on PPG in February 2025.
12. The appeal was made 2 May 2025. The Appellant's Statement of Case argued that applying the new Framework and PPG the appeal site was grey belt, and that the proposed battery storage facility no longer represented inappropriate development in the Green Belt.
13. On 16 May 2025 an email from the Council, copied to the Appellant advised that the Council was *"looking to raise the issue with Planning Board Members on 12 June, to allow Members to consider if they wish to withdraw the first reason for refusal on both Appeals and accept that the proposals are not inappropriate Grey Belt development"*.
14. A report was taken to Planning Board on 12 June 2025 addressing the change in Green Belt policy and from an analysis of the proposal in relation to the new policy advice it concluded that the proposal was on grey belt land and would not be inappropriate development in the Green Belt. The Board accepted the recommendation to withdraw the Green Belt reason for refusal. The Planning Officer communicated the resolution of the Council to the Appellant on the same day. From that point onwards there was no need for the Applicant to address the Green Belt issue further.
15. It was only a few weeks between the Applicant lodging their planning appeal and the Council reconsidering the Green Belt reason for refusal. The Council acted promptly reviewing its position upon submission of the appeal and the Applicant was aware of the Council's actions throughout in respect of the Green Belt reason.
16. Advice on the PPG is that withdrawal of a reason for refusal is an example of unreasonable behaviour which may result in an award of costs. But in this case, it was a change in Government policy that precipitated the withdrawal. I am not persuaded that the Council's actions in withdrawing the Green Belt reason for refusal amount to unreasonable behaviour.
17. The report to Planning Board 12 June 2025 included a sentence which informed the Planning Board that the Council still intends to defend the highway reason for refusal. In this regard the Council did not review its position.
18. For the appeal the Council stated that its argument was that physical constraints represent a significant, legitimate planning concern, particularly where HGVs share space with pedestrians or other road users. The Council argues that its approach was a precautionary response to local concerns and community impact. But the report to the Planning Board on 12 June described it as a highway reason, not a planning reason. The Council's professional highway officers had not objected to the application. They acknowledged the route's limitations but accepted them with mitigation via a Construction Traffic Management Plan (CTMP).
19. The Council's Highway Development Manager attended the hearing. Framework paragraphs 115 and 116 provide advice how proposals should be assessed in relation to highway matters. In response to my questions, the Highway Development Manager confirmed that their professional opinion was that a CTMP would safely mitigate concerns regarding the highways.

20. Having regard to advice at paragraphs 115 and 116 of the Framework, they added that there is always a level of risk, but that in this case it was at an acceptable level, and that provided that suitable planning conditions were attached, existing highway users would not be put at an unacceptable risk.
21. The Council argues that members were fully entitled as part of the democratic process to take a more cautious, community led view in the absence of physical improvements to the lane or assurances on how the cumulative impact would be addressed. However, at the Hearing the Highways Development Manager offered a suggestion that pedestrian refuges could be provided within the highway along the 127m section of Green Lane to help allay community concerns. A suggestion the Appellant accepted. This was a matter that could have been resolved at the application stage and secured by conditions as part of the off-site works package.
22. The Council had not sought the services of another suitably accredited highway expert to present the Council's case. At the hearing the Council's case was in the main presented by the Ward Councillor. Although the Councillor had detailed local knowledge and professional experience of running a heavy haulage, they were not an accredited highway expert and relied on tests undertaken using their own vehicles. Whilst local evidence can be invaluable in elaborating upon a community led case, it was unsupported by objective professional analysis. Some of the evidence presented was vague, generalised and included assertions at odds with the evidence of the Highways Development Manager.
23. A Highways and Technical Memorandum provided at appeal by the Highways Development Manager sets out a number of facts about the local highway conditions. There is scant technical evidence to underpin the Council's arguments.
24. The Council's decision and pursuance of the highway reason for refusal was in the knowledge that a very similar argument had previously been dismissed at appeal, APP/P4415/W/18/3206823.
25. The Council acknowledges that a substantive award of costs can be made against a local planning authority where there is a failure to provide evidence to substantiate each reason for refusal on appeal and for refusing a planning permission on a planning ground capable of being dealt with by conditions, risk and award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead.
26. In this case, the Council's professional highway officers did not object, and had made clear that the proposal could be made acceptable with suitable planning conditions, and that the requirements of such conditions could embrace the local concerns of residents. I conclude that the Council failed to provide evidence to substantiate the highway reason for refusal on appeal and that the concerns in relation to construction traffic were capable of being dealt with by conditions.
27. Following withdrawal of the Green Belt reason for refusal on 12 June 2025, the merits of the highway reason were not sufficient on their own to prevent the grant of planning permission. By not withdrawing the highway reason at that stage, thereafter, all costs incurred by the Applicant in relation to the appeal were wasted and unnecessary.

Conclusions

28. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the highway reason for refusal and a partial award of costs is therefore warranted.

Costs Order

29. 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 Rotherham Metropolitan Borough Council shall pay to Harmony TC Ltd, the costs of the appeal proceedings described in the heading of this decision limited to all costs incurred by the Applicant post 12 June 2025 in relation to the continuing appeal, such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Rotherham 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.

Helen Heward

INSPECTOR