Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Costs Decision

by A L McCooey BA (Hons) MSc

an Inspector appointed by the Welsh Ministers

Decision date: 21-11-2024

Costs application in relation to Appeal Ref: CAS-02313-Z1D6V4

Site address: Miners Park, Miners Road, Llay Industrial Estate, Llay, Wrexham, LL12 0PJ

- The application is made under the Environmental Permitting (England and Wales) Regulations 2016 Schedule 6 and Section 250 of the Local Government Act 1972.
- The application is made by Platts Agriculture Limited for a full award of costs against Natural Resources Wales (NRW).
- The appeal was against the non-determination of an application for a bespoke environmental permit authorising a waste operation.
- An Inquiry was held on 24 – 28 June and 10 & 11 July 2024.

Decision

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

Reasons

2. I have considered the costs application within the general principles of the Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex'). This guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. Applications for costs must clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense.

3. In dismissing the main appeal I have set out my reasons for concluding that the application for an environmental permit should be refused. I do not intend to repeat my reasoning here but will make references as appropriate.

4. The applicant contends that the actions of NRW have been unreasonable because despite a warning as to a potential claim for costs it continued to rely on its regulatory position in opposing the application. NRW failed to engage with Platts Statement of Conformity and the results of the testing regime, which the appellant argues was based on a flawed interpretation of the precautionary principle. I have concluded otherwise on these issues in the main decision.

5. The main thrust of the applicant's argument is that NRW should have known about the Formaldehyde issue since November 2023 and raised it in its statement of case but did not do so. It was only raised in a rebuttal proof shortly before the Inquiry. This was then refined in the position statement of NRW, to claim that the applicant was accepting hazardous waste (code 03 04 01) in contradiction of the fact that both parties agreed in

the Statement of Common Ground (SOCG) that only non-hazardous waste (code 03 05 01) was accepted at the site.

6. I have set out why NRW did not appreciate the significance of the Formaldehyde results in the main decision. The blame for this rests with the appellant's employees and agent. However, I do not consider that there was any deliberate attempt by the appellant or their legal representatives to conceal the results as claimed by NRW's Counsel. It was explained to be a combination of human error and an oversight much as NRW forgot to amend the SOCG in the light of its concerns on the Formaldehyde issue and position statement until the end of the Inquiry.

7. The appellant's arguments as to why the Formaldehyde results were not significant are set out in the main decision. These arguments have not been accepted by me for the reasons given. In all these circumstances NRW could not have raised the issue earlier and its evidence has persuaded me that there are sufficient grounds to dismiss the appeal and refuse the application for a permit.

8. Turning to the issue of noise, which was programmed to be heard at the Inquiry but agreement was reached shortly beforehand and the parties agreed that noise issues were not of concern. Costs are claimed as it is alleged that NRW acted unreasonably in requiring further information as to noise impacts from the operations on the premises. Platts then hired further consultants to address the issues raised. The second consultants (CSA – Clarke Saunders Associates) consider that NRW had all the information that they required to determine that noise impact was not an issue because noise levels from the site at the nearest receptors were so low. They argue that despite this fact, NRW continued to require reporting and noise monitoring of low noise levels that are difficult to detect. And then details of proposals for mitigating and managing noise emissions that require no mitigation or management because they are so low. The costs application is for the period from instruction of CSA in July 2023. The documents produced by CSA are an Expert Witness Report dated 5 December 2023, a Noise Emissions Assessment dated 14 May 2024 and a proof of evidence dated May 2024.

9. However, I note from the evidence that whilst NRW had raised concerns there were also representations from Wrexham County Borough Council who referred to a noise complaint from a local resident made in June 2023. The location of the complainant's property had not been assessed in the earlier noise reports which this was of concern. The Council also raised possible breaches of the planning conditions controlling noise immissions from the site.

10. These matters were not addressed satisfactorily until discussions between CSA, NRW's noise expert and the Council led to the production of the consultant's Noise Emissions Assessment dated 14 May 2024. Therein the noise complaint was investigated and found to be of no substance. The Council and NRW confirmed that they were content on all matters on 19 June 2024.

11. The applicant relies on the findings of the first consultant (ECL) to justify the argument that there was no real noise issue. However, there were outstanding matters that were not and could not have been addressed by them, such as the noise complaint, which was received after their reports were prepared.

12. There also reservations with ECL's findings expressed by NRW, the Council and to some extent by CSA. The costs application directs me to section 3 of the Expert Witness Report in support of the claim for costs. Even this contains examples of misgivings with the ECL reports. There are references to ECL's report having to be read carefully [3.7]. The noise impact report was 'written somewhat clumsily, first suggesting that the data shows there to be a noise impact at face value, but then dismissing it because the variations were not due to site noise' [3.8]. The report argues that the notes of survey observations by ECL should be read for explanation '(notwithstanding the clumsiness noted above in the reporting process)' [3.10]. Paragraph 3.11 concludes that 'despite a potentially confusing direction initially taken in the ECL report, it appeared to contain all the information NRW required to satisfy themselves that there was no noise impact at receptor locations.'
13. Finally, the applicant decided to instruct a second consultant rather than proceed to the Inquiry on the basis of the noise evidence and reports prepared by ECL, where it could then have argued that NRW were unreasonable in refusing the permit on this ground.
14. In these circumstances, I consider that a partial award of the costs incurred in addressing noise issues is not justified.

Conclusion

15. For the reasons given, I find that unreasonable behaviour resulting in unnecessary expense, as described in the Annex, has not been demonstrated and the application for an award of costs is refused.

A L McCooey

Inspector