



## Costs Decision

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by Mr A Thickett BA (Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 28/11/2024

Costs application in relation to Appeals: CAS-02488-V7M8Q2 & CAS-02489-V6P4R9

Site address: Underground strata comprising of sands and gravels at Radnor Hills, Heartsease, Powys.

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- The application is made under section 250(5) of the Local Government Act 1972.
  - The application is made by Radnor Hills Mineral Water Company Ltd against Natural Resources Wales (NRW).
  - The hearing, which was held on 22 October 2024, was in connection with appeals against the decision of NRW to issue licences to abstract water (serial numbers: WA/054/0009/0001 and WA/054/0009/0002) with expiry dates of 31 March 2031.
  - A Hearing was held on 22 October 2024.
  - A site visit was made on 1 November 2024.
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### Decision

1. The application for an award of costs fails.

### Procedural matters

2. In the absence of guidance relating to costs applications for this type of appeal, I have applied the advice in Section 12, Annex 'Award of Costs' of the Development Management Manual.
3. Costs applications should be made at the earliest opportunity but the guidance recognises it may not become apparent an application for costs may be justified until evidence has been tested at a Hearing or Inquiry. The appellant indicated it wished to apply for costs at the end of the Hearing arguing, amongst other reasons, that NRW's position on the central issue in the appeal was unclear in advance of the Hearing.
4. NRW's reasons for issuing a licence with an expiry date of 31 March 2031 were not entirely clear to me before the Hearing. I do not consider, therefore, that it would be appropriate to reject the costs application because it was made late in the proceedings.
5. I allowed the appellant to submit a written application setting out its case and the provisions for making such applications under these types of cases. They did so and NRW were given the opportunity to comment.

## Reasons

6. 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.

### Substantive matters

7. The adverse impact of low or no flow in the River Teme on migratory fish and freshwater pearl mussel is not in dispute and is a matter of legitimate concern. In making its decision on the licence, NRW were aware that by 2031, new information from a number of sources would provide a better understanding of the catchment. I explain in the appeal decision why I do not consider this information will assist in understanding the impact of the appellant's abstractions on flows in the Teme. However, given the decline of the freshwater pearl mussel population and the unknown impacts of climate change on the ephemeral nature of the Teme, NRW's decision to impose expiry dates of 31 March 2031 to enable the position to be reviewed is understandable.
8. Further, such an approach is supported by the Teme Abstraction Licensing Strategy which states licences will be time limited to enable periodic review. NRW provided evidence to substantiate its decision and whilst I take a different view, I do not consider NRW's position constitutes unreasonable behaviour.

### Procedural matters

9. The appellant did not see the HRA supporting NRW's decision to issue licences with an expiry date of 31 March 2031 until the appeal was made and statements exchanged. In these circumstances it was right and proper for the appellant to submit further information. NRW were informed by letter of 26 September 2023 the shadow Habitats Regulation Assessment (HRA) and water modelling information submitted by the appellant at final comments stage would be accepted.
10. Whilst it must have been evident that this information would be material to the determination of the appeal NRW failed to address it. However, nor did we chase a response until I was appointed to determine the appeals in May 2024. PEDW is, therefore, partially responsible for delaying matters for which I apologise.
11. In a note dated 7 May 2024, NRW explained why it would take 4 months to consider and respond to the shadow HRA and modelling. This included assessing the technical nature of the submissions, needing to consult external bodies and staff being away over the summer. I considered then and do now that this was not unreasonable.
12. The correspondence between the appellant and NRW regarding the statement of common ground was typical of the many combative exchanges between the parties during the appeal process. As a result the statement of common ground was submitted much later than I requested and would have liked. Nevertheless it was submitted, it proved to be most helpful for which I thank both parties and I do not consider the late submission led to any party incurring unnecessary or wasted expense.

## Conclusion

13. I find unreasonable behaviour resulting in unnecessary expense, as described in the Annex, has not been demonstrated and the application for an award of costs fails.

*A Thickett*

Inspector