



Costs Decision

Site visit made on 29 July 2025

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Costs application in relation to Appeal Ref:

APP/N2535/W/25/3363211

Land at Willingham-by-Stow Farm, Marton Road, Stow, Lincoln, DN21 5BH

- 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 FRV Powertek for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for '*The installation and operation of a Battery Energy Storage System (BESS) with ancillary infrastructure and landscaping and biodiversity enhancements*'.
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Decision

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

Background

2. Parties in planning appeals normally meet their own expenses. However, the national Planning Practice Guidance (the Guidance) 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. In this instance, the Applicant has submitted an application for costs within the deadlines set out. It comprises an application for full costs (on substantive matters), or failing that, an application for partial costs (on procedural grounds). This is principally on the basis that the Council:
 - i) *ignored clear advice from its professional planning officers and statutory consultees and in so doing has 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;*
 - ii) *has not reviewed its case promptly following the lodging of this appeal as part of sensible on-going case management;*
 - iii) *has attempted to introduce potential new reasons for refusal in its Statement of Case; and*
 - iv) *has failed to produce evidence to substantiate each reason for refusal on appeal.*
4. The Local Planning Authority, West Lindsey District Council, considers that neither a full nor partial award of costs should be awarded in this case. Whilst

- it notes that the decision-makers (the Planning Committee) did not follow their professional officers recommendation to grant permission, it is open to the elected committee to do so. Moreover, the Council points out that, in their view, the Applicant did not apply development plan policies accurately.
5. In particular, they point to Policy S16 of the CLLP. Whilst accepting that Policy S16 of the CLLP does not set out a specific criteria or criterion to qualify as an 'appropriate location' the Council point to the glossary to the Local Plan, which they say indicates that '*Appropriate locations means a location which does not conflict when taken as a whole, with national policy or policies in this Local Plan...*'. The Council go on to point out that the decision-maker needs to be satisfied that the Appellant has taken due 'care' and has selected an 'appropriate location'.
 6. A rebuttal was provided by the Applicant on 18 August 2025, which sought to address the points raised by the Local Planning Authority.

Reasons

7. The Council assert that the Applicant has not taken 'care' in selecting the appeal site. This is at odds with the submitted evidence. Contained within that are a number of documents and reports where the Applicant has diligently, and in some detail, considered a plethora of matters in assessing the site. This includes considering the agricultural classification of the land (Grade 3b and not Best and Most Versatile Agricultural Land), Noise impacts assessments, a Grid connection Technical note, a Biodiversity Gain Statement and ecological surveys, archaeological survey reports, an outline battery safety management plan, an Access and Construction Traffic Statement, a Landscape and Visual Impact Assessment, and a Planning Design and Access Statement; to name but a few submitted. It is somewhat peculiar, therefore, to suggest that the Applicant has not taken 'care' in the submission of their application and then appeal.
8. Indeed, the Council's rebuttal indicates that pre-application advice was sought and given to Applicant prior to their submission. This suggests that the Applicant was taking 'care' in formulating their application even before it was submitted to the Council. Moreover, even though it is clear that there is no local or national policy requirement at all to provide any form of exhaustive sequential test discounting every potential site within the whole of Lincolnshire, the Applicant explains why they have assessed the appropriateness in relation to the nearest Point of Connection (PoC). Again this demonstrates a degree of 'care' in deciding where to place the proposed BESS and its associated infrastructure.
9. Furthermore, it is clear in reading both Policy S16 and Policy S5 Part E of the CLLP, that there is no indication or requirement or otherwise that brownfield sites should be prioritised over any others. If the intention was that brownfield sites or only sites within X distance of a PoC should be preferred or encouraged, then the Policies would state that: they do not.
10. Of concern is that fact that the Council, as a Local Planning Authority, will be cognisant of Article 35 of *The Town and Country Planning (Development Management Procedure) (England) Order 2015* (the DMPO). This requires at 1(b) that: '*where planning permission is refused, the notice must state clearly*

and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision’.

11. Yet, the Council’s rebuttal, at paragraph 2.22, refers to Policy S1 of the CLLP and Paragraphs 187 and 189 of the *National Planning Policy Framework* (the Framework). To the contrary, the Decision Notice only states: *The development is considered to be contrary to the provisions of the Central Lincolnshire Local Plan (2023), in particular policies S5 (Part E) and S16.* Policy S1 of the CLLP is not referred to in the reason for refusal. This is surprising given that Policies such as S1 are not only referred to the fairly comprehensive Officer’s Report to committee, but the wording of many of the Policies have been provided within that same Report.
12. Furthermore, there is no reference to the Framework, which has been a consistently important material consideration for over a decade, nor any reason given for why there is a conflict with policies designed to protect the countryside and/or to prioritise previously developed land, within the reason for refusal.
13. In terms of the specific policies referred to on the Decision Notice, S5 and S16 respectively, the Council asserts that the Applicant failed to ‘properly engage’ with these. However, it is clear from the evidence presented, that the Applicant did engage with the adopted development plan.
14. To the contrary, the Council appears to have read further into these policies rather than what they set out in criteria terms. For example, both policies do not specifically refer to why ‘active agricultural land’ or the distance from a PoC are relevant matters in determining proposals such as that sought here. Moreover, neither sets out any criteria for any form of ‘sequential test’ using previously developed land in preference to what is, in essence, a greenfield site.
15. The matter of PoC was considered within the Officer’s Report on page 13 of 41, where the Report states:

‘The key determining factor to identifying the location of a BESS is proximity to available grid capacity. The Distribution Network Operator (DNO) determines where energy generation projects can connect on the network as this is based on complex technical and operational criteria. The proposed BESS will connect to the National Grid substation at Cottam approximately 6.4km away. It is acknowledged that usually a closer distance between the proposed development and the point of connection is preferred.’
16. Clearly, a connection closer to PoC is ‘preferred’, most likely because this means that the cost of potentially expensive cabling can be minimised and possibly less energy lost through its transmission. However, as the Officer Report acknowledges, this is a preference rather than an absolute, and proximity to a PoC is primarily a matter for the operator of the site rather than a critical aspect of planning policy.
17. In terms of Part E of Policy S5, the Officer Report states that:

‘Part E of Policy S5 requires justification for the location of development. Whilst Policy S16 does not require justification in terms of site selection, justification has been provided by the applicant within the submission...’

It is considered that the applicants have provided sufficient information within the application submission to justify the siting of the proposal away from the Cottam Substation.'

18. The Council's Professional Officers not only considered the application, but then reviewed it in respect of each criterion of Policy S5, Part E of the CLLP. It also acknowledged that whilst Policy S16 does not require justification in terms of site selection, Policy S5 does require justification of the location of the development. It goes on to state that 'sufficient information' has been provided by the Applicant to justify its location. It is unclear as to why, when the elected Committee determined the application, this information was considered insufficient.
19. Whilst I note the points about the cabling route to the substation, it is clear on pages 13 and 14 of 41 of the Officer Report, that such matters are for the Applicant to resolve. The Applicant was aware of this matter (via the Council's letter dated 25 September 2024) and responded by providing details of a connection agreement with National Grid. The Report also goes on to detail that a condition would be imposed which could ensure that the PoC and cabling route are achieved before works take place on the site. This is reasonable and a pragmatic way in which to deal with the concerns on these aspects of the proposal.
20. I also note the points raised in terms of the procedural grounds of the costs application. In this respect, I find that the Local Planning Authority have sought to introduce a number of reasons as to why the proposal resulted in harm which were not provided in the reason for refusal. The DMPO, as stated above, is clear and unequivocal. Moreover, it is well established planning practice that the person who has planning permission refused should know what the case is they need to address – that is the purpose of providing reasons for refusal.
21. Whilst there are occasions where further issues arise during the appeal process (for example a change in legislation, or new case law, or another planning decision) that situation has not occurred in this instance. Instead, the Local Planning Authority has sought to introduce additional concerns at the appeal stage. Yet this is on the basis of essentially the same information it had at the determination stage. If it were the case that these were concerns at that point, then these should have been included within the reasons for refusal. They were not. Moreover, it is unclear as to the rationale as to why they were issues at the appeal stage or included within that process.
22. The Local Planning Authority appears to have misunderstood its own policies and then failed to follow what they state (even though the Officer Report, which was before the Planning Committee did undertake this exercise). In doing so I find that the Local Planning Authority was unreasonable on substantive matters grounds.
23. Moreover, the inability of the Local Planning Authority to provide clearly and precisely the full reasons for refusing planning permission in this case, and seeking to raise these at the appeal stage was unreasonable. The behaviour of the Local Planning Authority was unreasonable on procedural grounds.
24. I find that this is behaviour which was unreasonable and resulted in unnecessary and wasted expense on the part of the Applicant. This is because

they were left with little option but to appeal the decision in a case where an appeal could have been avoided altogether had the Local Planning Authority acted rationally. This unreasonable behaviour was compounded further at the appeal stage when, in essence, new reasons for refusal were raised by the Local Planning Authority that the Applicant considered they had to address by providing further information at that stage. This not only resulted in unnecessary and wasted expense for the Applicant, but it was unfair as these were new reasons which were not clearly stated at the refusal stage.

25. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

26. 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 West Lindsey District Council shall pay to FRV Powertek, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to West Lindsey 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.

C Parker

INSPECTOR