The Planning Inspectorate

Costs Decisions

Inquiry opened on 19 March 2024

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 7 April 2025

Costs Application in relation to Appeal A: APP/EPR/636
Daneshill Soil Treatment Facility, Daneshill Landfill Site, Lound

- The application is made under the Environmental Permitting (England and Wales) Regulations 2016, Schedule 6(5) and the Local Government Act 1972, Section 250(5).
- The application is made by FCC Recycling (UK) Ltd for a full, or failing that a partial, award of costs against the Environment Agency
- The appeal relates to the decision of the Environment Agency to refuse an application to vary an Environmental Permit relating to the treatment of asbestos contaminated soils.

Costs Application in relation to Appeal B: APP/EPR/651
Daneshill Soil Treatment Facility, Daneshill Landfill Site, Lound

- The appeal is made under the Environmental Permitting (England and Wales) Regulations 2016, Schedule 6(5) and the Local Government Act 1972, Section 250(5).
- The application is made by FCC Recycling (UK) Ltd for a full, or failing that, a partial, award of costs against the Environment Agency.
- The appeal relates to the decision of Environment Agency to impose conditions on a Regulator Initiated Variation of an Environmental Permit.

Costs Application in relation to Appeal C: APP/EPR/652
Maw Green Soil Treatment Facility, Maw Green Landfill Site, Maw Green, Crewe

- The appeal is made under the Environmental Permitting (England and Wales) Regulations 2016, Schedule 6(5) and the Local Government Act 1972, Section 250(5).
- The application is made by 3C Waste Ltd for a full, or failing that, a partial, award of costs against the Environment Agency.
- The appeal relates to the decision of Environment Agency to impose conditions on a Regulator Initiated Variation of an Environmental Permit.

Decisions

Appeal A

1. The application for a full, or failing that, a partial, award of costs is refused.

Appeal B

2. The application for a full, or failing that, a partial, award of costs is refused.

Appeal C

3. The application for a full, or failing that, a partial, award of costs is refused.

The Submissions for the Appellants

4. The application for costs on behalf of the appellant was made in writing as were final comments on the Environment Agency's response to the application. I need not repeat them here.

The Response from the Environment Agency

5. The Environment Agency's response to the appellants' cost application was made in writing. There is no need for me to set it out here.

Reasons

6. It is helpful first of all to set out the manner in which applications for costs in cases such as these are to be dealt with. Government guidance in Environmental Permit – Guidance on the Appeal Procedure sets out that applications for costs are normally heard towards the end of the proceedings and will only be allowed if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense. Further, following an application for costs, the Inspector or the Secretary of State in England will act in the spirit of and apply the general principles of the Award of Costs section of the Planning Practice Guidance (NPPG) on Appeals[1].

7. The NPPG sets out the principles of the costs regime. Put simply, and as set out above, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has resulted in another party incurring unnecessary or wasted costs in the appeals process. An award of costs may be made for procedural, or substantive reasons, partially or in full.

8. Examples are given of the types of behaviour which may give rise to an award of costs against a decision-making authority. As the appellant has highlighted, these include: introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; preventing or delaying development which should clearly be permitted having regard to national policy and other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing permission on grounds capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead; and refusing to enter into pre-application discussions.

9. The appellants advance twelve separate grounds for a finding that the Environment Agency acted unreasonably thereby causing unnecessary or wasted expense. These encompass both procedural and substantive matters.

10. Before I deal with those grounds, it is important, in my view, to set out the context in which the Environment Agency acted. They were dealing with Environmental Permits concerning the treatment of asbestos contaminated material (ACM). As I have set out in the reasoning for my decisions on the three appeals, asbestos is incredibly dangerous and there is no level at which it can be said to be 'safe'. A single fibre can be sufficient to cause a lethal mesothelioma. As such, I do not accept that the Environment Agency can be criticised for approaching the matters at issue in the appeals, with caution.

[1] Paragraphs 4.4.3 and 4.4.4

11. The second point I would make is that in dealing with the appeals, I have agreed in large part with the approach the Environment Agency has taken and while I have allowed the appeals, I have done so on the basis of the forms of Environmental Permit, suggested by the Environment Agency, that reflect the various concessions made by both sides in the course of the Inquiry. In simple terms, it is my view that in order to properly manage risk, on and around both sites, the screening process needs to take place inside a suitably screened and filtered building.

12. Turning then to the various grounds advanced on behalf of the appellant, the first (in summary) suggests that the Agency was wrong to refuse to grant an Environmental Permit for the treatment of ACMs at Daneshill (the subject of Appeal A) and relied upon erroneous and unjustified grounds, including failing to take into account best available scientific evidence, a risk based approach to environmental permitting, and real data relating to substantially similar operations, in determining the application.

13. There are two points I would make in relation to this ground. First of all, the costs regime only covers unnecessary or wasted costs *in the appeals process* (my emphasis). Any unreasonable behaviour by the Environment Agency before the appeals were lodged (and I make no finding upon that) is not a matter for me.

14. Secondly, I read this ground as a suggestion that the appeals should not have been necessary on the basis that the risks involved in carrying out the screening of ACMs in the open, on both sites, fall within reasonable bounds. In my parallel appeal decisions, I have agreed with the Environment Agency that screening ACMs in the open is not acceptable at neither the Daneshill site, nor the Maw Green site. In that context, it cannot realistically be argued that the stance of the Environment Agency was unreasonable, or that the appeals were unnecessary.

15. The second ground refers to the (suggested) reliance of the Environment Agency upon 'internal guidance' which has not been published, is clearly a work in progress, and has not been consulted upon with relevant stakeholders, thereby, it is said, resulting in a clear breach of the Regulators' Code.

16. I would make two points about this ground. First, I do not consider that the Environment Agency placed undue reliance on the 'internal guidance' as setting out a strategic direction for decision-making; it seems to me that it relied primarily on BAT14d, from where the 'internal guidance' appears to spring. In my parallel decisions on the appeals, I have found that the guidance in BAT14d is more than sufficient to underpin my conclusions, and I have placed no reliance at all on the 'internal guidance'. Secondly, this 'internal guidance' might well be a work in progress that has not been consulted upon, but the appellants were made aware of it well before the exchange of evidence and were able to address it in their submissions to the Inquiry.

17. In that overall context, I do not regard the way the Environment Agency used this 'internal guidance' to have been unreasonable.

18. Ground three promulgates that the Environment Agency failed to provide and objective or specific evidence to substantiate the position they adopted in relation to the processing of ACMs on the sites.

19. I have some difficulty with this suggestion. As I have set out above, and in my appeal decisions, asbestos is incredibly dangerous and there is no level at which it can be said to be 'safe'. With that in mind, alongside the approach set out in BAT14d, it seems to me that it was for the appellants in these cases to provide justification for carrying out screening in the open, not for the Environment Agency to demonstrate why it ought to be enclosed. That no 'objective or specific evidence' was provided by the Environment Agency is not unreasonable, in that context; they do not, in my view, need to justify taking a precautionary approach to a material that is so dangerous.

20. I appreciate that the Environment Agency moved from their original position that there should be double-enclosure but that, in my view, showed a helpful willingness to react to the testing of the evidence, rather than unreasonableness. I see their suggestions relating to the form a building providing single enclosure might take in a similar light.

21. Bringing those points together, I find no unreasonable behaviour under the appellants' ground 3.

22. The appellants' fourth ground is a development of what is said in the previous ground. As I set out above, I fail to see how the Environment Agency can be reasonably criticised for adopting a precautionary approach to such a dangerous material. They might not have submitted 'scientific or objective evidence' to justify their position but I do not consider that to have been necessary. It is for the appellants to justify their approach and in that context, the Environment Agency did not make 'vague, generalised and inaccurate assertions' about the potential impacts of the processes. They were able to point to shortcomings in the appellants' modelling and risk assessments, such as the failure to properly allow for the potential for re-suspension. No unreasonable behaviour has been demonstrated in this regard.

23. Under Ground 5, the argument is advanced that the Environment Agency has been inconsistent in the way it has dealt with STFs that deal with ACMs and has therefore acted unreasonably. There are two ways in which I approach this point. First, it can be said, not unreasonably, that the Environment Agency has to take a site-specific view of STFs where ACMs are proposed to be processed. Different sites might well have their own particular characteristics and relationships with what lies around them, which justify different approaches.

24. On the other hand, if it is argued that the Environment Agency should deal with all STFs that treat ACMs in the same way, then that way might well be to require them all to carry out screening in a suitable building. The result of these appeals might well be that the Environment Agency revisits permits that have been issued on other sites where screening takes place in the open.

25. Points are raised too about the Environment Agency changing its position on various aspects during the Inquiry when it could have done so before. However, these concessions were not, in my view, central to its case, and represented a practical response to the evidence delivered at the Inquiry. I might point out too, that the appellants also made concessions.

26. I find no unreasonable behaviour on the part of the Environment Agency under this ground.

27. The appellants suggest under Ground 6 that the Environment Agency failed in its decision-making process and throughout the appeals to undertake any valid form of risk assessment and assess the levels of risk likely to be posed by the STFs at the two sites. However, as I have set out above, in approaching the form an Environmental Permit might take, it is for the applicant to show why its preferred approach should be followed. This must especially be the case when a material, like asbestos, that is fraught with danger, is involved.

28. I accept that BAT requires a judgment of the risk of the activity against the costs/benefits of imposing any best available techniques. That said, I do not consider that the Environment Agency has failed to do that. They have taken the view that given the nature of asbestos, screening of the ACM needs to take place in a building. In my parallel decisions on the appeals, I have agreed with the good sense of that approach. The Environment Agency has not been unreasonable in this regard.

29. Ground 7 suggest that the Environment Agency failed to take into account the risks of the proposed STFs when determining and applying BAT and did not have regard to the best overall environmental outcome for the environment when making their decisions, as required by the IED.

30. As I have set out above, BAT requires a judgment to be reached about the risk of the process or the activity against the best practicable (or available) techniques. Consideration of the latter in this case might well involve an assessment of costs, availability, and in the case of a new building, the likelihood of gaining planning permission. However, given the nature of asbestos, it is not unreasonable for the Environment Agency to have started from the premise that the process should be enclosed in forming that judgment. In the situation where that enclosure is to be provided by a building, that may well lead to costs and other challenges. These might make the process uneconomic or impossible on a particular site but that does not mean that the Environment Agency must accept an inappropriate level of risk in such a situation. The stance of the Environment Agency on this point is not unreasonable.

31. Points are made too about the concession the Environment Agency made in relation to double enclosure. Put simply, having heard the evidence at the Inquiry, they accepted that a 'typical' screener could be used provided that it was enclosed in a suitable building, with appropriate filtration systems. It seems to me that this concession could have been made earlier, but even if that was to be regarded as unreasonable, it is a minor matter in the context of the issues under consideration in the appeal, and I do not see that it has led to any unnecessary or wasted expense having been incurred by the appellants in the appeals process.

32. A number of grounds relating to procedural matters are then advanced. Ground 8 suggests that the Environment Agency failed to co-operate with the appellants on a Statement of Common Ground in a timely manner so that the issues on which evidence needed to be prepared could be narrowed.

33. Clearly, it would have been helpful if a Statement of Common Ground could have been agreed that narrowed the evidence in advance of its preparation. Both sides criticise the other in relation to the timeline, and the extent of co-operation before the Inquiry opened, but it was helpful, to an extent, that a Statement of Common Ground was agreed on the first day. I make the point

that it was helpful, to an extent, because while points were agreed, the parties' respective positions in relation to the appeals changed very little as a result of the discussions that took place.

34. In that context, while a Statement of Common Ground might have been agreed earlier in the process, I cannot see that it would have narrowed the issues to the extent that the volume of evidence would have been reduced, or the Inquiry would have been shorter in duration. On that basis even if the Environment Agency did unreasonably fail to co-operate, as the appellant suggests, it did not lead to any unnecessary or wasted expense in the appeals process.

35. The next ground (ground 9) relates to the appellants' suggestion that the Environment Agency failed to properly consider and engage with the technical information provided by the appellants in advance of the exchange of evidence which might have allowed agreement on certain technical matters.

36. I do not consider that criticism to be altogether fair. The 'technical information' that was provided three weeks or thereabouts in advance of the exchange of evidence was monitoring data. I am not sure the Environment Agency could do very much with that data because the raw data for the dispersion modelling was not provided at the same time. This did not emerge until the exchange of evidence. I suppose the Environment Agency could have used the monitoring data to produce its own modelling, but I go back to the point I have made above; it is for the appellants to show why their approach to screening the ACMs is to be preferred. There was no onus on the Environment Agency to provide their own modelling.

37. Ground 10 alleges that the Environment Agency unreasonably introduced delays into the appeals process and that the appellants had to expend time and incur expense in dealing with them. As the Environment Agency points out, it is not unreasonable for a party to request extensions to submission dates and as an Inspector, I normally take the view that I would rather have complete, properly considered submissions that were delayed, than incomplete submissions submitted in accordance with a deadline. Indeed, as the appellant points out, I (or PINS corporately) agreed to the extensions requested for precisely those reasons. If I had thought the requests unreasonable, then I would not have agreed to them.

38. The failure to agree a Statement of Common Ground in a timely manner is the subject of ground 11. I have set out my views on the approach of the Environment Agency to the Statement of Common Ground in dealing with ground 8 above. Moreover, I do not consider that the Environment Agency ran a previously unannounced, freestanding case based on amenity dusts. The point was simply made that if problems with dust emanating from the sites were reported by occupiers around the sites, then it would be reasonable to assume that the dust contained asbestos fibres. There is no unreasonable behaviour on the part of the Environment Agency under this ground.

39. Finally, I turn to ground 12. Under this heading the appellants suggest that the Environment Agency unreasonably introduced new issues late in the appeals process. I have dealt with my views on amenity dusts in dealing with ground 11. In terms of the treatment pad, I have difficulty seeing this as a major issue between the parties. Moreover, having understood the reasons behind the preference of the Environment Agency for an impermeable treatment surface,

the appellants volunteered to provide one. Even if you did regard the approach of the Environment Agency to the treatment pad as unreasonable, which I do not, then it is difficult to see how this has led to any meaningful unnecessary or waster expense having been incurred in the appeals process.

Conclusions

40. For all those reasons, I do not consider that either a full or a partial award of costs is justified in relation to the appeals. As such, the applications fall to be refused.

Paul Griffiths

INSPECTOR