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## Costs Decisions

Inquiry Held on 11-13 November 2025

Site visit made on 11 November 2025

by **R Catchpole BSc (hons) PhD CEcol MCIEEM IHBC**

an Inspector appointed by the Secretary of State

Decision date: 22<sup>nd</sup> January 2026

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### **Costs Application A: Concerning an appeal (Ref: APP/EPR/684) at Green Lane, Wardle, Nantwich CW5 6DB**

- The application is made under the Environment Act 1995, section 20 and the Local Government Act 1972, section 250(2)-(5).
  - The application is made by Nick Brookes Demolition and Waste Disposal for a full award of costs against the Environment Agency.
  - The inquiry was in connection with an appeal against an enforcement notice issued by the Environment Agency pursuant to the breach of a condition of an environmental permit for a waste transfer facility (Ref: EPR/EP3798CS), dated 29 July 2024.
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### **Costs Application B: Concerning an appeal (Ref: APP/EPR/684) at Green Lane, Wardle, Nantwich CW5 6DB**

- The application is made under the Environment Act 1995, section 20 and the Local Government Act 1972, section 250(2)-(5).
  - The application is made by the Environment Agency for a partial award of costs against Nick Brookes Demolition and Waste Disposal.
  - The inquiry was in connection with an appeal against an enforcement notice issued by the Environment Agency pursuant to the breach of a condition of an environmental permit for a waste transfer facility (Ref: EPR/EP3798CS), dated 29 July 2024.
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## Decision

### 1. Application A

The application for an award of costs is refused.

### 2. Application B

The application for an award of costs is allowed in the terms set out below.

## Reasons

### *Background*

3. I have considered both costs applications in the spirit of the general principles of the award of costs section of the Government's Planning Practice Guidance 2019 (PPG). This advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.

## Costs Application A

4. The applicant believes that the Environment Agency (the Agency) acted unreasonably because of a number of substantive grounds which are as follows:
  - a) A failure to consider background material which allegedly established a right to process trommel fines under Table S1.1, Activity A2 of the permit (Ref: EPR/EP3798CS) (the Permit);
  - b) The assumption that the trommel fines are Chapter 19 waste requiring mid-process testing;
  - c) A failure to undertake any site-specific scientific assessment to establish the presence of contamination, contrary to the Regulators' Code;
  - d) A failure to give weight to the ISO audited status of this site and take into account its past regulation; and
  - e) A failure to enforce against the correct condition.
5. The Agency points out that the application is effectively a reiteration of the grounds of appeal which does not establish how any unreasonable conduct has led to unnecessary or wasted expense. The Agency makes the following points in response:
  - a) It followed a well-established approach that having regard to contextual information outside of a public document, such as an environmental permit, is only relevant where there is an ambiguity in the terms of the document that requires resolution. Even if this is not the case, it points out that there is no clear statement that the Permit should be interpreted to include the processing of trommel fines under Activity A2.
  - b) It points out that fines from mechanical processing will necessarily fall within Chapter 19 which relates to waste from waste management facilities, in particular, under heading 19 12 which comprises "*wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) ...*". It observes that this has been the appellant's own interpretation<sup>1</sup> and that it informed the Agency's own trommel fines campaign<sup>2</sup>.
  - c) It accepts that it did not provide empirical evidence concerning risk but relies instead on an established risk concerning trommel fines and observations made about the nature of the material on the site. It points out that the appellant has not done sufficient testing to manage the established risk. It does not accept that the approach is contrary to the Regulator's Code because the enforcement notice relies on an established, risk-based judgement.
  - d) It observes that the ISO status of the site is not a point that the appellant has emphasised in evidence. It points out that it would not have made any difference given the issues and non-compliance that the Agency has relied upon.

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<sup>1</sup> Page 10, CD 7.2 and page 1, CD 7.3

<sup>2</sup> CD 2.6

- e) It points out that this is simply a repeat of the argument concerning the wording of the enforcement notice. It observes that it is entitled to focus on condition 1.1.1 which gives rise to the same issues and notes that this allowed ventilation of all relevant issues during the course of the appeal.
6. The applicant made no final remarks in response to the Agency's rebuttal statement. In general, appeal parties are normally expected to meet their own expenses and behave reasonably to support an efficient and timely process. Unreasonableness in this context has been defined by the Courts as having its ordinary meaning<sup>3</sup>.
7. I agree with the Agency in that the application is based on differences of opinion which largely relate to the appellant's grounds of appeal. Just because the position of an opposing party differs does not mean that it is unreasonable. The position taken by the Agency was tested during the course of the appeal which was determined in its favour. I did not find the position taken in relation to any of the areas unreasonable, as reflected in my decision. The ISO accreditation was only mentioned in passing and it was not central to the matters at hand. Even if the Agency had behaved unreasonably, the appeal would have still occurred which means that there would have been no unnecessary or wasted expense and therefore no grounds for an award of costs.
8. I find that the Agency did not act unreasonably on the matters set out above. As such, the appeal could not have been avoided and the associated expenses were necessarily incurred.

## **Conclusion**

9. For the above reasons, I am satisfied that neither a full or partial award of costs is justified and the application accordingly fails.

## **Costs Application B**

10. The applicant believes that Nick Brookes Demolition and Waste Disposal (the Company) acted unreasonably because it resiled from an unfounded legal argument that it was estopped from denying that the Permit allows the Company to process trommel fines derived from mixed construction and demolition waste under Activity A2.
11. The applicant points out that this was set out in the Company's statement of case as a distinct argument and that this was maintained in further comments as well as in a proof of evidence of one of its witnesses<sup>4</sup>. Given the initial evidence, I determined that this should be a main issue and that evidence would most likely need to be heard under oath following the case management conference.
12. The applicant observes that on 3 November 2025, the Appellant's solicitor sent an email at 11:36 stating that "*[a]fter careful consideration, we confirm that we do not intend to pursue the estoppel argument referenced in paragraph 80 of the Appellant's Statement of Case*" and noting that the issue would therefore not need to be determined. This was just under six working days before the opening of the Inquiry and after the deadline for the exchange of proofs.

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<sup>3</sup> Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

<sup>4</sup> CD 1.2, 1.3 and 2.10

13. The applicant maintains that that the Company acted contrary to well-established case law, despite being legally represented, and that this risks an award of costs on substantive grounds according to the PPG<sup>5</sup>. It also maintains that there are procedural grounds due to the late withdrawal of evidence relating to one of the main issues of the appeal.
14. The Company does not accept that, in the context of an environmental permit, an estoppel argument is wrong or inappropriate. It notes that the amount of time which it would have taken to argue the point would have been disproportionate and a waste of time given the issues. It maintains that the factual basis for the estoppel is in essence the same as the evidential point that it was allowed to process trommel fines for 12 or so years without any breach of condition having been identified. It suggests that it took a pragmatic course in abandoning the point to save Inquiry time.
15. The applicant made a number of final remarks. The first is that the rebuttal does not establish the basis for the Company's reliance on the argument. The second is that a decisive House of Lords judgement unequivocally establishes that there is no place for this doctrine in public law, particularly in relation to planning and environmental law<sup>6</sup>. Given that it was a main issue, a substantive legal point had to be made as part of the applicant's submissions.
16. Whilst there was a laudable intent to save Inquiry time, the Company has not provided any alternative legal submission to suggest that the law is not settled on this matter. Consequently, I find that there is a risk of an award of costs on substantive grounds. I do not, however, find there is a risk on procedural grounds because the appeal was not withdrawn and it is not unusual for parties to abandon particular points prior to opening.
17. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process.
18. In this instance, there was ample opportunity to resile from this point in the case management conference and thereafter. Had the point not been maintained and included in further submissions then there would have been no wasted expense because the applicant would not have been obliged to make a legal submission on this matter. An email would not have been suitable owing to the fact that the point had become a main issue which continued to be the case until just before the opening of the Inquiry. The reason for the very late withdrawal of the argument remains unclear and could have occurred much sooner.
19. Given the above, I find that the Company acted unreasonably and I am left in little doubt that the late withdrawal of the estoppel argument directly caused the applicant to incur unnecessary and wasted expense in the appeal process because of the need to prepare a detailed legal submission<sup>7</sup>.

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<sup>5</sup> Bullet point 5, Paragraph: 049 Reference ID: 16-049-20140306

<sup>6</sup> R (Reprotech (Pebsham) Ltd) v East Sussex CC [2002] UKHL 8; [2003] 1 WLR 348, CD 10.2

<sup>7</sup> Appendix 2, Proof of Evidence of Ms Smith, CD 2.4

## **Conclusion**

20. For the above reasons, I am satisfied that a partial award of costs is justified and the application succeeds accordingly.

## **Costs Order**

21. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 paragraph 5(6) of the Environmental Permitting Regulations 2016, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Nick Brookes Demolition and Waste Disposal shall pay to the Environment Agency, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing Appendix 2 of the proof of evidence of Ms Smith, such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Nick Brookes Demolition and Waste Disposal, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*R Catchpole*

INSPECTOR