Bourne Valley Associates Ltd

Advance Notice of Intention to Apply for Costs Against Herefordshire Council

Associated with the Planning Appeal

For

The erection of and the construction of an anaerobic digestion (AD) plant with associated facilities, including feedstock storage clamps; tanks; lagoons and wetland filtration system; and connection to the national gas grid, together with the installation of photovoltaic panels on buildings, a grain store and dryer and the construction of anupgraded vehicular access to the A417

at

Whitwick Manor, Lower Eggleton,

Ledbury, Herefordshire, HR8 2UE

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1. Introduction

This statement provides advance notice to both the Inspectorate and to Herefordshire Council, as local planning authority, that the appellant, STL Energy, will be seeking an award of costs associated with certain work towards the appeal. The appellant has requested that the appeal should be determined through the public inquiry procedure. Therefore, the claim for costs will take account of the greater costs associated with that procedure.

In this document, we set out the elements of work that we consider have been fatuous and unnecessary, so that costs associated with them could readily have been avoided. At this stage it is not possible to provide an accurate estimate of unnecessary worktime accrued, especially that time expended at the inquiry itself. Therefore, as required, full cost estimates will be submitted before the end of the inquiry, as required under inquiry procedures.

2. Could an inquiry have been avoided?

In our Statement of Case, we have fully addressed the four reasons for refusal. Although the first three reasons for refusal demonstrate that there are significant differences between the local planning authority and the appellants, we consider that an inspector could have explored those differences and drawn their own conclusions through close questioning of key witnesses at an informal hearing.

It is the fourth reason for refusal, relating to the authority's perception that the submitted information fails to enable it *"to conclude, beyond reasonable scientific doubt, that the proposed development would not result in an adverse effect on the integrity of the River Wye Special Area of Conservation (SAC), either alone or in combination with other plans and projects, as required by the Conservation of Habitats and Species Regulations 2017"* that is the most contentious. In our statement of case, requesting a public inquiry, we believe that full consideration of the issue would require detailed evidence from scientific experts, and necessitate them being questioned, including cross-examination. Such detailed scrutiny would not be possible at an informal hearing.

Moreover, it is the potential impact on the River Wye that has attracted the greatest public comment. There are very likely to be requests from third parties to address the inquiry. Their evidence would be scrutinised forensically by the appellant.

We set out below a summary, as fully explained in the Statement of Case, of why we believe Reason for Refusal 4 should not be material to the planning determination. If the Inspector were to agree our argument, on procedural grounds, and thus not consider Reason for Refusal 4 as valid, then a public inquiry may not prove necessary.

Even if the Inspector were to accept our request, the work required to address the authority's requirements in respect of assessing the effect on the integrity of the River Wye SAC has already been undertaken, and associated costs accrued.

3. *Why should Reason for Refusal 4 be deleted from consideration at appeal?*

The topic is considered in detail in the Statement of Case under Issue 4 - Effect on the integrity of the River Wye Special Area of Conservation (SAC), under paras 9.24 to 9.36. We seek to avoid duplication, so only a summary is set out here.

Natural England (NE) revised its guidance on commenting on planning applications on 16th October 2025, prior to Herefordshire determination the planning application. This guidance takes the form of "standing advice" and relates specifically to *"the impacts of air pollution on protected sites*", such as the River Wye SAC. The advice makes clear that local planning authorities need not consult NE on every application. It sets out criteria for planning authorities to follow in "screening out" applications on which NE's advice should not be sought. These criteria include distances of applications from protected sites: air quality assessment are not required for sites over 5km away. The River Wye SAC is, at its nearest point, 7.1km away from the application site. NE made clear to Herefordshire that the Standing Advice should be applied to consideration of the application.

However, there is no evidence that Herefordshire Council took account of the standing advice, though the NE response was copied into the Officer's Report. The Officer's Report does not consider the implications of that Advice for the determination of the application, which would have been expected, since the reason for refusal is at odds with the Standing Advice. It is unclear whether Herefordshire Council consulted the Standing Advice.

Work towards a detailed assessment of the impact of air emissions had started before NE issued its Standing Advice. So, for example, work on in-combination assessment had been started and there had been liaison between the applicant and the planning authority as to which other projects should be covered by that assessment. So, such work, undertaken prior to 16th October 2025, cannot reasonably be covered by a claim for costs.

However, work associated with the Habitats Regulations Assessment that took place between that date and the determination date of 5th December 2025 could have been avoided. In addition, all subsequent consideration of matters related to the preparation of case against Reason for Refusal 4 should, we believe, be regarded as unnecessary, so that the appellant has a sound case to apply for the award of costs.

4. *Work undertaken that could have be avoided if Herefordshire had following Natural England's Stading Advice*

- Detailed examination of Reason for Refusal 4 within the application consultants and with Counsel;
- Preparation of notification to local planning authority that it had not taken proper account of the Standing Advice;
- Preparation of Statement of Case to address Reason for Refusal 4 to allow both for the deleted on the reason and the assessment of impacts were the reason to remain material;
- Preparation of this statement of advance notice to claim costs prior to the closure at the inquiry;
- Preparation of updated Aerial Emissions Assessment;
- Review of sHRA work to date, the methodology of assessments including the in combination assessment;
- Review of the Council's HRA.

At an inquiry, additional costs that should not have been necessary are associated with the following:

- Preparation of evidence in chief by air quality witness and time associated with presenting their evidence;
- Preparation of evidence in chief by ecology witness and time associated with presenting their evidence;
- Specific evidence to be given by the AD plant designer/client in respect of measures associated with air emissions mitigation that have been undertaken;
- Consideration of Reason for Refusal 4 by the planning witness in summarising the issue in his evidence;
- Counsel's time associated with advising and guiding witnesses addressing the topic, and with cross-examination of local planning authority and any third party witnesses.