
Costs Decision

Site visit made on 22 June 2016

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2016

**Costs application in relation to Appeal Ref: APP/U1105/W/16/3144419
Land at Shepherds Farm, Oil Mill Lane, Clyst St Mary, Devon EX5 1AG**

- 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 Solstice Renewables Limited for a full award of costs against East Devon District Council.
 - The appeal was against the refusal planning permission for installation of ground mounted photovoltaic solar arrays with power inverter systems; transformer stations; internal access tracks; landscaping; CCTV; security fencing and associated access gate.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG provides examples of circumstances which may lead to an award of costs against a local planning authority. These include failing to produce evidence to substantiate each reason for refusal on appeal or preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations. The PPG also advises that behaviour and actions at the time of the planning application can also be taken into account.
 4. The main thrust of the applicant's application is that the Council did not consider the revised siting of the solar arrays upon the north east field of the appeal site or the agricultural land classification reports undertaken in September 2015 and October 2015. It is submitted that the Council should have accepted the amended plans and undertaken a consultation exercise upon the changes. The applicant was agreeable to an extended period of time within which the Council could determine the application. Had this exercise been undertaken, and given the single refusal reason relating to BMV agricultural land, the appeal could have been avoided, along with the associated costs.
 5. The applicant submits that the submission of a new planning application on the north eastern field would not benefit from the Government's Renewable Obligation Certificate (ROC) regime because the application should have been submitted by 22 July 2015. The Council should have been aware of this and the implications this would have on the viability of the scheme. It should
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- therefore have accepted the revised siting of the panels as an amendment to the scheme.
6. It is submitted that the Council did not engage with the applicant during the course of the planning application and failed to provide meetings so that the applicant could progress the application. The planning application was not determined in a timely manner. The Council failed to comply with paragraph 187 of the Framework which states that 'local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible'.
 7. The Council consider that it has discretion whether or not to accept changes to a proposal, particularly if they are so significant as to materially alter a proposal such that a new application should be submitted. This advice is reflected in the PPG. In this case, the Council considered that the change in siting of the solar panels to a field where no panels had been shown, materially altered the proposal, such that it considered that a new application and supporting documents should be submitted.
 8. Whilst I note the applicant's frustration that the Council did not accept the amended siting of the solar arrays, it seems to me that, given the late submission of this information in the application process, the level of public interest in the site, and the changes that would be necessary to the supporting documentation, the Council was not unreasonable in declining to consider the amended information.
 9. Had the Council accepted the additional information and undertaken a consultation exercise, there would have been no guarantee that the revised scheme would have been approved, because the consultation exercise may well have raised material planning considerations which were not applicable to either the appeal scheme before me, or the earlier refused and dismissed scheme on the site. Furthermore, although the applicant states that the absence of a ROC would affect the viability of the revised scheme on the north eastern part of the site, no substantive information has been submitted to support this.
 10. I appreciate that an earlier planning application on the site included panels in the north eastern field. However, it is well established that each application and appeal should be determined on its individual merits. Neither myself, nor the Council could take into account comments received on an earlier application on the site when determining the present scheme.
 11. I note the applicant's concerns in respect of the delay in determining the planning application. In part, this was down to waiting for the outcome of an earlier appeal on the site, and an extension of time was agreed between the parties. This was entirely reasonable given the nature of the respective schemes. However, after the Council had advised the applicant that it would not be considering the revised information (13 November 2015), I find that it acted unreasonably because it did not then determine the planning application promptly. It took almost a further month for the decision to be issued.
 12. However, whilst I find that the Council acted unreasonably in this respect, it was open to the applicant to submit an appeal against the failure of the Council to determine an application for planning permission within the prescribed period. The applicant chose not to take this course of action. Given that the

application was refused planning permission, I find that the appeal was necessary along with the associated expense. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not therefore been demonstrated.

13. For the above reasons, and having regard to all other matters raised, the application for an award of costs is refused.

R C Kirby

INSPECTOR