
Costs Decision

Site visit made on 5 July 2016

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Decision date: 11 October 2016

Costs application in relation to Appeal Ref: APP/H0928/W/16/3146738 Land at Town End Farm, Skelton, Cumbria CA11 9TZ

- 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 RALOS new Energy Ltd for a full award of costs against Eden District Council.
 - The appeal was against the refusal of an application for planning permission for the installation of a 5MWp SOLAR PV FARM.
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Decision

1. The application is allowed in the terms set out below in the Costs Order.

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. The PPG makes clear that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy and any other material considerations; fail to produce evidence to substantiate each reason for refusal on appeal, and if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. The applicant alleges that the Council failed to produce substantive evidence to support its sole reason for refusal and did not submit any evidence to justify setting aside the recommendations of its officers. It is contended that unlike the applicant's submitted Landscape and Visual Impact Assessment which adopted a systematic and scientific approach to demonstrate that the proposal would not result in significant landscape harm, the Council produced no methodology to explain its finding of an unacceptable effect on the landscape.
 5. It is further contended that the Council's Statement contained only generalised objections on landscape and visual issues, and failed to put forward credible evidence to support the concerns expressed in the reason for refusal. This approach, it is argued, prevented a development that should clearly have been permitted. The applicant points to this being unreasonable behaviour which led to unnecessary costs being occurred in having to pursue this appeal.
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6. The PPG points out that local planning authorities (LPA) are not bound to accept the recommendations of their officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support their decision in all respects.
7. I note that Members of the Planning Panel were of the opinion (following review of the application, a site visit, a summary of the site including photos and plans, and after hearing from the applicant at the Panel) that the proposal would result in considerable harm to the amenity of the area and the landscape. A reason for refusal was prepared by officers based on the discussion at the Committee. Members reviewed this proposed reason for refusal and confirmed that the reason accurately reflected their concerns with the application.
8. It is the view of the Council that the discussions at the Panel which led to the application being refused were not vague, generalised or inaccurate. The parts of the application which were factual were the subject of objective analysis. The parts of the application which required a subjective analysis i.e. landscape and visual impact were discussed fully at the Panel and eventually led to the application being refused for the reason provided.
9. Nevertheless, in my judgement the Council failed to substantiate its position in respect of the proposal causing considerable harm to the amenity of the area and the landscape. The Council made generalised assertions about the impact of the proposal which are unsupported by any objective analysis. Consequently, and in contravention of the advice in the PPG, the LPA failed to show reasonable planning grounds for taking a contrary decision and did not produce relevant evidence on appeal to support their decision in all respects.
10. Accordingly, unreasonable behaviour resulting in unnecessary expense, as described in the PPG has been demonstrated and a full award of costs is justified.

Costs Order

11. 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 Eden District Council shall pay to RALOS new Energy Ltd, the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Eden 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Court Costs Office is enclosed.

Richard McCoy

Inspector