
Costs Decision

Site visit made on 23 August 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 05 December 2016

**Costs application in relation to Appeal Ref: APP/Y2003/W/16/3145863
Land at Sweeting Thorns, Holme, Scunthorpe (Grid Ref Easting 492692
Grid Ref Northing 407679)**

- 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 Mr James Wallwork, Rochester 005 Limited for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for the Installation of Standalone Solar PV modules and Associated Infrastructure.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, 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 advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
4. Examples of substantive unreasonable behaviour referred to in the PPG include (1) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations (2) failure to produce evidence to substantiate each reason for refusal on appeal and (3) requiring the appellant to enter into a planning obligation which does not accord with the law or relevant national policy on planning conditions and obligations.
5. The Appellant's costs application is based on two grounds, on which I set out my findings below.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

Ground 1 – community contributions

6. The Appellant claims, in ground 1, that the Council unreasonably delayed determination of the application subject to appeal whilst it sought to negotiate an agreement with the Appellant which would provide for the delivery of community contributions, including a financial contribution. He also claims that the community contributions sought by the Council were not required to mitigate any direct impact of the development and therefore conflicted with the statutory and national and local policy tests which apply to planning obligations, and that the Council did not have any grounds to delay determination of the application after the July 2015 Committee meeting whilst community contributions were sought.
7. The PPG² states that costs cannot be claimed for the period during the determination of the application. Whilst behaviour and actions at the time of the planning application can be taken into account in an Inspector's consideration of whether or not costs should be awarded, costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding.
8. Furthermore, the Appellant's costs application states that the unnecessary or wasted expense for which costs are sought was incurred by him '*...during the determination period*'. The correspondence which he has submitted to support this ground of the costs application relates to this period, rather than the subsequent appeal. As the Council's reasons for refusal did not raise the issue of community contributions or the other matters set out in the draft Unilateral Undertaking, the Appellant is unlikely to have been required to incur unnecessary or wasted expense in the appeal process in relation to these matters.
9. In accordance with the PPG advice referred to above, a costs award is not therefore justified in relation to this ground.

Ground 2 – agricultural land

10. The Appellant claims, in ground 2, that the Council has misrepresented national policy regarding the use of agricultural land in its second reason for refusal of the planning application subject to appeal. That reason for refusal states in summary that insufficient evidence had been submitted to justify why the proposal for the most part would occupy productive agricultural land.
11. The PPG³ includes a specific section covering proposals for large scale solar farms. It states that particular factors in the consideration of such proposals will include: '*...encouraging the effective use of land by focussing large scale solar farms on previously developed and *non agricultural land* ...*' and '*...where a proposal involves greenfield land, whether (i) the proposed use of *any* agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land...*' (my emphases).
12. It is clear from the wording of this section of the PPG that, whilst a primary focus is on the protection of 'best and most versatile' (BMV) land, there is also a focus on protecting poorer quality agricultural land except where it has been

² Paragraph: 033 Reference ID: 16-033-20140306

³ Paragraph: 013 Reference ID: 5-013-20150327

demonstrated that the use of such land is necessary. The approach of the PPG is reflected in the Ministerial Statement to Parliament in March 2015⁴.

13. Furthermore, I have found in my appeal decision that, whilst the Appellant appears to have undertaken an extensive site search and also described the practical matters which need to be addressed in such a search, the submitted information does not describe a formal site selection process which demonstrates that there is no non-agricultural land which could accommodate the proposal.
14. For reasons which are set out in my appeal decision, I have attributed only limited weight to the shortcomings in the agricultural evidence submitted by the Appellant. However, given the presence of these shortcomings and the requirements of national policy as set out above, I do not consider that the Council misrepresented Government policy in its second reason for refusal or behaved unreasonably in refusing permission for this reason.

Conclusion

15. For reasons which are set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. I therefore do not make an award of costs.

Jonathan Clarke

INSPECTOR

⁴ 'Planning Update March 2015' – Written statement to Parliament, DCLG and Secretary of State for Communities and Local Government, 25 March 2015