



Costs Decision

Site visit made on 7 April 2023

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th May 2023

Costs application in relation to Appeal Ref: APP/C3240/W/22/3308481 Land at Steerway Farm, Limekiln Lane, Wellington, Telford TF1 2JU

- 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 Telford and Wrekin Council against RE Projects Development Limited.
 - The appeal was against the refusal of planning permission for is for the installation of a ground mounted solar farm with continued agricultural use (grazing), ancillary infrastructure and security fencing, landscape provision and ecological enhancements.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only 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 Councils cost claim relates to ecology as well as Landscape Visual Impact Assessment (LVIA) information matters. The Council alleges that the Appellant has been both procedurally and substantively unreasonable in relation to dealing with ecology issues through failing to provide sufficiently detailed ecological information at either: (1) the application stage or (2) after permission was refused, but before the appeal was made.
4. The Council's second reason for refusal which was withdrawn prior to the Inquiry relates to insufficiency of information. I agree that the purpose of an appeal is to meet the reasons for refusal given by the local planning authority.
5. I accept that the Appellant had no choice but to appeal within the statutory period of 6 months. The Appellant was therefore required to respond to landscape, visual and planning policy objections as well as ecological reasons for refusal in preparing for the appeal. The Appellant has engaged the Council on those aspects to narrow the areas of dispute where it was appropriate to do so.
6. The Appellant states that from 14 November 2022 and having signed a Statement of Common Ground, there was no need for the Council to prepare an ecology proof of evidence. A Case Management Conference Note from the Planning Inspectorate issued 17 January 2023 acknowledges ecology issues

- where no longer disputed by the Council based on their prior agreement. Nonetheless, I acknowledge third party objections were a relevant factor.
7. The Council concedes that its own concerns about Biodiversity Net Gain were already addressed by 14 November 2022, through greater understanding of what habitat enhancements could be delivered. This being around one month or so, after the appeal was first lodged.
 8. All of the evidence available suggests to me that the Appellant has been as efficient as possible in resolving areas of dispute brought to its attention from the submission of the planning application onwards. Moreover, the Council may have requested additional information during the initial application period to better aid the decision it took as well as further exploring scope for potential planning condition use. I accept that the Appellant acted in a proactive and reasonable manner to address the issues raised.
 9. Accordingly, there is no substantive evidence before me which demonstrates unreasonable behaviour or that the Council has incurred any additional unnecessary expense as a result of the ecology implications of the appeal.
 10. As to LVIA implications. During the planning application period the Appellant produced a LVIA which the Council thought was incomplete. The Applicant produced a second LVIA which was submitted as part of a revised Environmental Statement (ES) in February 2022.
 11. There is no convincing evidence that the Council sought additional or further environmental information in the determination period following that. I note the Officer Report to the Planning Committee addresses the second LVIA (LVIA 2), confirming that it had corrected the shortcomings of the first LVIA.
 12. However, Mr. Cook on behalf of the Appellant prepared his own assessment (LVIA 3) which was subsequently appended to his own proof of evidence as an expert witness giving evidence at the Inquiry, owing to changes in consultants.
 13. That point aside, I have accepted that the information was needed for the purposes of dealing with the appeal under the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, in order to properly understand the significance of effects and any mitigatory measures possible related to the reason for refusal in dispute.
 14. I note a comparison table was introduced by the Appellant and circulated around 15 February 2023 to aid technical and non-technical parties. The information Mr Cook prepared is professional opinion based in substance, I do not find an appended LVIA to be an unreasonable approach. Mr Cook was entitled to give his informed professional opinion on the matters disputed and subject to cross examination. The most sensible option to do that was through a LVIA based on his own conclusions and the Institutes Guidelines for Landscape and Visual Impact Assessment 3. Indeed, all parties were able to clearly identify where significant and main differences in opinion lay.
 15. In doing so, none of the information replaced the existing ES information or previous LVIA's. It did not raise fresh or substantive character and appearance issues. Indeed, it is further information the consideration of which was an aid to all of the parties involved in the appeal given the large size and extent of the appeal site involved.

16. In all respects, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the applicant's claim for costs fails.

M Shrigley

INSPECTOR