



Costs Decision

Hearing held on 31 May 2023

Site visits made on 30 May and 1 June 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2023

**Costs application in relation to Appeal Ref: APP/G2713/W/23/3315877
Land south of Leeming Substation, west of the village of Scruton,
bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG**

- 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 Lightrock Power Ltd for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for the installation of a solar photovoltaic array/solar farm with associated infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 application for an award of costs is made on substantive grounds. It is highlighted that the Committee of the Council determining the application decided not to accept the recommendations of its Officers to grant permission. It is argued that the Council has prevented or delayed development which should have been permitted having regard to the development plan, national policy and other material considerations and has failed to substantiate the reason for refusal on appeal. The PPG indicates that, in such circumstances, costs may be awarded against a Council.
4. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the Council to be able to produce relevant evidence on appeal to support the decision.
5. It is not disputed that the Council provided two witnesses at the hearing, who both had considerable experience in their respective fields, and that the Council produced a statement of case, albeit short in length. However, this in itself does not mean that they have substantiated, at appeal stage, their decision to refuse the application.
6. The application had 2 inter-related reasons for refusal. These relate to the proposal's use of Grade 2 agricultural land, the unjustified loss of this Best and Most Versatile (BMV) agricultural land and the impact of this loss on the ability

to provide food for the security of the nation. The reason for refusal sets out the development plan policies and the parts of the *National Planning Policy Framework* (the Framework) to which the Council considered the scheme would be contrary.

7. As detailed in my decision, I have concluded that the appeal site is not BMV agricultural land. However, I recognise that the agricultural land classification of the site is a matter of judgement, and given the evidence from their own consultant, I consider that it was not unreasonable for the Council to adopt a different position in this respect.
8. Nonetheless, the Council's appeal statement provides no evidence to refute or counter the appellant's evidence that, even if the site was BMV agricultural land, the proposal would not result in the loss of the land for agriculture, or to explain why given the appellant's sequential assessment, the use of this land was not justified. In addition, whilst the statement highlights the need to balance the objective to achieve a low carbon economy with the objective to protect a finite resource and the ability to produce food for the nation, it does not carry out any such balancing exercise. Consequently, I consider that the Council's statement does not substantiate the reasons for refusal.
9. At the hearing the Council indicated that their concerns regarding the loss of agricultural land was related to the impact the proposal would have on the versatility in the use of the land and its productivity. However, both in the Statement of Common Ground (SoCG), and at the hearing, the Council agreed that there is no legal or policy mechanism to control the specific agricultural use an owner makes of land. Moreover, the Council did not dispute the fact that the government currently provides financial incentives to farm in less intensive ways and take land out of production for biodiversity reasons. In the light of this, the productivity or otherwise of the land, and whether or not it is used in a versatile way cannot reasonably support an argument that the proposal would result in the loss of agricultural land.
10. Additionally, in the SoCG the Council acknowledge that some agricultural use of the land will continue alongside the solar farm through sheep grazing and they did not dispute that it is the intention for the land to revert to agricultural use when the solar farm ceases to operate. Whilst the land would not be able to be used for arable production whilst the site is being used as a solar farm, the Council have provided no evidence that the use of the land for grazing sheep would be contrary to any policy, whether or not it is BMV land. Given this, it cannot be reasonably argued that the proposal will result in either the temporary or permanent loss of agricultural land.
11. Whilst in their response to the costs claim the Council have argued that it was not unreasonable for them to place significant weight on the ability to grow crops on BMV agricultural land, given that it is agreed by the Council that there is no mechanism to require crops to be grown, it is indeed unreasonable to put significant weight on this.
12. Similarly, both in the SoCG and at the hearing the Council confirmed that there were no legislative, planning policy or guidance at any level that relates to food production or security. Whilst their response to the costs claim suggests that the proposed revisions to the Framework refer to the need to address food security, the explanatory text to the Framework revisions, highlights that as a nation we have a high degree of food security and does not set out that any

additional food security needs to be achieved. Therefore, I consider that at appeal stage the Council have provided no evidence to substantiate this part of the reason for refusal.

13. It was agreed in the SoCG that there is no national or local policy requirement for a sequential test to be undertaken for renewable energy proposals. Policy S5 of the *Hambleton Local Plan (adopted February 2022)* (HLP) indicates that where significant development in the countryside is demonstrated to be necessary the use of BMV land should be avoided wherever possible. This does not require a sequential test, nonetheless one was provided by the appellant.
14. No concerns regarding the methodology or approach of the appellant's sequential assessment were raised in either the Officer's report or the Council's appeal statement. At the hearing it was stated that it could have used a wider search area, but no evidence was provided as to what search area should have been used. Neither did the Council provide any evidence themselves, to counter that in the appellant's sequential assessment, to show that there were any other potential alternative sites utilising lower grade agricultural land or brownfield land, that could use this, or another connection to the grid.
15. In their response to the application for costs the Council refer to HLP Policy EG7 in support of their case for retaining BMV land. However, this is not a policy to which they had made any previous reference, nor that was listed in the SoCG as a policy that was relevant to the case. Whilst the part of the policy quoted provides support for sustainable forms of farming rather than providing any support to the Council's case for the retention of BMV, it is still unreasonable at this late stage of the appeal process to start relying on new policies.
16. Overall, I consider that the Council has not produced relevant evidence at appeal stage to support their decision to refuse planning permission and has therefore delayed a development that should have been permitted, having regard to the development plan and other material considerations. I therefore consider that the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal.
17. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is justified.

Costs Order

18. 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 North Yorkshire Council shall pay to Lightrock Power Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to North Yorkshire 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.

Alison Partington

INSPECTOR