
Costs Decision

Hearing held on 18 July 2023

Site visit made on 17 and 18 July 2023

by P Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Costs application in relation to Appeal Ref: APP/V1505/W/23/3318171 Land at Crays Hall Farm, Church Lane, Crays Hill, Essex CM11 2UN

- 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 Boom Energy Ltd for a full award of costs against Basildon Borough Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for installation of renewable energy generating station comprising ground mounted photovoltaic solar arrays together with substation, transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure and landscaping and biodiversity enhancements.
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Decision

1. The application is refused and no award of costs is made.

The submissions

2. The submissions were made in writing and responded to in writing. A rebuttal to the Council's response was made in writing.

Reasons

3. 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. The PPG says that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing or failing to determine planning applications, or by unreasonably defending an appeal. An example might be 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, or acting contrary to, or not following, well-established case law; or not reviewing their case promptly following the lodging of an appeal against refusal of planning permission or an application to remove or vary one or more conditions, as part of sensible on-going case management.
4. The main points made by the appellant are:
 - i. That the Council considered individual benefits of the scheme and decided that each failed to meet the threshold of being a very special circumstance

(VSC) and did not contemplate that a number of ordinary factors when combined together can result in something very special;¹

- ii. The failure of the Council to consider its own strategy and policies;
 - iii. The failure to identify suitable sites elsewhere in the Borough;
 - iv. In the light of the lack of an up to date Local Plan, the failure to start a process of identifying suitable sites for solar generation in the Borough;
 - v. The failure to recognise the significance of the temporary 40 year life of the development;
 - vi. The failure to recognise the crucial value of the adjacent sub-station;
 - vii. The failure to recognise the economic benefits of the scheme.
5. To address a point made by the Council in its response, whilst the Council was not provided with the benefit of early engagement from the appellant company on this scheme, it cannot have been unaware of the potential and the need for solar development within its area, not least because of clearly expressed national policy but also because it had already had to deal with the adjacent Outwood scheme and its extension. I give little weight to the Council's view that officers were placed at a disadvantage by the lack of prior consultation.
6. The officers' report correctly records the advice on VSC in the NPPF at paragraphs 5.1.25- 5.1.26. The report then clearly sets out national strategy for renewable energy, the need for solar power as a priority, the contribution the scheme would make towards the climate emergency which the Council declared in June 2019 and the objectives of the Basildon Borough Council Climate Strategy and Action Plan. The benefits of the scheme are clearly expressed and afforded significant weight. The benefits clearly include the on-site transfer of electricity back into the grid, the environmental benefits, the biodiversity benefits and the economic benefits and refer to the applicant's own documentation.
7. Officers' opinion on the effect on the openness of the Green Belt is set out. The officers report then states at paragraphs 5.1.52 and 6.2 that 'it is not considered that the very special circumstances put forward would either individually or collectively outweigh the harm to the Green Belt by reason of inappropriateness'. Whilst the Council does not consider the Green Belt issue in the same way that it was considered at the Hearing or is phrased in the accompanying decision letter, it is clear that a planning judgement was carried out following an analysis of benefits in combination and disadvantages in combination with regard to the advice in the NPPF at paragraph 147. This is titled 'Conclusion on very special circumstances'.
8. Officers have then gone on to summarise the effects on Landscape Character, Appearance and Visual Amenities and cumulative effect, based on the 'Place' report, concluding that the proposed scheme would have a substantial adverse impact. This then is carried forward into the conclusion at paragraph 6.3.
9. The Council have not carried out the balance in the conventional manner including elements of 'any other harm' as suggested in paragraph 148, but

¹ Reference High Court [2004] EWHC 2759 (Admin) *Basildon*

there is no evidence that officers did not consider the cumulative impact of the benefits in accordance with the HC *Basildon* judgement.

10. Moreover, the Council's Hearing Statement expressly refers to paragraph 151 of the NPPF where Government advice states that 'very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources'. Whilst the Council's methodology does not follow the conventional route, I do not find overall that its consideration of whether very special circumstances outweighed the harm to the Green Belt and any other harm clearly misinterpreted the cumulative or 'in combination' effects of those benefits, to the extent that its behaviour was unreasonable.
11. Turning to the other grounds, there is no persuasive evidence that the Council ignored its own policies, such as they existed at the time. Significant weight was given to the environmental benefits in the light of 'the pressing need for renewable energy sources and the large amount of national legislation, guidance and policy which supports the transition to a low carbon future' (Hearing Statement paragraph 7.18). I do not disagree that a 40 year life span constitutes a significant length of time for landscape and visual impacts to persist and it was not unreasonable for the Council to consider this to be 'semi-permanent' in the balance, given that this could include 2 generations.
12. The lack of progress on the replacement local plan has undoubtedly hindered the Council's aspirations in terms of planning for future renewable energy supply and finding sites, but there is little to suggest that this unduly affected proper consideration of the merits of this proposal. The position that the Council took at the Hearing is that the disbenefits in terms of the effect on landscape character and visual amenity, in conjunction with the Outwood scheme, were too great. That judgement has a subjective element. Whilst my judgement is different, it does not make the Council's position unreasonable. I note that the Council carried out a similar balancing exercise for a battery storage scheme at Lower Dunton Road (22/01486/FULL) where the cumulative benefits were considered persuasive enough to allow that scheme.
13. Other aspects of the appellant's application for costs consist of no more than a re-statement of the merits of its case that were explored at the Hearing. For the reasons given above, I do not find that unreasonable behaviour has been demonstrated that has directly caused the appellant to incur unnecessary or wasted expense. For the above reasons, the application fails.

Paul Jackson

INSPECTOR