



Costs Decision

Hearing held on 24 August 2023

Site visit made on 24 August 2023

by Alan Novitzky B.Arch MA(RCA) PHD RIBA

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Costs application in relation to Appeal Ref: APP/J3720/W/23/3321095 Land near to Middle Road Farm, Middle Road, Harbury, Warwickshire, CV33 9JN

- The award 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 appeal was made by Leicestershire Solar 1 Ltd against the refusal of Stratford-on-Avon District Council to grant planning permission for the installation and operation of ground-mounted solar photovoltaic panels and associated energy storage, inverter stations, substation compound, customer station, fencing and gates, spare parts containers, meteo stations, CCTV (with associated masts), hard and soft landscaping and all associated works, including site access and internal access tracks.
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Decision

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

Submissions and responses

2. Submissions and responses were made in writing as set out in the document list below. No oral submissions, adding to or amending the written submissions, were made at the Hearing. Substantive unreasonable behaviour is claimed.

Reasons

3. 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.
4. Although the Council is not obliged to follow its officers' recommendations, its decision should be based on sound planning reasons supported by evidence. The committee report acknowledged that the application would cause a level of harm by urbanising the currently undeveloped agricultural fields but that this should be weighed against the benefits of enabling renewable energy in this part of the District at a time of climate change emergency, and that the proposals would not result in such a level of harm as to warrant a refusal.
5. The Council based its decision on a single reason for refusal that, by reason of its scale and size, the proposed development would be visually intrusive in the open countryside, would not be sensitive, and would seriously detract from the open and rural character and appearance of the landscape. Further, that it would have a significantly adverse urbanising effect on the landscape character, especially considering cumulative impact on the open countryside.

6. This reason for refusal has not been appropriately supported by evidence or analysis. The minutes of the committee meeting add nothing of substance. The Council's Statement of Case points to minor adverse impacts on landscape character identified in the Landscape and Visual Impact Assessment (LVIA) and appears to imply that the Council put great weight on this aspect. However, no exercise in planning balance was evident. A landscape witness appeared for the Council at the Hearing, but no report was submitted, and no oral evidence of substance was forthcoming.
7. The Council infers that the production of the Amended Scheme, which was granted planning permission prior to the Hearing, indicates that the original scheme was unsatisfactory. However, this approach is undercut by the Council's refusal to consider the amendments appropriate under the Wheatcroft principles during the appeal process and up to the Hearing.
8. The Council has failed to produce evidence to substantiate its reason for refusal on appeal.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 Stratford-on-Avon District Council shall pay to Leicestershire Solar 1, 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.
11. The applicant is now invited to submit to Stratford-on-Avon 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.

Alan Novitzky

INSPECTOR

DOCUMENTS

Costs Application on Behalf of Leicestershire Solar 1 Ltd
Stratford-on-Avon District Council's Response to Application for Costs
Costs Reply on Behalf of the Appellant