



Costs Decision

Site visit made on 21 September 2023

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th October 2023

Costs application in relation to Appeal Ref: APP/U1105/W/23/3320714 Land to the south and west of Marsh Green, Marsh Green, East Devon EX5 2EU

- 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 Low Carbon Alliance Ltd against East Devon District Council.
 - The appeal was against the refusal of planning permission for the construction and operation of a ground mounted solar farm and associated landscaping and ecological habitat, with permission being required for 40 years, comprising solar arrays, equipment housing, sub-station, fencing, ancillary equipment and associated development; and temporary change of use of land for construction compound (off site).
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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 cost claim received alleges: 1) prolonging the proceedings by introducing a new reason for refusal; 2) vague, generalised, or inaccurate assertions about the appeal schemes impact, unsupported by any objective analysis; and 3) that East Devon District Council (EDDC) has not provided any adequate justification for no longer defending two reasons for refusal leading to the appeal.
4. I accept that the issues alleged by the claimant are interrelated and given the substantial overlap I have summarised my findings accordingly.
5. With respect to the first ground. The committee minutes evidenced do show noticeable variance to the eventual terms of the Decision Notice (DN) issued. Nonetheless, the reasons of the DN contested are binding. Whilst the precise reasons for any variances are unclear, the main parties have not cited any Judicial Review of the DN prior to, or during the appeal process. Thus, I disagree those specific circumstances have prolonged proceedings based on the evidence available.
6. Conversely, there is good record of EDDC engagement to narrow potential areas of dispute where it was appropriate to do so during the planning application period onwards.

7. That said, the main purpose of an appeal is to meet the reasons for refusal given by the local planning authority. Consequently, the claimant based on the DN had no choice but to appeal within the statutory period of 6 months. The claimant was also required to respond to all matters raised to it informed by the DN, as well as the Case Management Conference (CMC), plus all relevant document exchanges and matters raised in the lead up to, as well as during, the Inquiry itself.
8. In that context, I agree that EDDC cannot be responsible for the stance adopted by the Rule 6 (R6) party, or any other interested party, relative to the terms of the DN. In that vein, the Inquiry would have been necessary to determine most, if not all, the issues heard irrespective of the withdrawal of the reasons for refusal by EDDC.
9. In those circumstances, I am mindful that the appellant is likely to have needed to call evidence in any event for key elements in dispute. Thus, EDDC's conduct has not caused the direct incursion of any unnecessary costs in my view. Indeed, in some respects, EDDC's actions were beneficial to reducing overall Inquiry time.
10. I also accept that much of the argument made for costs in Ground 2 is directed to the actual planning merits of the appeal, and not whether EDDC provided proper reasons and evidence to justify their refusal.
11. In all respects evidence was given by properly qualified witnesses, bearing in mind officer advice informing EDDC's decision beforehand. Irrespective of my findings on any of the main issues, given the clear local concerns also informing the Council's initial decision I find that an adequate level of broad objective analysis was present in the overall arguments made. Albeit there was important discrepancy in some of the Council's landscape witness assessment largely stemming from appeal document annotations.
12. Importantly, with respect to Ground's 1, 2 and 3. EDDC withdrew flooding and drainage related reasons for refusal promptly post the CMC leading to the event. As was the case with the best and most versatile agricultural land argument (cited in reason no.2 of the DN). This situation being subsequently reflected in the agreed Statement of Common Ground's and proofs referred to by the claimant (the Appellant). Nevertheless, those matters were ultimately and inevitably still part of any planning balance.
13. EDDC and the views of the R6 party combined raised legitimate planning concerns on several contentious issues related to the terms of the DN and the locality. In that context, I find that EDDC have made clear efforts to adapt their arguments post the CMC, in a collaborative, informed and proactive manner in a way that does not disadvantage the Appellant. Mindful of all active lines of argument which were pursued and the professional expertise available. Nevertheless, in doing so I accept there are unavoidable residual tensions created in assessing all the arguments applied relative to the DN.
14. Notwithstanding those residual tensions, all the evidence available suggests to me that EDDC has been as efficient as possible in managing and narrowing areas of active dispute brought to its attention, as encouraged by best practice.
15. Despite the steps EDDC took, there remained key differences involving local knowledge including from surrounding residents and members of the

community represented by the R6. Thus, I accept they have acted in a reasonable manner in response to all of the local issues triggered, where disagreement remained.

16. Overall, there is no substantive evidence before me which demonstrates unreasonable behaviour or that the Appellant has incurred any additional unnecessary expense because of the implications of the appeal triggered as a whole.
17. In all respects (having regard to grounds 1, 2 and 3), I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the applicant's (i.e., the Appellant's) claim for costs fails.

M Shrigley

INSPECTOR