



Costs Decisions

Inquiry opened and adjourned on 15 November 2022 and resumed on 10 October 2023

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal A

Costs application in relation to Appeal Ref: APP/X1355/W/22/3299829 Sheraton Hall Farm, Sheraton, Durham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightsource Development Services for a partial award of costs against Durham County Council.
 - The inquiry is in connection with an appeal against the refusal of planning permission for installation and operation of a solar farm together with all associated works, equipment and necessary infrastructure.
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Appeal B

Costs application in relation to Appeal Ref: APP/X1355/W/22/3299836 Sheraton Hall Farm, Sheraton, Durham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightsource Development Services for a partial award of costs against Durham County Council.
 - The inquiry is in connection with an appeal against the refusal of planning permission for construction of underground electricity cables and associated infrastructure to connect to the proposed Sheraton Hall Solar Farm (DM/20/03722/FPA).
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Appeal C

Costs application in relation to Appeal Ref: APP/H0724/W/22/3299842 Land near Sheraton Hall Farm, Sheraton, Durham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightsource Development Services for a partial award of costs against Hartlepool Borough Council.
 - The inquiry is in connection with an appeal against the refusal of planning permission for construction of underground electricity cables and associated infrastructure to connect Sheraton Hall Solar Farm to primary proposed substation – Durham County Council reference - DM/20/03722/FPA.
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Appeal D

Costs application in relation to Appeal Ref: APP/H0724/W/22/3299848 Land near Hart Moor Farm, Hartlepool, TS27 3BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightsource Development Services for a partial award of costs against Hartlepool Borough Council.
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- The inquiry is in connection with an appeal against the refusal of planning permission for construction of underground electricity cables, substation and associated infrastructure to connect to Hart Moor substation on land near Hart Moor Farm, Hartlepool, TS27 3BQ.
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Appeal E

Costs application in relation to Appeal Ref: APP/H0724/W/22/3299857 Land near Hulam Farm, Castle Eden, Durham

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lightsource Development Services for a partial award of costs against Hartlepool Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for construction of underground electricity cables, substation and associated infrastructure to connect Hulam Solar Farm to the existing substation near Hart – Durham County Council Ref – DM/19/03959/FPA.
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Decision

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

Background

All Appeal cases

2. I wrote to the main parties on 9 November 2022 seeking legal submissions on the following points:
 - i) Whether any of the five appeals could be considered to be an extension to the consented Solar Farm at Hulam (reference DM/19/03959/FPA) by reason of being functionally linked.
 - ii) Whether development consent would be required in accordance with the Planning Act 2008 for the resultant generation capacity.
 - iii) Whether there are implications related to these issues for any grant of planning permission for the above appeals and the Inquiry next week.
3. The main parties responded accordingly. Durham County Council and Hartlepool Borough Council were of the view that, notwithstanding the fact that they validated and determined the planning applications, that the appeals before me and referenced above did not fall to be determined under the Town and Country Planning Act (TCPA). Instead they argued a Development Consent Order (DCO) should be sought by the appellant for this development under the Planning Act 2008 as an extension to the solar farm at Hulam, which already has planning permission. I do not intend to rehearse the main parties' planning arguments here but suffice to say the appellant took the opposite view that the appeals are valid and should be determined as such without delay.
4. It was put to me at the inquiry by the Councils that they would seek to challenge through the High Court this matter at the decision stage, but to get to this point would require around 7 days of Inquiry time (including the site visit) and time spent by me writing the decision. All of this would come at considerable expense to the public purse. An alternative approach, which the Councils introduced as their favoured way forward was for the Inquiry to be adjourned in order to allow them to judicially review the decision that the applications and appeals were valid. This would require the Court to determine

whether the appeals are valid and should continue to be determined under the TCPA or if consent can only be given for the development by way of the grant of a DCO in accordance with the Planning Act 2008.

5. Following the opening of the inquiry and hearing legal submissions from all three main parties on the above points I took the decision to grant an adjournment to allow the Councils to issue a challenge within a certain time frame. In my view the Councils preferred approach had the benefit of potentially preventing wasted time and public expense and this was the basis on which I adjourned the inquiry on the afternoon of 15 November.
6. The challenge was lodged in December 2022 in the High Court in London.

Reasons

All Appeal cases

7. The Planning Practice Guidance 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.
8. The appellant argues that when the Councils produced a joint initial submission on 11 November 2022, this was the first time in the application and appeal process, they indicated that they believed that all the schemes were functionally linked and that they all should be treated as extensions to Hulam Solar Farm. This was repeated in the Councils joint response to the appellant's legal submissions dated 14th November 2022.
9. However, the appellant argues that no mention was made in either the initial joint submission or the further joint response of the potential for the Councils to request an adjournment of the inquiry so that an application for judicial review could be made.
10. The first occasion on which the Councils requested that the appeal hearing be adjourned so that judicial review proceedings could be brought was at end of the morning session on 15th November 2022 in response to my initial decision that the inquiry would go ahead.
11. The appellant argues that the Councils behaved unreasonably in seeking to have the 6 day inquiry adjourned on the first day. The appellant says they attended the inquiry with a full team, having spent the preceding days preparing for the opening of the inquiry session, attending final preparation meetings, site visits and travelling.
12. The appellant argues that the proper course of action in this case was for the Councils to agree that the inquiry should proceed as planned, subject to the possibility that, in the event planning permission was granted, a statutory challenge based on absence of jurisdiction should have been brought pursuant to section 288 of the TCPA. This course of conduct was resisted by both Councils.
13. I wrote to the main parties as set out above, less than a week before the inquiry opened. This gave the main parties little time to consider my questions and the implications for the inquiry. Indeed, responses to the questions were

received by the PINS on the Friday before the inquiry and cross copied. I also confirmed on Friday 11 November that the inquiry would go ahead as planned.

14. Comments were made by the main parties on the opposing parties submissions on the following Monday (the day before the inquiry opened). The Councils did not in any of their written submissions say that they would seek a judicial review should the inquiry continue.
15. Nevertheless, in my view this could have only come on the day before the inquiry when most of the preparatory work the appellant refers to would have been done anyway. The site visits and travelling needed to be done on the Monday and because of the time of year site visits had to be carried out by a certain time to allow good visibility, something that is important for cases such as this where long distance views are being considered. This means travelling earlier in the day than in summer for example. Moreover, the inquiry was eventually resumed and so some of the site visit preparatory work will not have been wasted.
16. Turning to the time spent at the inquiry hearing, my opening and then dealing with legal submissions and the open discussion that took place about the best way to proceed. It was quite a unique situation we all found ourselves in with little precedent on the most appropriate way to proceed. These discussions were in my view an important part of the process that eventually led to my decision to adjourn the inquiry. Given the limited time available on the day before the Inquiry, it would have been impossible to cover all this ground in writing, especially given there were 2 Councils involved and thus 3 main parties and the parties and me were travelling to the venue.
17. Whilst I sympathise with the appellant's frustration over the matter, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Louise Crosby

INSPECTOR