The Planning Inspectorate

Costs Decision

Hearing held on 6 February 2024

Site visits made on 5 and 6 February 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Costs application in relation to Appeal Ref: APP/B1550/W/23/3329891 Land West of Great Wheatley Farm, Great Wheatley Road, Rayleigh, SS6 7AR

- 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 Aura Power Solar UK Ltd for a full award of costs against Rochford District Council.
- The appeal was against the refusal of planning permission for a solar farm, access, ancillary infrastructure and cable route.

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. It is also claimed that the Council have not determined similar cases in a consistent manner. The PPG indicates that, in all 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. Although the Council was represented at the hearing, and produced a short statement of case this does not mean that they have substantiated, at appeal stage, their decision to refuse the application. Nor does the fact that the application was subject to a lengthy debate when considered at the Planning Committee and had been subject to a site visit by members prior to the meeting.

5. The application had a single reason for refusal which indicates that the harm to the Green Belt would not be outweighed by the energy output of the proposed

solar farm. It also sets out the paragraph in the *National Planning Policy Framework* (the Framework) to which the Council considered the scheme would be contrary.

6. The Council's hearing statement indicates that members considered that this development had a "relatively low output in relation to the greater harm to the Green Belt". The statement sets out that in considering how the proposal would cause harm to the Green Belt consideration was given to the assessment of the parcel of land which the appeal site forms a part of in the Rochford and Southend Green Belt study.

7. However, the statement provides no assessment of how the appeal scheme would affect the openness of the Green Belt either spatially or visually. At the hearing it was indicated that in this regard the concerns related to the fact that the difference in levels across the site, along with the removal of some existing vegetation, would make the proposal prominent. However, the Council has not produced any evidence to counter the finding of the applicant's Landscape and Visual Impact Assessment on the visual effect of the proposal. As such its assertions in this regard are not supported by any technical evidence.

8. Moreover, neither in the statement, nor at the hearing, was any substantive evidence provided to explain how the energy output of the proposal results in greater harm to the Green Belt either in terms of its inappropriateness or with respect to its impact on openness. In addition, no evidence was produced to counter that provided by the applicant that shows that the output per hectare of the proposal is similar or better than other schemes approved or operating in the Green Belt in the area.

9. In support of their argument, reference was made by the Council to other planning decisions around the country where it is indicated schemes of around 49.9MW have been approved, but where the output is lower the weight given to the production of clean energy in the Green Belt balance reduces, resulting in the schemes not being granted planning permission. However, many of the decisions listed date from 2014 – 2016 and so were not made in the context of the current national policy for renewable energy which has changed significantly since then. The other more recent decisions referenced are not proposals in the Green Belt. As such, reliance on such cases is unreasonable.

10. Furthermore, even if discussed at the Committee, the Council's statement provides no assessment of the benefits of the proposal and no indication of how these relate to the climate and ecological emergencies the Council have declared. It also carries out no meaningful balancing exercise between the benefits of the proposal and the Green Belt and any other harm, other than simply asserting that the size of the proposal and the energy it would generate would not outweigh Green Belt harm. Consequently, I consider that the Council's statement does not substantiate the reason for refusal.

11. The reason for refusal does not make any specific reference to the proposal having landscape and visual effects. Nonetheless, the Council's statement suggests the proposal would have a "strong harmful presence when viewed from the urban edge and footpath network near to the site." This is despite the fact that in section 7 of the Statement of Common Ground (SoCG) it is agreed that there would be little change in view outside the site boundary due to the pattern of vegetation cover and that whilst there will be some visual effect it would not be to any degree that can be considered to be demonstrably

harmful. I accept that then in section 8 of the SoCG the existence of any significant landscape and visual effects is listed as an area that remains in dispute. However, this inconsistency within the Council's case in my view is unreasonable behaviour.

12. Moreover, as highlighted above, the Council have produced no technical evidence to counter the conclusions of the applicant's Landscape and Visual Impact Assessment which found that the visual impact of the proposal would be very limited and localised. As such, the statement that the proposal would have a "strong harmful presence when viewed from the urban edge and footpath network near to the site" is unsubstantiated.

13. In a similar vein, although again not mentioned in the reason for refusal it is clear from the Councillor's note appended to the Council's hearing statement that it was considered that the site was Best and Most Versatile (BMV) agricultural land. Despite the SoCG accepting that this was not the case, at the hearing, the Council continued to assert that the site was BMV land.

14. At the hearing the Council indicated that members considered more weight should be given to the statement in the consultation response from Natural England that "from the description of development this application is likely to affect BMV agricultural land" than the site-specific assessment carried out by the applicant. The rebuttal to the cost claim explains that because of this, despite what the Officer's Report said, when reading the full response members considered the statutory consultee was in fact objecting to the proposal. Whilst it is stated that it is not irrational or unreasonable for them to have come to such a conclusion, given the full response very clearly indicates that Natural England are not objecting, it is both irrational and unreasonable for members to have come to such a conclusion. Moreover, for the Council to continue to argue at the hearing that the site is BMV land having agreed it is not in the SoCG is also unreasonable behaviour.

15. The applicant has highlighted that several months after this application was refused by the Planning Committee, they resolved to grant permission for another solar farm in the Green Belt. This scheme not only had Green Belt harm but major landscape and visual harms and harm to the significance of a non-designated heritage asset. Nonetheless, it was considered these were outweighed by the benefits of the proposal. It is argued by the applicant that this shows inconsistency in the Council's decision making.

16. The Council have stated that circumstances for this case were different as at the time of decision making the Council were in need of meeting its "target" for renewable energy. This "target" is the "desired outcome" of 100MW set out in the Council's Sustainability Strategy. Putting to one side consideration as to the appropriateness of this as a "target", it is both irrational and unreasonable to claim an application approved 4 months later than the appeal scheme was needed to meet this target, but the appeal scheme was not.

17. In the rebuttal to the cost claim it was suggested that it is difficult for members to provide a substantial evidence base as few consultancies will take on such work as it would be likely to lose them future work as they would be known as "Council lovers". Whilst in my experience consultancies quite regularly support Council's at appeal, even if that were the case this does not absolve the Council from the need to substantiate the reasons for refusal at appeal.

18. In response to the application for costs the Council suggest that if costs were to be awarded, they should not cover any in respect of heritage issues given this did not form part of the reason for refusal and it is claimed was wrongly introduced into the appeal by the applicant.

19. However, section 8 of the Statement of Common Ground (SoCG) clearly indicates that a matter in dispute is whether the public benefits of the proposed development outweigh the less than substantial harm that would arise to designated heritage assets. Moreover, the Council's statement of case provides no balance between the public benefits of the proposal and the heritage harm as set out in paragraph 208 of the Framework.

20. Whilst at the hearing the Council said the statement in section 8 of the SoCG was an error, given they had identified it as an area that was a matter of dispute, it was not unreasonable for the applicant to address this matter as part of the appeal process. Even if this was not the case, as heritage issues had also been raised by third parties and given the statutory duty placed on decision makers with regard to heritage matters, the applicant needed to address this issue at appeal stage. As such, I consider the award of costs can cover work in relation to heritage matters.

21. It was also argued by the Council that if costs were to be awarded it should not cover the costs of the applicant's Counsel. However, who the applicant considers is necessary to present their case is a matter for them to conclude upon. It is not uncommon for Counsel to be used by one or both parties at a hearing. Given the inconsistency in the Council's case outlined above, I consider that it was not unreasonable for the applicant to consider that they needed legal representation at the hearing. As a result, I consider the award of costs can cover the cost of the applicant's legal representative.

22. 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. It has also been inconsistent in its decision making. I therefore consider that the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal.

23. 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

24. 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 Rochford District Council shall pay to Aura Power Solar UK 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.

25. The applicant is now invited to submit to Rochford 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.

Alison Partington

INSPECTOR