



Costs Decision

Hearing held on 9 April 2024

Site visit made on 10 April 2024

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2024

Costs application in relation to Appeal Ref: APP/E2530/W/24/3337544 Land associated with Washdyke Farm to the North of Billingborough Rd, Folkingham, Lincolnshire, NG34 0EZ

- 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 GS Ignis Ltd for a partial award of costs against South Kesteven District Council.
- The appeal was against the refusal of planning permission for installation of a solar farm comprising ground mounted solar PV panels with a generating capacity of 27 megawatts (MW), including mounting system, inverters, underground cabling, stock proof fencing, CCTV, internal access tracks and associated infrastructure, landscaping and environmental enhancements for a temporary period of 40 years.

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, 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 appellants have put forward a case that the Council failed to substantiate their case in relation to three reasons for refusal: Impact on heritage assets, impact on landscape, and whether the proposal has community support. It is therefore put to me that in failing to do so the Council acted unreasonably and that these reasons for refusal should not have had to have been addressed at appeal.
4. The Council's case is expressed in their committee report, their written submissions at appeal and their verbal submissions at the hearing. In relation to landscape matters the Council's view is informed by the appellant's Landscape and Visual Impact Assessment (LVIA)¹, which identified major adverse visual effects for recreational users of PRoW No. Thre/2/1 during construction, reducing to moderate adverse in year 1 and minor adverse in year 15. The Council set out in their evidence how they balanced this harm against the public benefits of the scheme. This is a matter of planning judgement. Although I myself have in the event reached a different view, I see nothing wrong with the approach taken by the Council in relation to visual impacts.

¹ WASHDYKE SOLAR FARM, FOLKINGHAM LANDSCAPE AND VISUAL APPRAISAL - GM11883/FINAL

5. In relation to heritage, the appellants have themselves identified some harm to significance of the Anglo Saxon Nunnery and Chapel, a view that was not shared by the Council's conservation officer at the time. In the committee report the Council set out that the planning officer preferred the view of the appellants, who identified less than substantial harm. However, the report then goes on to state that this harm could be mitigated by conditions. It is therefore not clear to me, and wouldn't have been clear to the appellant, why the Council went on to refuse the scheme on heritage grounds.
6. The Council's statement at appeal includes a different view from a different Conservation Officer, and states that "the Committee concluded that the public benefits of the proposal would not outweigh the less than substantial harm to the scheduled monument" but there is no reasoning to support this, as the only "balancing" that takes place is within the committee report which, in the event, takes a contrary view. The committee minutes are not helpful and I was provided with no further convincing evidence at the hearing. It therefore seems to me, notwithstanding the views expressed in the Wardell Armstrong Report, in the absence of any "heritage balance" that concludes that the public benefits of the scheme are insufficient to outweigh less than substantial harm, the Council acted unreasonably, and the appellant would have been obliged to pursue an appeal.
7. In relation to the matter of community support, although the wording of policy RE1 on its own is not explicit in setting out in which instances community support is required, the Renewable Energy Appendix notably does not require such a test, as it does for wind energy, and unlike wind energy schemes, no such test formed part of the national policy or guidance which was referred to in the supporting text to the policy. I therefore see no reasonable basis for applying one to Solar PV development and consider that the Council were unreasonable in doing so. On this basis also the Council would have been obliged to pursue an appeal.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reasons for refusal 2 and 5 and a partial award of costs is therefore warranted.

Costs Order

9. 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 South Kesteven District Council shall pay to GS Ignis, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to Reasons for Refusal 2 and 5 as set out in the decision notice ref S23/0511 dated 28th of July 2023, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to South Kesteven 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.

Anne Jordan

INSPECTOR