



## Costs Decision

Hearing held on 20 February 2024

Site visit made on 19 and 21 February 2024

**by Paul Thompson DipTRP MAUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 November 2024**

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### **Costs application in relation to Appeal Ref: APP/W3005/W/23/3323952 Hamilton Hill Farm, Cauldwell Road, Sutton in Ashfield NG17 5LB**

- 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 Ashfield District Council for a full award of costs against Mr Batov (Hamilton Solar Limited).
  - The appeal was against the refusal of planning permission for a solar farm with ancillary infrastructure, security fence, access, landscaping and continued agriculture, to generate power to feed into the local distribution network.
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### **Decision**

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

### **The submissions for Ashfield District Council**

2. The costs application was submitted in writing at the Hearing.

### **The response by Mr Batov (Hamilton Solar Limited)**

3. The response was made in writing after the Hearing closed.

### **Reasons**

4. 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.
5. The application for a full award of costs is made on the basis Mr Batov (the appellant) acted unreasonably on procedural and substantive grounds in continuing with the appeal despite the Council's strong reasons for refusing permission; the lack of cooperation in submitting a Statement of Common Ground (SoCG); and the submission of evidence to the appeal, including the implications to the Council for defending the appeal and to other interested parties being able to comment on its content.
6. The appellant is within his rights to support his case, in the most appropriate way having regard to the Council's reasons for refusal. Moreover, in my main decision I set out that the appeal plans and documents did not fundamentally change the scheme and most documents received through the appeal were also consulted upon. The appellant's additional Heritage and Landscape Impact Statements also referred to subject matter referred to in his other evidence, so expanded upon an existing position. Furthermore, the appellant did not meet the Council's request to withdraw the appeal based on the evidence submitted

and, in doing so, he continued to exercise his statutory right of appeal. Hence, these do not amount to matters constituting unreasonable behaviour.

7. The Council has also argued the appeal had no real prospect of success in light of the objection raised by Historic England and the substantial harm referred to in its first reason for refusal, so should not have proceeded. While I dismissed the appeal, the advice of Historic England was not necessarily a determining factor. The appellant also cannot be criticised for submitting an appeal to question the extent and magnitude of harm. Ultimately, as the decision-maker, I determined the harm would be less than substantial, not the substantial harm argued by the Council and this would not be outweighed by benefits.
8. The Pre-Hearing Note (PHN) sought agreement, or not, to the suitability of sites for the appeal scheme based on numerous criteria. This led to further evidence being produced in the appellant's Commercial Viability and Technical Notes, received on 6 February 2024. These clarified the appellant's position and expanded on the evidence for the sites considered for the proposal, including those identified by the Council. I accepted the documents as they were to address points raised in the PHN which would need to be discussed at the Hearing; and the main parties had sufficient time to consider their content and prepare their cases. While some of the content therein could have been provided to inform the site selection process at the application stage, the main parties disagreed on the suitability of sites, so it was vital to save time at the Hearing. Although the Council may have been prejudiced to some extent, it was not put to wasted expense, as its first reason for refusal clearly identified concerns regarding site selection and this point needed testing at the Hearing. Hence, the appellant did not behave unreasonably in these circumstances.
9. Notwithstanding this, interested parties not in attendance at the Hearing may not have been aware of the Notes or their content. On this basis, had the finding regarding the availability of other sites in the District had a bearing on the outcome of the appeal, interested parties could have been afforded an opportunity to comment on their content. However, given my decision, this would have served no practical purpose. I am also mindful that the appellant could have referred to their content at the Hearing, without providing them.
10. In response to the PHN, the appellant also referred to legal judgments, and did so in response to discussion therein about the Forge Fields Judgment raised in the Council's Statement of Case. While these were new information, they would not have been raised unless the Council referred to Forge Fields and could have been raised during the event. Their provision at an earlier stage therefore gave all parties opportunity to clarify their relevance to the appeal.
11. The PHN also referred to the main parties working together on the SoCG, the ethos of which is to set out matters of agreement and disagreement between them. It is not intended that one party omits statements made by another, as these can remain as disagreements. Put simply, not everything needs to be agreed, so when the Council removed statements made by the appellant and these were reinserted, the appellant cannot be accused of acting in bad faith.
12. On 9 February 2024, the appellant provided a Soil Resources and Agricultural Quality Report<sup>1</sup>. This predated submission of the planning application, but was not submitted with it, and confirms the site to be Grade 2 agricultural land.

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<sup>1</sup> Report 1668/1, dated 28 February 2020, by Land Research Associates.

However, a separate document<sup>2</sup>, submitted with the application, confirmed the land to be Grade 3b. The former meets the definition of Best and Most Versatile agricultural land (BMVAL) but the latter does not.

13. At the Hearing, the appellant's representatives explained that, following discussion with the Council over the SoCG, separate discussions took place with the appellant and the soil assessor. The submission of the report came about thereafter. There is no substantive evidence before me to doubt that the report was carried out for the agent for the application, or to suggest that the appellant was either directly involved in its conception or instructed anyone to not disclose it at an earlier stage. The appellant's planning consultants and planning solicitor were only made aware of the report on 8 February 2024 and disclosed it the following day, as they were professionally obligated to do so by the Royal Town Planning Institute and the Law Society. To my mind, there was no advantage to the appellant to do so and there is no reason for me to doubt this chain of events. Accordingly, I cannot conclude that the appellant acted unreasonably in this regard.
14. While the document undoubtedly had implications for the preparation and presentation of the Council's case, that also goes for the appellant, as various documents in his evidence relied upon the premise the land was not BMVAL. The appellant therefore prejudiced his own case, as it resulted in consideration of a new main issue, and reason for refusal, at the Hearing with a more stringent test upon the proposal. Moreover, in my main decision, I determined that poorer quality BMVAL land had not been used in place of higher quality land. It was therefore upon me, as the decision-maker to determine whether the benefits of the scheme and the availability of land constituted the most compelling evidence to justify the temporary loss of BMVAL throughout the lifetime of the proposed development.
15. Due to the timing of the submission of the report, the main parties had time to ready their cases and present them at the event. Despite the possibility not all interested parties may have known about the report, its findings were of such fundamental importance that to not accept it into evidence would have resulted in the appeal being determined in relation to incorrect evidence. This would not have been in the public interest or exercise natural justice. Hence, the work carried out by the main parties to prepare their cases was not wasted expense.
16. The Council also referred to the Planning Inspectorate's Environmental Impact Assessment Regulations (2017) Screening Opinion, as this did not refer to the land as Grade 2. However, it has not suggested any implications for the screening process had it been, nor has it advanced any evidence this would have been the case. Given the outcome of the appeal, there would be no practical purpose to redetermining this under the Regulations.

## **Conclusion**

17. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*Paul Thompson*

INSPECTOR

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<sup>2</sup> Produced following a site inspection on 17 May 2020 by Bateman Rural Associates Limited.