



Costs Decision

Inquiry Held on 8-11 and 15-17 April 2025

Site visits made on 8 and 28 April 2025

by Helen Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 11th December 2025

Costs application in relation to Appeal Ref: APP/R3705/W/24/3349391 Land 800 Metres South of Park House Farm, Meriden Road, Fillongley in the Borough of North Warwickshire

- 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 Enviromena Project Management UK Ltd for a full award of costs against North Warwickshire Borough Council
 - The appeal was against the refusal of planning permission for the construction of a temporary solar farm to include the installation of ground mounted solar panels together with associated works, equipment and necessary infrastructure.
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Decision

1. The application for costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses.
3. 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. And Council's should properly exercise their development management responsibilities, by relying only on reasons for refusal that stand up to scrutiny on the planning merits of the case.
4. The application for an award of costs is set out in writing, October 2024. A brief update was submitted at the end of the Inquiry and a reply to the Council's Response submitted after the close of the Inquiry.
5. The application states that it is a full application for costs for wasted expense of the entire appeal, including unnecessary time spent by Enviromena and their representatives, in preparing for the appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses, for a development that should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
6. Members, acting as the local planning authority, have the ability to grant or refuse permission, regardless of their professional officers' recommendation. In this case, the Committee determining the application (the Board) decided not to accept the recommendations of its Officers to grant permission, made in three reports.

7. The second report, dated 24 March 2024, explained the most important planning policies and summarised their requirements. When the Board resolved to refuse planning permission at the meeting on 8 July 2024, they did so with the benefit of three reports and having had a site visit. There was a vote taken, those in favour were outvoted by those against.
8. Having visited the site and considered the proposals and then having articulated the harms that they had found, it was not necessary for the Board to go further in articulating why the professional reports and survey, upon which the planning officer was content to rely, were not acceptable to them. It was not necessary for the committee to provide an explanation of an alternative basis, or methodology for their decision. Nor did the committee have to produce evidence of its own before deciding.
9. The Head of Development Control used his judgement to summarise the reasons why the Board refused planning permission, which included the Reason for Refusal and an explanation as to how members reached the decision. The July 2024 Minutes set out the proposed reason for refusal in full and also record that *"In making this decision, the Board took into account the written Officer Report and the content of the statements made by the speakers at the meeting. In its assessment of the final planning balance, it gave greater weight to the harms that would arise, notwithstanding the amendments made. In its judgement those harms did not clearly outweigh the planning considerations and benefits outlined by the applicant particularly in respect of Green Belt and Landscape planning policies."*
10. The Minutes were put to the August Board Meeting where members agreed that they were content that they accurately recorded the decision taken. The Minutes were approved.
11. I find nothing unusual in official minutes not reflecting all of the comments set out in a transcript of the same meeting. Not all views aired at a committee meeting, positive or negative, will be reflected in the decision of a planning committee. It is not for a costs application to seek to go behind the decision making of the Council and forensically assess what happened at the Board Meetings.
12. There was one reason for refusal. The reason states clearly that the proposed development was considered to be inappropriate development in the Green Belt and that it would not preserve openness and conflict with development plan Policy LP3 is clearly stated.
13. At the time that the decision was made, and in subsequent revisions, the National Planning Policy Framework advised that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.
14. The Reason for Refusal includes that *"The cumulative harms caused are considered to be substantial because of the development's proposed size, its siting on higher land, there being no surrounding higher land and its public visibility over a wide area."*

15. This follows an explanation that *Local and Neighbourhood Plan policies require new development to conserve and enhance the landscape; to integrate appropriately into the natural environment, harmonise with its immediate and wider settings, as well as to protect the rural landscape of the Parish, the scenic aspects of the village and the setting of the Church*. Policies LP1, LP14 and LP30 of the North Warwickshire Local Plan 2021, and Policies FNP01 and FNP02 of the Fillongley Neighbourhood Plan 2019 are cited.
16. The Reason for Refusal includes that *“It is not considered that this substantial harm is clearly outweighed by any benefits that the proposal might give rise to”*. The Council was not required to set out what those benefits were. That is not to say that the Board did not weigh harms properly against the compelling need for solar development and other benefits before arriving at a decision.
17. Matters relating to landscape and visual harm are subjective. The Reason for Refusal is sufficiently clear and precise that a reasonable person would have no doubt as to what the Council had decided and why. It was sufficient to explain why permission was refused and to act as the basis to explain the reasons why the Council considered the proposal was unacceptable at appeal.
18. The Reason for Refusal meets the requirement of Article 35(1)(b) of *The Town and Country Planning (Development Management Procedure) (England) Order 2015* that *“where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision”*.
19. At Inquiry the Expert Landscape Witness for the Council concluded that residual adverse impacts upon landscape character would be no greater than ‘moderate adverse’. That was no greater than the residual harms that had been reported to the Board on the basis of the LVIA submitted with the application, and upon which the Head of Development Management, had recommended approval. They were also no greater than those found by the Expert Landscape Witness for the Appellant.
20. Guidelines for Landscape and Visual Impact Assessment, 3rd edition paragraph 5.56 advises that there are no hard and fast rules about what makes a significant effect. The Expert Landscape Witness for the Council provided a reasonable level of detail and explanation of the likely landscape and visual effects of the proposed development. Their evidence was quite clear and specific. Tables were produced to identify how effects had been derived. It was not *vague or generalised*.
21. At Inquiry, the Expert Landscape Witness for the Council explained that as this was non-EIA development, and they had used the word “importance” rather than “significance” when describing effects. That they attached greater importance to some impacts was not to say that they made inaccurate assertions about the proposal’s impact. It was their professional opinion that moderate adverse effects were “important”. They were entitled to reach this judgement, and they acknowledged that they were less important than those graded as major.
22. The planning balance weight takes into account not only the level of effects identified by the expert but also the planning significance of those effects. The assessment of the planning balance and how it related to the s.38(6) duty under s.38(6) of the Planning and Compulsory Purchase Act 2004 is a matter of planning judgment. There is no classification of benefit types and harms and no matrices for

weightings. It is not an exact science. It depends upon the material planning considerations in each case, with both the harms and benefits found and the weight to be attached to each being a matter of planning judgment. The Council's Expert Planning Witness clearly articulated at the Inquiry why they attached significant weight to the harms in the planning balance.

23. The Reason for Refusal was a cumulative Green Belt and landscape reason, which stated that the harms together were not 'clearly outweighed'. At the time the Council refused the planning application the approach to the Green Belt was that as set out in the National Planning Policy Framework 2023. Paragraph 148 stated *"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations"*.
24. By the Case Management Conference on 9 January 2025 the Government had issued a revised Framework and indicated that updated PPG advice in respect of new Green Belt policy was imminent. PPG guidance was published 14 February.
25. A Statement of Common Ground, signed by the Appellant and Council on 10 February 2025 includes a table at Section 8 where the Council agrees that the site is Grey Belt but that the proposal does not comply with paragraph 155. This does not evidence a Council that was failing to review their case as the new guidance was emerging. Indeed, in February, all main parties were grappling with trying to conclude Proofs of Evidence in time for submission whilst waiting for the PPG Guidance.
26. The Applicant asserts that the Council's concession regarding grey belt only took place at the Inquiry because the Council had failed to review their case properly following the publication of the new Framework and PPG on grey belt, and that the Appellant had invited the Council to reconsider the point on multiple occasions prior to the appeal.
27. By the time the Inquiry sat the PPG had only been published for a relatively short time, and witnesses had to deal with how to apply the new grey belt policy, particularly the application of paragraph 155 a). The Council's Expert Planning Witness put forward a reasonable professional opinion about how the tests should be applied. However, under cross examination, the Council's Expert Planning Witness accepted the Appellant's interpretation that development would meet the test at Framework paragraph 155 a). By conceding that point the Council's Green Belt case fell away. However, the argument was subjective, one of professional judgement and interpretation. The concession did not mean it had been at all unreasonable for the Council to pursue its Green Belt case up to this point.
28. Although I found that paragraph 155 a) was satisfied, that was not by simply accepting the argument put forward by the Appellant's Professional Planning Witness. Indeed, part of the Appellant's argument depended upon an analogy with five equal drinking glasses, which did not persuade me.
29. The landscape objection had not been a separate reason for refusal. Although landscape could still carry weight in the final planning balance, the sum of the parts for the Council's case no longer added up. However, by that point the landscape

evidence for both parties had been heard, and even if the Council had conceded, the Inquiry would have continued with the Rule 6 Party. The Appellant's Expert Planning Witness would still have needed to have been called, sessions held on conditions and legal obligations, and closing submissions heard. I cannot see that the Appellant experienced any unnecessary or wasted expense by this stage.

30. At the end of the day, the most significant impact upon the unfolding of events at this Appeal was the timing of the publication of the new Framework and guidance for Green Belts and grey belt, in combination with the timetable for the Inquiry.
31. The Expert Planning Witness for the Council carried out a planning balance at every stage. In the circumstances, the Council's persistence that permission should be refused was not unreasonable or without sound justification.

Conclusion

32. I have not found evidence that the action of the Council amounted to unreasonable behaviour that caused the applicant to incur unnecessary or wasted expense in the appeal process. The application is refused.

Helen Heward

INSPECTOR