
Costs Decision

Site visit made on 22 October 2025

by **P Thompson DipTRP MAUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th April 2026

Costs application in relation to Appeal Ref: APP/F1040/W/25/3365887

Land west of Newton Lane, Newton Solney DE15 0RU

- 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 Anesco Ltd for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for installation and operation of a renewable energy generation station comprising ground-mounted photovoltaic panels, inverter/transformer units, DNO substation, site access, internal access tracks, security measures, landscaping, and other ancillary infrastructure.
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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 applicant has applied for a full award of costs but has indicated a partial award would also be justified if I am minded to agree. It is alleged that the Council ignored clear professional and sound advice from its planning officers and statutory consultees regarding the development, and has failed to produce meaningful evidence to substantiate the reasons for refusal; has attempted to introduce potential new matters, without substantive evidence; and has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The first reason for refusal (RfR1) refers to Policy BNE4 of the South Derbyshire Local Plan – Part 1, which provides the ability to require a site selection process. The Council was critical of the applicant's Alternative Sites Assessment (ASA) and set out why it disagreed with the ASA, including what it considered should have been undertaken having regard to the development plan.
5. The Members of the Council's Planning Committee are entitled to come to a different view to officers and other advisors. However, in seeking to defend RfR1, the Council has taken an overly simplistic and rigid approach to consideration of BNE4's approach to the protection of soils and aim to '*wherever possible* direct development to areas with lower quality soils' [my emphasis]. The Council was unrealistic having regard to the evidence before it in relation to sites and the point of connection and did not correctly consider the national policy tests regarding the

approach to brownfield land and how compelling evidence should be considered to justify the proposal. This amounts to unreasonable behaviour by the Council, which could have been avoided had it correctly undertaken the foregoing. I will return to the finding on unnecessary or wasted expense on this matter later.

6. The findings in my main decision regarding landscape and visual effects, from the second reason for refusal (RfR2), do not wholly align with the Council's case. However, the Council was able to substantiate why planning permission should not have been granted on this basis. Despite this, its Statement of Case (SoC) failed to have regard to the Landscape and Visual Impact Assessment (LVIA) or amended layout and landscape strategy plans submitted with the appeal. While this amounts to unreasonable behaviour, the applicant's Final Comments quickly and succinctly responded to them without wasting expenditure, so the applicant did not incur unnecessary or wasted expense. Similarly, from a procedural perspective, RfR2 did not, of itself, necessitate a new LVIA. It was for the applicant to determine the content of their grounds of appeal and, despite the new LVIA and plans, my main decision found harm in this matter.
7. The applicant has also indicated the Council raised numerous new matters at the appeal stage. In terms of food security, the Council alleged the proposal would have effects at a local level, including cumulatively with other solar and battery energy storage schemes. The Council also referred to negative impacts on tenant farmers and their contributions to the local economy. The evidence provided regarding these matters did not substantiate the proposal's effect, which amounts to unreasonable behaviour. Despite this, the applicant's own evidence was also straightforward so, it appears to me, there has been so little extra work required due to these matters that this can be regarded as 'de minimis'. In fact, the applicant quickly dealt with them without wasting expenditure so, although the Council acted unreasonably, this did not cause unnecessary or wasted expense.
8. Turning to other points the applicant considers were newly raised in the Council's evidence. Firstly, RfR1 refers to the development's effect over its lifetime, and the main parties refer to this equating to a temporary period. Hence, references to the nature of development and any loss of agricultural land over a temporary period were not new considerations. Work undertaken on such matters was therefore wholly relevant to the appeal. Secondly, my reading of the Council's SoC indicates it did not state concerns or its own position regarding highway matters, but drew attention to the concerns of others. Thirdly, reference in the Council's SoC to the case at Lullington did not extend beyond the relevant planning history section, as it did not refer to it again. Fourthly, it was rational for the Council to refer to weight to afford biodiversity net gain as the applicant referred to it as a benefit of the scheme. As such, although I ultimately arrived at a different conclusion in this regard to the Council in my main decision, the Council's position was reasonable. Accordingly, the second and third points did not necessarily require comment from the applicant, it was their choice to do so, so the Council did not act unreasonably in relation to any of these points.
9. In the planning judgement, it appears to me, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should not have been permitted having regard to the harms associated with RfR2. Nevertheless, the applicant's SoC included detailed analysis of the policy context and reappraisal of existing evidence presented at the planning

application stage considering the Decision Notice. The applicant also provided a rebuttal of the Council's case, which amounted to further detailed analysis of each area of disagreement. The refusal of planning permission, by advancing vague assertions about the proposal's impact in relation to RfR1, unsupported by objective analysis of the applicant's evidence and the policy context therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG. As a direct result, the applicant has been faced with the unnecessary expense of preparing evidence for the appeal against that part of the Council's case which, from its Decision Notice and SoC was unfounded.

Costs Order

10. 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 Derbyshire District Council shall pay to Anesco Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to South Derbyshire 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.

P Thompson

INSPECTOR