The Planning Inspectorate

Costs Decision

Site visit made on 28 April 2015

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 24 June 2015

Costs application in relation to Appeal Ref: APP/Y1138/W/14/3001908
CJ Ware and Son, Quartley Farm, Bowdens Lane, Shillingford, Tiverton, Devon EX16 9BU

- 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 Wessex Solar Energy for a full award of costs against Mid-Devon District Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a solar energy facility utilising solar photovoltaic panels to produce up to 5.5 MW of renewable energy.

Decision

1. The application for an award of costs is allowed in the terms set out below, but only in relation not the second reason for refusal, the application for an award of costs is refused in relation to all other matters.

Reasons

2. The national Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. This appeal relates to a solar farm on agricultural land. The Council were minded to refuse the proposal, and set out reasons for refusal related to visual and landscape harm as well as the unjustified loss of agricultural land.

4. The appellant submitted a cost application in writing citing paragraph 16-049 of the PPG. In this it was suggested that the Council had acted unreasonably in preventing or delaying development which should reasonably have been permitted, failing to substantiate their reasons for refusal, providing vague and unsupported assertions regarding impacts and were minded to refuse the proposal on grounds capable of being dealt with by conditions.

5. The submissions noted the delays in the process through deferring the decision and the officer recommendation for approval supported by an independent review of the Landscape and Visual Impact Assessment (LVIA). Despite this, Members did not choose to follow their advice. Furthermore, it was suggested that despite clear guidance from officers on the matter, Members included agricultural land as a reason for refusal without any proper definition or support from an objective analysis.

6. The Council's written response maintained that although officers had recommended approval, they had done so on a balance of harm and benefits;

it was a decision that was finely balanced. They considered that there were no undue delays; the LVIA was revised following withdrawal of the original scheme and the review was commissioned after the second application was submitted. It was usual practice to bring an Implications Report to committee when Members were intending to refuse contrary to officer recommendations.

7. The officer report identified harm and the independent review sited numerous shortcomings. Despite the recommendation, Members were entitled to reach their own conclusions. Furthermore, conditions were not considered capable of resolving the issues and Members remained of the opinion that the scheme had not demonstrated that the use of grade 3 agricultural land was necessary. They had been reasonable, and had omitted two of the initially suggested reasons for refusal

8. In considering the matter of whether the Council were unreasonable in their approach, I have considered the matter of delays and the two reasons for refusal separately.

9. Delays in the Council's own decision making were a result of initial concerns over the LVIA, which was revised in support of the second application. The Council's overall position, despite the in principle acceptance of the site in landscape terms in the LVIA review, was clearly one of being minded to refuse; the applicant would have been aware of this. The delay at the December meeting due to issues over the minutes was unfortunate, but not unreasonable; due process must be properly observed. I have no reason to consider that the revised Implication Report would not have been considered in January had the appeal not been lodged. Overall, I do not consider that the Council unreasonably delayed development, and turn to whether they were unreasonable in their position of objection to the scheme.

10. In terms of landscape harm, both the Council officer's report and my own decision found harm from the proposal. The LVIA is an approach to identify and assign significance to harm in landscape and visual terms, but the decision facing a planning authority is to balance harm from all matters, against the benefits of a scheme. The officers, and indeed myself, found that balance to weigh in favour of the proposal. That the Members chose to exercise their own judgement on this matter is not unreasonable. The review of the LVIA did note shortcomings, but also considered the site as potentially acceptable. However, it could not take into account all of the matters that should be considered in a balanced, overall judgement on a scheme of this type. Sufficient evidence was provided in relation to the harm, and I consider the Council were not unreasonable in their position on the first reason for refusal.

11. Turning to agricultural land, I am aware that the Council Members were cognisant of the Ministerial Speech and Statements referred to in the PPG[1]. However, the applicant also notes that the preference set out in local and national policy is to consider the effect on the best and most versatile land; that at Grades 1, 2 and 3a.

12. The proposed reason for refusal and the evidence set out in the Council statement referred not just to the loss of agricultural land, but to the justification for using such land in preference to other land of poorer quality. This is partially reflective of the guidance, which indicates preference for land

[1] Paragraph 5/013

at poorer quality and brownfield land, albeit poorer quality is not explicitly identified by grade.

13. To this end, I note that the Council considered the applicant's site selection and consideration of alternatives to have been limited in that it did not properly address all brownfield land options and only considered land at Grades 4 and 5. While advice and guidance may now suggest that such installations proposed on greenfield land should be shown to be 'necessary', there is no formal approach to such a sequential test set out in policy, and I consider that a full appraisal of all possible sites is not currently required. The scheme gains no weight from being proposed on brownfield or poor quality land, but similarly does not fall into the category of higher quality agricultural land that policy specifically seeks to protect.

14. Nonetheless, the Council concluded in their statement that they did not consider a solar development to be '*an appropriate use of valuable grade 3 agricultural grazing land*'. This is not the test set out in national or local policy.

15. They should have been aware of the development plan and national planning policy position. Officers clearly pointed out the extent of considerations in the National Planning Policy Framework (the Framework) and their own Mid Devon Local Plan Part 3 Policy DM5, where the focus was on best and most versatile agricultural land in grades 1, 2 and 3a.

16. The Ministerial Statement referred to the use of poorer land in preference to land of higher quality, but addressed only the best and most versatile land. The Speech by an Energy Minister, set photovoltaics at the heart of the UK Energy Mix, and while it strongly supported community involvement and expressed a preference for brownfield land for ground mounted solar schemes, it did not exclude agricultural land per se. It set out that such schemes should be on low grade agricultural land, which works with farmers to allow grazing in parallel. The Members had information from the application that confirmed the grade of the land, that grazing would continue, that there would be existing and additional screening and that there would be encouragement of biodiversity around the fringes of the site. These matters all relate directly to PPG considerations specifically identified for solar farms.

17. In particular, it is necessary to consider the Council's own policy, DM5. This states that the Council will balance the impact against the wider benefits of renewable energy schemes and must consider the quality and productivity of best and most versatile land (grades 1, 2 and 3a). Similarly the Framework[2] refers to Grades 1, 2 and 3a and seeks the use of poorer quality land, which clearly can include grades 3b and 4, in preference to that of high quality. No substantive evidence was put before me that the Council disagreed with the finding of the land classification. In concluding that the principal of a solar farm on Grade 3 agricultural land was not appropriate, the Council were not following the thrust of national policy and guidance, and particularly the explicit requirements of their own policy on this matter.

18. Accordingly I consider that the Council were unreasonable in pursuing the reason for refusal at appeal relating to agricultural land.

[2] Paragraph 112

Costs Order

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

20. 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 Mid Devon District Council shall pay to Wessex Solar Energy, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the second reason for refusal regarding agricultural land only.

21. The applicant is now invited to submit to Mid Devon District, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Mike Robins

INSPECTOR