Please state whether you are applying for a full or partial award of costs

A full award of costs is sought.

The unreasonable behaviour which has caused you unnecessary or wasted expense in the appeal

With reference to guidance on applying for costs, it is considered that the planning authority acted unreasonably in both procedural and substantive terms, by delaying the approval of development which should clearly have been permitted (this being supported by the development plan and relevant material considerations, including a substantial body of appeal decisions, as set out in the appellant's Statement of Case). Whereas, if the application was determined timeously in accordance with the development plan and other material considerations (including appeal decisions), the appeal (and all costs associated with the preparation and submission of this) could have been avoided.

In total, the planning authority had the application before it for some 14 months (from April 2024 to June 2025), in which time the appellant was on a number of occasions given to understand that the planning authority was satisfied with the information provided, but then later advised that the planning authority required further information or input, despite there being no changes in the proposed development or the policy context in the interim that might have triggered this (see timeline below). In this way, determination of the application was repeatedly delayed, despite the appellant having submitted all documentation/information requested timeously, and ensuring that all matters of concern to the planning authority were adequately addressed.

Ultimately, the case officer advised that she was proposing to recommend refusal of the application for reasons including:

- what she considered to be substantial harm to the historic environment;
- the loss of agricultural land; and
- that those impacts would not be outweighed by the benefits, in assessing which she concluded that only moderate weight should be given to the development's contribution to the production of renewable energy.

In reaching that conclusion, the case officer failed to take account of the facts that:

- the specialist heritage consultees' assessment that any harm to the historic environment was less than substantial;

- National Policy Statement EN-3 makes it clear that: *"…land type should not be a predominating factor in determining the suitability of the site location…", and "…the development of ground mounted solar arrays is not prohibited on Best and Most Versatile agricultural land…"* (with regards to which it should be noted that, while the originally submitted ALC Report did indicate that around 25% of the site was BMV agricultural land, it was always clear that the majority of the site was not, with it having since been established that none of the site is in fact BMV land in any event, and the planning authority being aware of that);

- the requirement of NPPF paragraph 168(a) that, when determining planning applications for all forms of renewable and low carbon energy developments **and their associated infrastructure***,* local planning authorities should *"give **significant** weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future…*"; and

- a substantial body of appeal decisions which makes it clear that, when significant weight is given to the benefits associated with renewable energy generation (as should be done per the previous bullet point), this outweighs less than substantial harm to historic assets (details of which are provided in the appellant's Statement of Case).

Given the above, there were no reasonable grounds for the case officer's recommendation of refusal, and strong grounds for it to instead be approved. Further, while the applicant was advised of the officer's intention to recommend refusal of the application in March 2025, it was not actually referred to the planning committee at that time, with the first meeting of the committee that this might have been considered only scheduled for June 2025. Then, less than two weeks ahead of the scheduled meeting date, that meeting was cancelled, resulting in determination of the application again being further delayed. At which time, given the number of occasions at which the appellant had understood the application to have been at the point of being determined without this happening, the appellant took the decision to appeal against non-determination, and is seeking costs on the basis that the appeal could have been avoided if the planning authority had dealt with the application more timeously and reasonably, without the unjustified delays and failure to follow the development plan and other material considerations (including appeal decisions) outlined above.

As set out above there are clearly both procedural and substantive grounds for costs to be awarded to the appellant.

Timeline

29 March 2024: application submitted

May – September 2024: further documents and information submitted to address initial feedback from case officer.

July – October 2024: appellant and agent seek feedback from case officer, but no responses received.

24 October 2024: email from case officer advising that final responses from a number of consultees were still needed, but that issues raised by the outstanding consultees appeared to have been addressed, with no concerns raised.

November - December 2024: further consultee response received from the Highways Authority (responding to information that appellant had submitted over 3 months earlier, in August 2024) and updated documents/information to address points raised in this submitted.

18 December 2024: call with case officer, from which it was understood that there were no further issues to address.

22 January 2025: case officer advises that they do in fact have some concerns about the heritage impact of the application, and asks for a response to consultee comments on this.

21 February 2025: response to consultee comments on heritage impact submitted.

26 February 2025: case officer proposes engaging an independent landscape architect to review the LVIA for the project (which, with the exception of addendums provided with the response submitted on 21 February 2025, had at that point been with the planning authority for almost 11 months without this having been raised) and the appellant agreed to pay for this, subject to it being provided in a 2-week turnaround to enable the application be determined in April 2025.

Early March 2025: it was noted that Natural England had requested some further information, but the case officer advises that the land classification report that had been submitted was sufficiently detailed for her to make a planning decision.

Late March 2025: case officer advises that she was proposing to recommend refusal of the application under delegated powers, but invites appellant to provide a note on the many benefits that the project would deliver to take into account. That note was provided the day after the request was made.

April 2025: case officer advises that she does not consider the benefits to outweigh the harm caused and, if not withdrawn, the application would be refused, indicating that this would be done under delegated powers in the next couple of weeks. On 3rd April 2025, an extension of time was agreed until 11 April 2025 to give the case officer to write her report and for the decision to be issued. On 14th April, the case officer confirmed her report had been drafted.

May 2025: After chasing the decision notice multiple times, the appellant queried the suggestion that this would be determined under delegated powers, on the basis that the Council's scheme of delegation required the application to be referred to committee. The case officer ultimately confirmed this was the case on 20th May 2025, with the first committee that this might have gone to being scheduled for 18 June 2025.

9 June 2025: appellant was advised that the 18 June planning committee meeting at which the application was to be determined had been cancelled.