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## Costs Decision

Inquiry Held on 15 August 2023

Site visit made on 14 August 2023

**by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

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

**Decision date: 30<sup>th</sup> August 2023**

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### **Costs application in relation to Appeal Ref: APP/W3520/W/23/3319970 Land to the south of Church Farm, Somersham, IP8 4PN and Land to the east of The Channel, Burstall, IP8 4JL in Suffolk**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Bramford Green Limited for a full award of costs against Mid Suffolk District Council (MSDC).
  - The inquiry was in connection with an appeal against the refusal of planning permission for '*Installation of renewable energy generating station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements including Nature Areas.*'
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### **Decision**

1. The applications for an award of costs is allowed in the terms set out below.

### **Procedural Matters**

2. Costs may be awarded where: applications are made in a timely manner; unreasonable behaviour has occurred; and where that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process<sup>1</sup>. It is not a punitive costs regime, but rather one that seeks to ensure that all parties to planning appeals support an efficient and effective planning system.

### **The submissions for Bramford Green Limited**

3. The Applicant made the application for costs at the Inquiry. Put simply, the Applicant considers that the local planning authority acted unreasonably by preventing or delaying development which should clearly have been permitted having regard to the development plan, national policy, and/or other material considerations. Furthermore, in failing to substantiate the reasons for refusal MSDC has behaved unreasonably.

### **The response by Mid Suffolk District Council**

4. The Council refutes that there is any proper basis for a costs award being made. Put simply, the Council was reasonably entitled to refuse the application on the basis it did, and the Applicant has failed to produce any evidence to indicate it was unreasonable for the Council to do so in February 2023.

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<sup>1</sup> *Planning Practice Guidance* Paragraph: 030 Reference ID: 16-030-20140306

## Reasons

5. The application for costs was made in a timely manner, albeit in writing at the opening of the Inquiry.
6. The Council made a planning decision in February 2023 to refuse permission as set out in the decision notice. This was on the basis of harm in the form of loss of Best and Most Versatile Agricultural Land (BMVAL) and adverse impacts on the visual character and amenities of the area. For both reasons, the local planning authority demonstrated that, in their view at that time, the proposal was contrary to various policies of the adopted development plan, and also to material considerations including national policies set out in the *National Planning Policy Framework* (the Framework).
7. The Council reviewed its case before the Case Management Conference (CMC) and made it clear that it was no longer seeking to defend the reasons for refusal. The Applicant considers that the rationale for the change in the Council's position – based upon new government guidance being issued in March 2023 – 'goes nowhere'. To a point, I am inclined to agree. These were facts known shortly after the decision was issued by the Council, but they did not amount to any particular change in the overall direction of government policy or guidance on moving to a low carbon future.
8. In any case, this direction has been clearly indicated in the Framework since its 2021 iteration<sup>2</sup>. This is even more surprising given that Paragraph 158 of the Framework was clearly in front of the decision-maker at the determination stage as it is listed in the second reason for refusal. There have been no changes to the Framework since the decision was made earlier this year nor to the locally adopted Development Plan. I find that the lack of adequate justification for no longer defending the reasons for refusal results in unreasonable behaviour.
9. Further to this, around the time of the CMC on 11 July 2023, I was made aware that there was a 'free-go' application for the appeal site. At the Inquiry the main parties agreed that this was an 'identical' scheme to that which was before me under s78 TCPA 1990. At the time of the Inquiry, the Council had still not determined that planning application even though it was originally to be presented to Committee around 21 June 2023, (with the representation period ended on around 23 June 2023, so it was subsequently withdrawn). Responses were given at the Inquiry that it *may* be going to planning committee in September or October. This seems an abnormally amount of time given it was planned to go to committee on 21 June 2023.
10. Furthermore, it does seem peculiar that the Council did not seek to defend the reasons for refusal in the appeal scheme; yet have not found a solution to determining the current 'identical' proposal promptly. Quickly determining that planning application, which, whilst requiring scrutiny by the Council's planning committee, should have been relatively straightforward given the Council's position in this appeal scheme for what is essentially an identical proposal. The quick determination of that scheme may have led to the unnecessary expense of the Inquiry taking place. Indeed, the whole appeal could have been avoided had the Council applied exactly the same logic and reasoning to the free-go appeal quickly rather than waiting months for another committee slot.

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<sup>2</sup> See Paragraphs 8.c), 152, 155, 156, and 158.

11. The Applicant has drawn my attention to the *Langford* Secretary of State decision. It is suggested that the Members in the appeal scheme here had no good reason to come to a different view to that of their officers and consequently their reasons have no support. In this appeal, the Council Officers acted proactively and professionally – providing quick assistance to the Inquiry - for example by promptly agreeing a Statement of Common Ground (SOCG). The same is true of the witnesses for the Applicant.
12. It is open to elected Members, after considering the evidence before them, to determine an application contrary to the recommendation of their professional officers. When doing so, they must provide reasons for that. Those reasons, which are set out in the decision notice, are, on their face, reasonable and reflect common practice in wording and content.
13. However, on reviewing its case, the Council then decided to no longer defend its reasons for refusal. This was on the basis of some changes in national government policy discussed above. But these were changes that do not appear to have resulted in any changes to the substance of the original reasons for refusal – for example government policy relating to BMVAL or landscape matters. There is little in the evidence of the local planning authority supporting the change in the Council’s stance beyond it no longer wanting to defend its reasons for refusal. The case here was ‘indefensible’ as suggested by the Applicant, with the reasoning similar to that used in *Langford*. This behaviour was clearly unreasonable in this case and it has led to the unnecessary and wasted expense of an appeal with associated Inquiry.
14. I note the Council’s point that they no longer sought an Inquiry around the time of the CMC, yet the Appellant continued to seek one. Similarly, the former Rule 6 Party also indicated that a Hearing might be a more suitable procedure by which to hear the evidence. However, given the degree and sustained nature of public interest and objection in this case I consider that this justified the Inquiry still taking place. This ensured that the evidence before the Inquiry was heard in an open, fair, and impartial manner.
15. The Council refused permission and did so in accordance with well-established planning practice. This was not unreasonable at that stage. However, the rationale for the change in the Council’s stance is questionable – given that the overall thrust of local and national policy and a low carbon future has not changed. Nor were there any changes to the adopted Development Plan or the Framework. Members need to provide clear justification for making the decision they did and be prepared to justify these at appeal. Moreover, it was within the Council’s ability to determine the identical ‘free-go’ appeal anywhere in the two months between the close of representations on 23 June to the Inquiry Sitting on 15 August.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Consequently, the application for full costs is granted.

### **Cost Order**

17. 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 Suffolk District Council shall pay to Bramford Green Limited, the costs of

the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to Mid Suffolk 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.

*C Parker*

INSPECTOR

### **Documents**

- A *Costs Application on behalf of Appellant by Thea Osmund-Smith and Sioned Davies, No5 Chambers, dated 15 August 2023. (Including Appendix, copy of Secretary of State Decision reference 3293104, dated 5 December 2022)*
- B *Costs Application Response by Mid Suffolk District Council, by Tom Cosgrove KC, Counsel for MDSC dated 17 August 2023*
- C *Costs reply on behalf of the Appellant by Thea Osmund-Smith and Sioned Davies, No5 Chambers, dated 21 August 2023*