

**APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 IN RELATION TO**

**LAND 800 METRES SOUTH OF PARK HOUSE FARM, MERIDEN ROAD,  
FILLONGLEY**

**APPEAL REF: APP/R3705/W/24/3349391**

**LPA REF: PAP/2023/0071**

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**RESPONSE ON BEHALF OF  
NORTH WARWICKSHIRE BOROUGH COUNCIL  
TO THE APPELLANT’S APPLICATION FOR COSTS**

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**INTRODUCTION**

1. The Appellant’s application for costs is opposed.
2. The application was made in two parts. The original application, dated October 2024, states that it is an application for a full award of costs, and relates to matters that took place before the appeal process had commenced.
3. As such, it could not have succeeded by itself. This was raised in the CMC and in her CMC Note the Inspector said, at Section 12:

“The Appellant will review and ensure that any application to be made at the inquiry is provided in writing in advance to allow the Council time to respond.”

4. Such a review did not take place. As a result, the Council remained unsure of the case against it until the final day of the inquiry when the Appellant made a brief Costs Update.
5. The alleged unreasonable behaviour is set out in the Costs Update in one paragraph. It does not explain such key matters as whether a full or partial award is being sought, or how the alleged unreasonable behaviour “has directly caused the Council to incur unnecessary or wasted expense in the appeal process”.<sup>1</sup>

## **RESPONSE**

### **Original costs application**

#### **PPG**

6. The PPG on Costs states that costs cannot be claimed for the period during the determination of the planning application:

**“Can costs be claimed for the period during the determination of the planning application?”**

No, but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector’s consideration of whether or not costs should be awarded.”<sup>2</sup>

7. Nevertheless, as the Inspector may take into account the Council’s behaviour in determining the application, the criticisms made by the Appellant are addressed.

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<sup>1</sup> PPG §030, Ref ID: 16-030-20140306.

<sup>2</sup> PPG §033, Ref ID 16-033-20140306.

## **Response to the Appellant's allegations**

8. The Appellant concludes on the Council's alleged unreasonable behaviour at Section 7 of its Application.

### The decision-making process in outline

9. The Board had three meetings to consider the application and had the benefit of three officer reports all authored by the Council's Head of Development Control, Mr Jeff Brown:<sup>3</sup>
  - a. The first report, dated 23 May 2023, introduced the proposal to the Board and identified the most important Development Plan policies to be addressed. It also provided guidance of how this should be undertaken.<sup>4</sup>
  - b. The second report, dated 24 March 2024, explained the most important planning policies and summarised their requirements – particularly Local Plan policies LP1, LP3, LP14 and LP30.<sup>5</sup>
  - c. The third report, dated 8 July 2024, provided brief clarification on two final matters.
10. The Board members further had significant experience in determining applications concerning solar developments as they had recommended that several similar applications in the Borough should be approved. These comprised six solar energy developments, three of which were in the Green Belt, and two Battery Energy Storage Systems, both of which were in the Green Belt.<sup>6</sup>
11. The Board considered each of these applications on their own merits. In doing so, they visited each of the application sites. As a consequence, the assessments made outlined in the officer reports could be judged in site-specific circumstances.

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<sup>3</sup> CDs 2.1, 2.2, and 2.3.

<sup>4</sup> CD 2.1

<sup>5</sup> CD 2.2

<sup>6</sup> These are listed in Mr Weekes' Proof at §5.1 (CD 13.2a).

12. Their approach was no different when determining the present application. When the members resolved to refuse planning permission at the meeting on 8 July 2024 (“the July 2024 Board Meeting”), they did so with the benefit of detailed information in the three officer reports for the application, a site visit, and the experience of dealing with several similar applications.
13. Following this meeting, Minutes were prepared (“the July 2024 Minutes”) by the Head of Development Control, which summarised the reasons why the Board resolved to refuse planning permission.
14. The July 2024 Minutes were then approved at the subsequent meeting on 5 August 2024 (**“the August Board Meeting”**) as reflected at Item 19 of the Minutes (“the August 2024 Minutes”) [**Council’s Response/A1**].

Response to the Appellant’s specific allegations

15. As to the specific allegations made in the Conclusion Section of the application:
16. **First**, the Appellant alleges that the Minutes of the Board Meeting of 8 July 2024 (“the July 2024 Minutes”) were inaccurate [**Original costs application, §6.3 and A3**]. This was the meeting at which the Board resolved to refuse planning permission. As with any refusal, the July 2024 Minutes summarised the reasons why the Board refused planning permission, which included the Reason for Refusal and an explanation as to how members reached the decision that they made. In preparing the Minutes, the Head of Development Control, as the relevant officer, was required to use his judgment to outline the key reasons from what was said in the meeting.
17. The reasons were in accordance with standard practice and were adequate. They were approved by the Board at the August Board Meeting as recorded in the August 2024 Minutes. Thus, the Inspector can be satisfied that the Board had an opportunity to review the Minutes and that members agreed that they were content that the July 2024 Minutes accurately recorded the decision taken.
18. **Second**, it is alleged that the Board gave insufficient reasons for refusing the application [**Original costs application, §7.2**]. For reasons to be inadequate,

there must be genuine as opposed to forensic doubt as to what the decision maker decided and why (*Starbones Ltd v SSHCLG* [2020] EWHC 526 (Admin)). Further, reasons do not have to be discursive (*LB Tower Hamlets v SSHCLG* [2019] EWHC 2219 (Admin)).

19. The July 2024 Minutes set out the proposed reason for refusal (“RFR”) in full and states:

“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.”

20. The level of reasoning was entirely standard and in line with the Council’s usual practice and what could be expected of members at a meeting such as this.
21. **Third**, it is alleged that the Board “failed to articulate why the professional reports and survey, upon which the planning officer was content to rely, were not acceptable to them, or on what alternative basis, methodology or results their decision was based” [**Original costs application, §7.3**]. It is further alleged that the Board failed to produce any evidence of its own.
22. As already explained, the reasons given were adequate and it is not the role of a planning committee to produce its own evidence. The Appellant fundamentally misunderstands the role of a planning committee or what could reasonably be expected of one.
23. **Fourth**, it is alleged that the Board as a whole failed to listen to some positive comments made during the meeting [**Original costs application, §7.5**]. There was a vote taken as with any other planning application before the Board and those members in favour of the application were outvoted by those that were

against it. A majority of the members voted to resolve to refuse planning permission. The process was carried out fairly and appropriately.

24. **Fifth**, the Appellant appears to allege that the members should have been given advice about risks on appeal and costs [**Original costs application, §7.6**]. The members of the Board had considerable experience in determining planning applications, including those relating to solar and other renewable energy developments. There was no particular need to give specific advice about risks on appeal in relation to the present application, the Board was entitled to take the decision that it did.
25. **Sixth**, while it has not been necessary to respond in detail to every point made – to do so would result in a document nearly as long as the Appellant’s – many of the points made demonstrate the Appellant’s lack of understanding of the implications of its own application, and of the planning process.
26. For instance, the Inspector is invited to consider the table below §6.9 where it sets out what it regards as being problems with the RFR. In this table, the Appellant demonstrates that it did not regard the size of the development as being a relevant consideration when assessing harm to the openness of the Green Belt, nor did it recognise that the development would be sited on higher ground which could be seen from some distance around it.

## **Conclusion**

27. The Appellant’s original costs application cannot lead to an award of costs in itself as it relates to matters which took place before the appeal. In any event, it is without merit.

## **Costs Update**

28. The Costs Update alleges that the Council did not make good on the RFR. The focus is on how the planning balance was carried out [**Costs Update, §3**]. The various points made in this paragraph are considered in turn.

## **Landscape and visual impact evidence**

29. The Appellant notes that Ms Oxley did not give any Year 15 impacts more than moderate weight.
30. In her oral evidence, Ms Oxley explained that, in accordance with GLVIA 3 (CD6.6) and the Technical Clarification Notes (CD6.13), where a proposal does not need an EIA, the term LVA is used rather than LVIA and the word “importance” is used rather than “significance” when describing effects.<sup>7</sup>
31. Ms Oxley explained that most practitioners set the “significance bar” for EIA at the middle of the range.<sup>8</sup> Thus, major and moderate effects are important or significant depending on the context and minor and negligible effects are not. In the present context, moderate effects are “important”, but a degree less important than those which are graded as major. She further explained that Mr Cook considered only major effects to be important and that this was not the typical approach taken.<sup>9</sup>
32. That Ms Oxley understood moderate effects to be important is plain from her evidence. The following examples from the text of her Proof demonstrate this (with emphasis added):
- a. **Paragraph 3.7:** “Visibility is particularly widespread and is an **important** consideration in the appeal decision from the area of Coventry Way from VP7 up to Red Hill (beyond VP13).”
  - b. **Paragraph 3.10:** “Views from Park House farm and the area of VP9 to the north west of the site will be open and, as they are elevated, the proposals will result in a change which should be an **important** consideration in the appeal decision...”

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<sup>7</sup> Oxley, XX. See, for instance, CD 6.13, the Notes and Clarifications on Aspects of Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA3), at §5(11).

<sup>8</sup> Oxley, XX.

<sup>9</sup> See Mr Cooks App 2 at CD 14.4.

- c. **Paragraph 3.12:** “The photomontage from VP11 on the PRow by Meriden Road is somewhat misleading in showing a partially obscured, eclipsed view (as is also the case elsewhere) given the proposed development will be seen from the roadside here at close range, directly to the east of the viewer. The visual effect will be an **important** consideration in the appeal decision, and the character of the local landscape would be changed as experienced from here.”
  - d. **Paragraph 3.17:** “As an overview, the areas of most **important** effects for consideration in the appeal decision will be....”.
33. Ms Oxley further explicitly stated that such important effects should be given significant weight in the planning balance. At §5.22, she said:
- “The landscape and visual effects, and their effects on and harm to the openness of the Green Belt as well as its landscape and visual character (currently undeveloped rural countryside with scenic qualities), are such that **significant** weight should be given to these matters in the determination of the appeal”.
34. Thus, Ms Oxley was both clear in her Proof and in her oral evidence as to the significance of the landscape and visual effects of the proposed development. It was entirely reasonable for Mr Weekes to afford them significant weight in the planning balance.
35. The Appellant is wrong to characterise Ms Oxley’s conclusions in the way that it has, especially as she explicitly explained her approach in her oral evidence.

### **Approach to carrying out the planning balance**

36. The Appellant criticises the manner in which Mr Weekes carried out the planning balance. In doing so, it has taken an overly reductionist approach to the consideration of benefits and harms, without the support of any authority, statutory or otherwise.



37. As the Inspector will be well aware, decision-makers are required to make their decisions pursuant to the duty under s.38(6) of the Planning and Compulsory Purchase Act 2004. The planning balance assists the decision-maker, by providing an indication of the weight to be afforded to individual benefits and harms. The assessment of the planning balance and how it relates to the s.38(6) duty is a matter of planning judgment.
38. The Inspector will further be aware that Appellant developers typically produce a long list of benefits, several of which are similar. The Appellant in this appeal has conformed to type. Separate weight is given to Clean Power (Substantial), Energy Security (Substantial), Local Climate Emergency Declaration (Significant).
39. This is fine. But if the overly reductionist points-based approach favoured by the Appellant were applied to such weightings generally, it would lead to absurd outcomes. For instance, it is difficult to see how the most serious Green Belt harm as a single issue (with Substantial weight) could ever weigh against energy infrastructure developments in the Green Belt in a planning balance. This would be absurd and demonstrates why a more common sense approach should be taken.
40. In his Proof, Mr Weekes considered the issues carefully and concluded that the various harms, including harm to the Green Belt outweighed the acknowledged benefits of the scheme.<sup>10</sup> A further table was produced setting out the respective positions of the parties following the submission of Proofs and Rebuttal Proofs.<sup>11</sup>
41. There was no suggestion in Opening that the Council's position was hopeless, as the Appellant now argues. If it thought so then, the Appellant would have surely have said so.
42. The Council's position changed, of course, once Mr Weekes accepted the Appellant's interpretation of §155(a) and with the effect that the Council's Green Belt case fell away. Even then, he was entitled to weigh up the harms and consider whether they were so great that planning permission should be refused. This was

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<sup>10</sup> See Weekes Proof, Planning Balance Conclusions at §11.21 (CD13.2a).

<sup>11</sup> CD 13.12.

his judgment to make. He is as a professional planning consultant of considerable experience and his judgment was reasonable.

43. Further, even if the Inspector were to take the view that the way in which Mr Weekes carried out the planning balance could have been set out differently, it is absolutely clear that in his professional opinion the harms that the development would cause were significant and that planning permission should be refused.
44. And, even if the Inspector were to accept that Mr Weekes' judgments were unreasonable at this point, the Appellant has not suggested how it experienced any loss, a necessary pre-requisite for an award of costs to be made pursuant to §30 of the PPG on Costs. If the Council had indicated that it was no longer offering evidence to the inquiry after Mr Weekes gave his evidence, the inquiry would have continued as the Rule 6 Party would have continued: Mr Bainbridge would have given his evidence, the conditions and s.106 session would have taken place, and the Inspector would have heard Closing Submissions.
45. Indeed, even if the Appellant had conceded shortly before the outset of the inquiry once the planning balances of the various parties had been compared, the inquiry would still have continued and the Appellant would have needed to give oral evidence on the same topics. With a timetable already produced and witnesses available to give evidence on particular days, it is difficult to see what unnecessary expense the Appellant would have incurred.
46. Thus, the way in which Mr Weekes carried out the planning balance at every stage of the appeal was reasonable and the Appellant has failed to demonstrate how it experienced any unnecessary or wasted expense as it should have done.

### **Reason for refusal**

47. The Appellant has again neglected to take a common sense approach to the interpretation of the reason for refusal. It states that the cumulative harms are identified are substantial and that the overall substantial harm is not clearly outweighed by any benefits.

48. The allegation of unreasonableness appears to be that the Council should not have continued to defend the reason for refusal in the absence of Green Belt harm. This is plainly an absurdity. If the Appellant's interpretation were preferred it would mean that after Green Belt harm was conceded the landscape and visual harm would somehow not be relevant.
49. In any event, as mentioned above, even if the Inspector were to accept that the Council had acted unreasonably in continuing to defend the appeal after Mr Weekes' concession, the Appellant would not have experienced any unnecessary or wasted expense.

### **Conclusion on the Costs Update**

50. The Appellant's brief Costs Update might give a degree of relevance to the original costs application, but it is equally without merit.

### **CONCLUSION**

51. Neither the Appellant's original costs application, nor its Costs Update has any merit. The Council has demonstrated how supportive it is of renewable energy proposals. Since its decision not to support this particular development, it has faced the continued threat of costs by the Appellant. It should not have done so.
52. For all the reasons above and in the Council's evidence, the Inspector is respectfully invited to refuse the Appellant's application.

**Howard Leithead**

25 April 2025

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# Appendix A1

## NORTH WARWICKSHIRE BOROUGH COUNCIL

### MINUTES OF THE PLANNING AND DEVELOPMENT BOARD

5 August 2024

Present: Councillor Simpson in the Chair

Councillors Bates, Bell, Chapman, Farrow, Fowler, Hayfield, Humphreys, Jackson, Jarvis, Parsons, H Phillips, O Phillips, Ridley, Ririe and Smith

Apologies for absence were received from Councillors, Dirveiks (Substitute Councillor O Phillips), Gosling (Substitute Councillor Jackson), Hobley (Substitute Councillor Jackson) and Reilly (Substitute Councillor Smith)

#### 18 **Disclosable Pecuniary and Non-Pecuniary Interests**

Councillor Humphreys declared a non-pecuniary interest in Minute 20c – Application No PAP/2021/0372 (Flexdart, Marsh Lane, Water Orton, B46 1NS) by reason of being on the Regulatory Board of Warwickshire County Council and took not part in the discussion or voting thereon.

#### 19 **Minutes**

The minutes of the meeting of the Planning and Development Board held on 8 July 2024, copies having previously been circulated, were approved as a correct record, and signed by the Chairman.

#### 20 **Planning Applications**

The Head of Development Control submitted a report for the consideration of the Board.

##### **Resolved:**

- a **That Application No PAP/2024/0236 (6, Marie Close, Mancetter, Atherstone, CV9 1NF) be granted subject to the conditions set out in the report of the Head of Development Control and with an amendment to include Saturday opening hours from 08:00 to 12:00;**

**[Speaker: Ellie Jones]**

- b **That Application No PAP/2024/0189 (Sunnyview, Dingle Lane, Nether Whitacre, Coleshill, B46 2EG) be deferred for a site visit;**

**[Speaker: Darren Bignall]**

- c That Application No PAP/2021/0372 (Flexdart, Marsh Lane, Water Orton, B46 1NS) be granted subject to the conditions set out in the report and the supplementary report of the Head of Development Control together with the completion of a Section 106 Agreement between the applicant, the Borough Council and the Warwickshire County Council in the terms set out in the supplementary report in respect of highway matters and the main report in respect of the phasing of the development; and**

**[Speaker: Chris Fellows]**

- d That Application No PAP/2023/0188 (Land at, Tamworth Road, Dosthill) be deferred in order to invite the applicant to consider if further mitigation could be included in respect of addressing potential impacts arising from noise and traffic as well as reviewing the landscaping proposed.**

**[Speakers: Raymond Collister, Adrian Barnsley, Henry Courier, Stuart Black]**

**21 Hall Farm, Farthing Lane, Curdworth**

The Head of Development control outlined the background to the making of an Emergency Tree Preservation Order in respect of a Willow tree at Hall Farm in Curdworth.

**Resolved:**

**That the Board confirmed action taken under the Chief Executive's Emergency Powers to make a Tree Preservation Order in respect of a Willow tree at Hall Farm, Farthing Lane, Curdworth.**

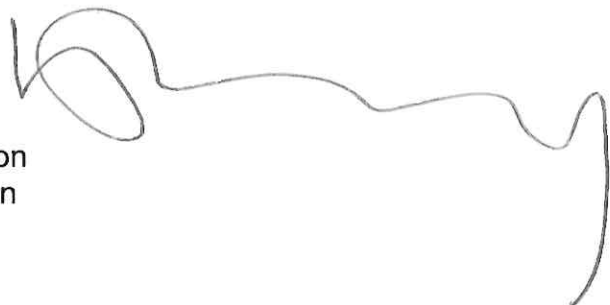
**22 Appeal Update**

The Head of Development Control brought Members up to date with recent appeal decisions.

**Resolved:**

**That the report be noted.**

M Simpson  
Chairman

A handwritten signature in black ink, appearing to be 'M Simpson', written over a horizontal line.