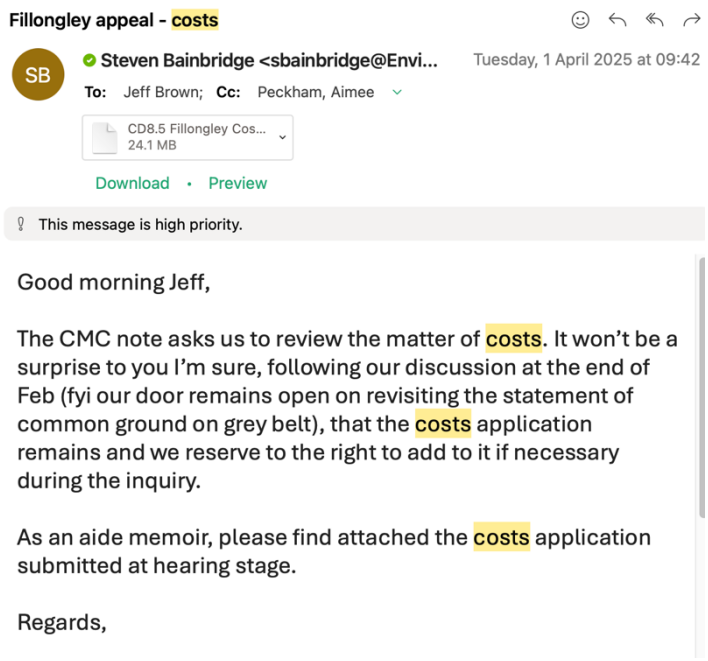
RE: FILLONGLEY SOLAR FARM

APPELLANT'S COSTS REPLY

Reply to §§1-5 of the Council's Response (the history of the application)

1. The Council provides a very odd mischaracterisation of the Appellant's clear approach on the costs issue. The Council has had the costs application for many months. It was never withdrawn. Having reviewed the Proofs and Rebuttals submitted, the Appellant confirmed again to the Council prior to the inquiry that it had no intention of withdrawing it (see screenshot below). As was envisaged, a short update was made at the close of the inquiry. The Council chose to ignore the costs application until the end of the inquiry. It is not clear why.



2. The Appellant's original costs application clearly stated the application was for a full award of costs (§1.1). The wasted expense is thus the cost of the entire appeal, as explained at §7.7 of the original application. That was clear and so there was no reason

to repeat it again in the short update provided at the close of inquiry, which confirmed again that the original application still stood (at §1).

Reply to §§6-7 of the Council's Response (unreasonable behaviour at application stage)

3. The Council has entirely misunderstood the approach set out in the Appeals Planning Practice Guidance ("PPG").

4. There is no difficulty with, and nothing unusual about, granting costs on the basis of unreasonable behaviour that occurred at application stage. What the PPG says is that the 'expense' that can be recovered is the expense incurred resulting from the appeal. It does not say that the 'unreasonable behaviour' can only occur post-submission of the appeal. If the unreasonable behaviour at application stage caused the Appellant to submit an unnecessary appeal, the wasted cost of that appeal can be recovered:

> ***What counts as unnecessary or wasted expense?***
>
> ….
> *Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission*. (PPG §032)
>
> ***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*…. (PPG §033)

5. Here, costs are not being claimed for the period during the determination. The costs claimed are for the expense of the appeal itself. However, the substantively unreasonable behaviour that required the Appellant to bring an appeal relates to the Committee's approach at application stage. In this respect, the Appellant's original costs application is entirely standard and accords with the approach of the PPG.

6. Indeed, that a costs application can relate to matters that took place before the appeal process has commenced is clear from the fact that included within the form for

submitting a section 78 appeal is an option to apply for costs. At the stage of submission of an appeal, that could only relate to unreasonable behaviour at application stage (see Appendix 1 for a screenshot of the form).

Reply to §§8-27 of the Council's Response (unreasonable behaviour at application stage)

7. The PPG is clear that one of the key aims of the costs regime is to encourage local planning authorities "*to properly exercise their development management responsibilities*" and to "*rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case*" (§028). Examples of unreasonable behaviour include "*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*." (§049).

8. Absent any alternative evidence, methodology, or assessment, the Committee's overturn of the carefully drafted Officer Reports, which were based on a wide body of technical assessment, was "*unsupported by any objective analysis*" and unreasonable. As often happens, the Planning Committee prior to determination could have sought a further technical assessment from officers or the applicant or commissioned an independent technical review, to justify taking an alternative approach. It did neither, instead simply disagreeing without justification with the recommendations of the Head of Development Control.

9. For the reasons set out in the Appellant's original costs application, sound reasons do have to be given for an overturn of this nature. It is odd, and out of kilter with the way Inspectors approach this issue, for the Council to suggest otherwise. Just to give one example, in a recent costs decision dated 16th April for a solar farm (Appendix 2), the Inspector held:

> *"15. The Councils are correct in that Members, acting as the local planning authority, have the ability to grant or refuse permission, regardless of their professional officers recommendation. Following the detailed training mentioned in their response, the Members would no doubt be cognisant with the fact that their decision notice should reflect the requirements of Article 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. This sets out that:*
>
> > *'(1)(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all*

policies and proposals in the development plan which are relevant to the decision'

[….]

17. Whilst noting that Members resolved to make a decision contrary to an Officer's recommendation, as is their right, the reasons for refusing permission by the local planning authorities [need] to be clear. Such process includes explaining why, for example, both the Applicant's and the Councils own appointed independent landscape experts did not object to the proposal.

18. Put simply, both local planning authorities refused permission on the basis of harm to the character and appearance of the area and landscape. What has not been adequately explained is the basis of which Members relied upon in drawing a diametrically opposite conclusion.

19. The only basis I heard at the Hearing was that Members undertook site visits and taking both that and the concerns of local residents into account, determined that the proposal would result in some form of landscape and/or visual harm relating to character and appearance. However, I have been provided with little detail as to why such a different conclusion was reached by both Planning Committees in this case."

Reply to §§29-35 of the Council's Response (landscape evidence)

10. The Council at §§29-35 has unfairly attempted a second bite at Closing Submissions on landscape matters. The Council has read the Appellant's Closings, obtained extra time to respond on Costs, and reopened its case on landscape.

11. In any event, the Council's attempt to reargue the point on the weight to landscape does not assist its case. Ms Oxley's findings on the moderate effects appeared to come as a surprise to the Council at the inquiry. The Council may regret that Ms Oxley only found residual moderate effects, but it cannot change the evidence she gave.

12. As explained at footnote 81 of the Appellant's Closings, on the stand, Ms Oxley suggested for the first time that "moderate" effects would be "significant" in EIA terms. This is not an EIA scheme. Nonetheless, that was an odd suggestion and not one justified in her written evidence or methodology. Mr Cook's methodology (supplied back in November - §5.2 in Appendix 12 CD13.4b) clearly explains that only major effects are significant in EIA terms, and Ms Oxley offered no criticism of that nor an alternative approach in her written evidence, despite having the opportunity to do so.

13. The EIA point is also a distraction. Even were "moderate" effects to be significant for the purposes of the EIA Regulations, which do not apply here, that would not elevate the effects to being major/substantial/significant/high ones in terms of the landscape assessment. The effects are "moderate", which is in the middle. That is the key point.

14. The Council notes at §33 that Ms Oxley's Proof says "significant weight" should be afforded to the impacts in the planning balance. Typically, the weight given to identified effects in the overall planning balance is a matter for the planning witness. Weight takes into account not only the level of effects identified by the expert but also the planning significance of those effects.

15. Here, the Appeal Site is not located within any international, national, or local landscape designation. It is not a valued landscape. No affected views are protected views under policy. The Site thus sits at the lowest end of the hierarchy of protection afforded to landscape by policy. In other words, it is exactly the sort of land that should be looked at to deliver the required generation capacity in landscape terms. The relevant requirement in the NPPF at §187(b) is simply "recognition".

Reply to §§36-49 of the Council's Response (planning balance and reason for refusal)

16. The Committee's reason for refusal was a cumulative Green Belt and landscape reason, which stated that the harms together were not 'clearly outweighed' (the Green Belt test). There was no standalone landscape reason for refusal. That means landscape was not in and of itself considered by the Committee to be sufficient to outweigh the benefits (see article 35 DMPO). Post Grey Belt concession, the reason for refusal cannot stand.

17. At §36 the Appellant is said to take an 'overly reductionist' approach to the planning balance. The Council is seeking to avoid the obvious results of the simple and standard exercise of ascribing weight to various benefits and harms and then weighing these against each other. That is why the parties were asked to produce a planning balance table. There is no point in ascribing weightings if there is then no 'balancing' exercise.

18. Mr Weekes' final position on weightings (ID18) is that substantial weight attracts to delivery of clean power, substantial weight attracts to the contribution to tackling energy insecurity, and significant weight to the local climate emergency declaration.

19. On Mr Weekes' planning balance scale there are five tiers: (5) substantial, (4) very significant, (3) significant, (2) moderate, (1) limited. Significant weight to the landscape impacts, in the middle of the scale, cannot reasonably be said to outweigh the substantial weight afforded to the benefits, at the top.[1]

20. The overall balance does in this case tilt strongly in favour of a consent. Given the urgency of the need for clean energy to meet net zero targets, the dangers posed to domestic energy security by a geopolitically unstable world, the biodiversity crisis, and the benefits of investment, business rates and jobs when economic growth is weak, the multiple benefits of solar energy schemes will in many cases outweigh the harms (as is clear from the large number of recent appeal consents in the Core Documents). Indeed, the Government's policy under EN-1 is that because of the urgent need there is a presumption of consent for 50MW+ solar farms where they are in AONBs, in the Green Belt, and where there is substantial harm to the highest grade heritage assets. That is not a reason to set the conclusions of the planning balance aside (cf. the Council's §39).

21. Finally, while the Grey Belt concession only took place at the Inquiry, that is because the Council failed to review their case properly following the publication of the new NPPF and PPG on Grey Belt (cf. §§43-45 of the Council's Response). The Appellant invited the Council to reconsider the point on multiple occasions prior to the appeal. Had it done so, and then properly reviewed the reason for refusal, a great deal of inquiry time would have been saved.

Conclusion

[1] Even the slimmed down table in Mr Weekes' Proof that does not address all the benefits comes out with a weighting in favour of a consent. (See Mr Weekes' §§10.3 and table at §11.21, copied over from the Council's SOC. Mr Bainbridge's Proof expressly noted that the Council's weightings added up in favour of the Scheme at footnote 17 p.54).

22. The Appellant's costs position has always been clearly and fairly set out from the time of the submission of the appeal. It is good practice to make a costs application early on in the process (see PPG §035). The Appellant has done exactly that.

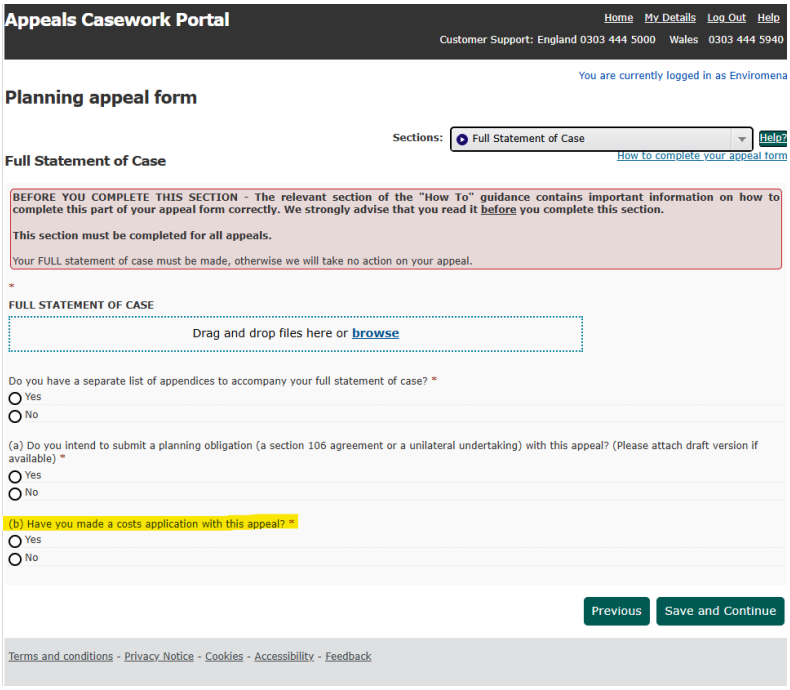
23. There was no sound planning basis for the Committee overturning the carefully reasoned Officer Reports. Had Mr Brown's recommendations been heeded, there would have been no need for the appeal and costs would have been avoided. The Committee's unreasonable behaviour was compounded by the Council's approach during the appeal. It is incomprehensible how the Council continues to assert the planning balance falls against the proposal having conceded on Grey Belt.

ODETTE CHALABY

28th April 2025

APPENDIX 1

Costs question from appeal forms:



APPENDIX 2 (ATTACHED)

UPPER LEIGH COSTS – APP/B3410/W/24/3352967 / APP/B3438/W/24/3352966