



Costs Decisions

Hearing Held on 1 April 2025

Site visit made on 31 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

Costs application in relation to Appeal A Ref: APP/B3410/W/24/3352967 Bramble Cottage, Greensmiths Lane, Upper Leigh, Staffordshire, ST10 4NY

- 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 Lightrock Power Ltd for a full award of costs against East Staffordshire Borough Council.
 - The Hearing was in connection with an appeal against the refusal of planning permission for the installation of a solar photovoltaic array/solar farm with associated infrastructure.
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Costs application in relation to Appeal B Ref: APP/B3438/W/24/3352966 Lower Tean Leys, Tean Leys, Lower Tean, Staffordshire, ST10 4NS

- 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 Lightrock Power Ltd for a full award of costs against Staffordshire Moorlands District Council.
 - The Hearing was in connection with an appeal against the refusal of planning permission for the installation of a solar photovoltaic array/solar farm with associated infrastructure.
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Decisions

Appeal A

1. The application for an award of full costs, against East Staffordshire Borough Council, is allowed in the terms set out below.

Appeal B

2. The application for an award of full costs, against Staffordshire Moorlands District Council, is allowed in the terms set out below (which are that only partial costs are awarded).

Procedural Matters

3. This cost decisions letter deals with two planning appeals that occur on the same site and scheme. It crosses the administrative boundary between East Staffordshire Borough Council (ESBC) and Staffordshire Moorlands District Council (SMDC). The evidence was heard at the same Hearing and the Councils represented by the same witnesses. I have proceeded on this basis. Given the similarities of the application made, I have issued this one letter containing two cost decisions and awards.

The submissions for Lightrock Power Ltd (The Applicant)

4. The Applicant had made a *partial* application for costs before the Hearing opened. This was made against ESBC, relating to them withdrawing their third reason for refusal (highway safety). Towards the end of the Hearing, the Applicant indicated that, having reviewed the evidence before and then discussed at the Hearing, they wished to make an application for *full* costs against both ESBC and SMDC. This application was made orally at the Hearing (with this provided in writing within the agreed timetable). The timetable was agreed by the Applicant and Respondents before the Hearing closed, so that their response and final comments on this matter were to be provided in writing.
5. The full case for the applications are set out in writing. I do not, therefore, seek to replicate them here in full. Nonetheless, put simply, the Applicant considers that both Councils have acted unreasonably and in doing so caused unnecessary and wasted expense.
6. This is because the Applicant considers that the Councils did not provide any objective analysis for their concerns as to any harm arising – whether in terms of character and appearance (including landscape) or living condition matters. They also suggest that the relevant guidance on residential amenity was ignored (CD7.4) and that the Applicant's Residential Visual Amenity Assessment (RVAA) was also ignored.
7. Following receipt of the Councils responses, the Applicant chose to not submit any final comments in relation to their cost application.

The responses by East Staffordshire Borough Council and Staffordshire Moorlands District Council (the Respondents)

8. In terms of the initial partial costs application against ESBC (made before the Hearing opened), the Council explained that members undertook a site visit to view the site from four locations and then the site was visited to be viewed from two other locations. It is indicated that elected Members were entitled to reach a different planning judgement to their Officers based on their site visit.
9. ESBC then engaged the services of a transport consultant to advise them in respect of highways matters after the decision notice was issued by the Council. Following this, the Council then 'removed' condition 3 in a decision dated 11 February 2025, under its constitution. It is suggested that because of this, and that highways was no longer contested by ESBC, further costs should not have been incurred beyond that point. They also suggest that whilst interested parties raised highway matters, the Inspector would have come to their own conclusions on this matter.
10. With regard to the full application for costs, the Councils (ESBC and SMDC) provided a written response on Friday 11 April 2025. Put simply, the Councils consider that they did not act unreasonably. Whilst the professional Planning Officers at both local authorities recommended the grant of permission and no objections were raised by the independent landscape expert appointed by the Councils; the elected members of the planning committee at both Councils decided, after reviewing the written information and undertaking site visits, that the proposal was not acceptable.

11. They, therefore, exercised their right to refuse planning permission acting as the local planning authority. They point out that it is not unreasonable for Members, in exercising planning judgement, to make a decision contrary to an Officer's recommendation. It is also pointed out that Members at both Councils receive detailed training before they can take part in decision-making at committee.
12. The Councils response also details the experience of their representatives at the Hearing. This included 30 to 40 years of experience, which was utilised in order to support the Councils reasons for refusal. In particular, it has been pointed out, as it was at the Hearing, that landscape and visual impacts are matters of professional judgement.

Reasons

13. As detailed in the national Planning Practice Guidance, costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process. Both elements need to have occurred in order for costs to be awarded.
14. The term 'unreasonable' should typically be understood by its ordinary meaning. Unreasonable behaviour in the context of an application for costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
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'
16. This is to inform all parties as to why permission was refused; in order that these matters can either be resolved through mitigation, re-design, or other such changes. It also acts as a basis to explain the reasons why both Councils considered the proposal was unacceptable at appeal, should the Applicant choose that route; as was the case here.

Character and appearance, including landscape

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.
20. This matter was further compounded at the Hearing, where the Councils provided no justification for their findings in respect of magnitude and effect, and why these differed from those of the Applicant's Landscape Expert – the latter of which were, in essence, generally supported by the Council's own independent landscape expert at the committee decision-making stage.
21. Instead, the sum of their justification boiled down to '*it's a matter of professional judgement*'. The written evidence did not contain any demonstration of how the Councils Landscape representative at the Hearing came to the conclusions they did. Despite being given a number of opportunities to respond and point the Hearing to their justification for refusing permission on this issue, the Councils written landscape evidence did not. Nor was it clear as to why there was such contrasting conclusions on the same evidence using an agreed methodology.
22. Indeed, I asked a number of times at the Hearing for the Councils to take me to where the 'working out' was shown. The response was that it was a matter of 'professional judgement' was unhelpful at best. That is because it does little to inform the decision-maker at the appeal stage as to what specifically it was about this issue that caused the Councils to provide it as a reason for refusal.
23. In contrast, the Applicant's table was based upon an objective and reasoned evidence base, following a methodology agreed as suitable by the Councils at the Hearing. This table, together with the rest of the Applicant's landscape evidence, explained clearly and precisely the potential harms or effects arising from the proposal, what weight should be afforded to these and why, and how they could be mitigated.
24. Comparing the two sets of evidence before the Hearing on this issue, the Councils evidence did not clearly and precisely explain why the proposal resulted in the unacceptable harm the Councils alleged – harm which is described as 'would significantly harm' in the agreed SOCG¹ and attributed 'very substantial negative weight'² in the Councils Statement of Case in their final planning balance. Instead, vague and generalised assertions were made on the Applicant's LVA evidence; amounting to words placed on one side of A4 paper against the Applicant's summary table.
25. The inability to clearly and precisely state the full reasons for refusal, and then providing a paucity of evidence at the Hearing to support such a position, amounts to unreasonable behaviour. Whilst I recognise that local planning authorities are able to take a different view to that of an Officer's recommendation, and the issue of character and appearance are used many times as a reason for refusal, such a stance needs to be supported by objective evidence at appeal.

¹ Page 38 of 42, paragraph 9.2

² Page 35, Table 3

Residential amenity

26. In terms of residential amenity, the evidence presented by the Councils on this matter was extremely limited. Whilst the SMDC decision notice refers to Blythe House, the ESBC decision notice simply refers to 'nearby residential properties'. The Councils cases essentially amounted to pointing to the Applicant's RVAA: for which the Councils raised no objections to the methodology used, and the exercise of professional or planning judgment therein.
27. Reading the information provided on this matter from the Councils, their objections appear to revolve around matters of outlook and views, rather than the proposal resulting in harm to living conditions:- for example through loss of light, overshadowing, or overbearing nature of development. This can be seen in the agreed SOCG, where it is indicated the dispute between the parties include: *'Whether the proposed development by reason of its scale, form, materials and siting and close proximity would be visually intrusive to the occupants of nearby residential properties and would therefore harm their residential amenities.'*
28. It is well established in planning practice, that occupiers rarely have a right to a view or outlook. In that respect, it is unclear as to what the Councils concerns on this matter related to. If it was to point to the fact that the character and appearance of the area was to be changed for occupants of nearby dwellings, then this matter was contained and considered within the first reason for refusal.
29. The Councils point to the fact that glint and glare were matters which were linked to residential amenity³. Although this is not cited as a reason for refusal, nor is it contained within the remaining areas of dispute between the Councils and the Applicant. Its introduction as a matter that needed consideration at a relatively late stage in proceedings, and thereby requiring the Applicant to address such matters at the Hearing, was unreasonable.
30. Furthermore, at the Hearing itself, the Councils were only able to identify two windows in the property Leigh Lane Farm⁴ from which there might be views towards the proposed development for which such issues might arise in terms of glint and glare.
31. On this matter, I find that SMDC did not act unreasonably. There would be an impact on the occupiers of Blythe House; albeit mitigated to a large degree by the proposed landscaping scheme. Whilst the SMDC appeal decision did not find this same level of harm which could justify the dismissal of the appeal, it was not unreasonable for the SMDC Planning Committee who considered that proximity between that building and the proposal would result in an adverse impact on the occupiers which justified the refusal of permission. In exercising its planning judgment, SMDC did not act unreasonably on this issue.
32. However, in respect of ESBC, I find that the Council did act unreasonably. This is because although the decision notice refers to 'residential properties' it is unclear as to which were affected by the proposal. ESBC appears to have relied upon generalised and vague assertions in indicating that there would be harm arising from glint and glare. Not only did ESBC fail to identify it as an issue within their reason for refusal and /or the agreed SOCG, but this matter

³ Pages 4 and 5 of the Councils Response.

⁴ Which according to the agreed SOCG map on page 4 of 42, lies within the ESBC area

was also raised very late in proceedings at the Hearing, and then when briefly discussed, ESBC through their representative, provided very little justification as to what the adverse impacts specifically were or how the existing and submitted landscaping would not reduce such effects to a very low level and / or provide adequate mitigation to achieve that outcome. This was unreasonable behaviour which resulted in the Applicant incurring unnecessary or wasted expense in dealing with the matter of glint and glare and as related to residential amenity.

Highway safety

33. In terms of highway safety, ESBC indicates in its response, that under its constitution in a decision dated 11 February 2025, *'reason for refusal no.3 opposing the development on highways grounds was then removed'*. Whilst ESBC might have conceded that it was no longer seeking to contest the third reason for refusal, I am not aware of the powers afforded to a local planning authority to amend a decision notice outside the scope of the Courts; who typically would quash such decisions and then return them for full re-determination.
34. Even if this change is possible under the Council's constitution, the decision notice before the Hearing continues to contain that third reason for refusal. It therefore remains a matter which the appeal decision-maker needs to address, regardless of it being an area of common ground between the main parties. There was also a legitimate expectation from local residents that the matter would be considered at the Hearing.
35. Indeed, the matter of highway safety and access along Leigh Lane was a one raised by numerous local residents and also the Parish Council prior to the Hearing. Indeed, on page 3 of the Councils response, I am informed that *'The Councils would also highlight the numerous objections from the public to the planning applications...'*.
36. At the event itself, both the main parties and I saw numerous videos which sought to show examples of where highway issues had arisen on Leigh Lane. Whilst it is correct that ESBC was no longer seeking to contest their third reason for refusal, it remained extant. In such circumstances, and given that it was a matter that the local Parish Council had raised numerous times including at the Hearing, it is entirely plausible that an option remained that the appointed Inspector, as the decision-maker, could dismiss the appeal on such matters.
37. Given such circumstances, it was helpful that the Applicant provided an expert to address and assist the Hearing on the highway matters that had been raised by the local community, and which had initially been a reason for refusing permission by ESBC.
38. Furthermore, ESBC engaged a transport consultant in early 2025; whose detailed advice appears to have informed ESBC's decision to not contest that reason for refusal. It is unclear as to why that advice was adhered to and caused ESBC to not contest that reason for refusal. (This contrasts with the position in terms of landscape matters, where the professional independent advice from the Councils Landscape expert at the Committee stage was given limited weight and overridden by the exercise of 'planning judgement' at both the Committee and appeal stages).

39. Perhaps more confusingly is the fact that when the proposal was reported to ESBC Planning Committee on 27 February 2024, it was indicated, on page 12 of 57, that:

'5.4 SCC Highways

No objection subject to conditions in respect of:

- Construction of the passing bays prior to commencement - The submission of a Construction Transport Management Plan prior to commencement - The surfacing of the access off Leigh Lane to be finished in a bound material prior to commencement - The submission of visibility splays for approval.⁵

40. The report then goes on to list Highways Impacts in Section 13 on page 28 of 57 onwards. In this section we can read the professional Planning Officers consideration of this matter, and them informing the Planning Committee that: *'The SCC Highway Authority having reviewed the submitted and additional highways information have commented that road widening to create three passing places along Leigh Lane on the access route to the site and minor widening improvements at the site access is appropriate and would result in an improvement to highway safety⁶'* and that *'The SCC Highway Authority have confirmed that they have **no objections** in principle to the proposals subject to ensuring that the passing bays on the public highway along Leigh Lane...⁷*
41. The report then goes on to detail suggested conditions. In the Committee Report for the ESBC Planning Committee meeting of 23 April 2024, it details why the application was deferred from February: – put simply to allow further consultation on alternate field arrangements and consultation regarding the safety of the battery storage unit (the latter BESS of which was removed from the scheme). This indicates that the deferral was not related to the matter of highway safety; which the February 2024 report had already indicated no objections from the Local Highways Authority.
42. Instead, we see that conditions have been updated, and include a condition numbered 1: Passing Bays (Grampian) on page 10 of 30 of this report. The professional Officer's recommendation remained the same. Both reports demonstrate a careful and considered analysis of the issues the scheme raised, and why the Officer came to their recommendation.
43. It is, of course, open to the trained elected Members of the Local Planning Authority to refuse permission contrary to the advice of their professional officers, and also contrary to the advice of bodies such as the Local Highways Authority (LHA), Staffordshire County Council. But similar to those matters detailed above on landscape/character/appearance and residential amenity, such decisions need to be fully reasoned. Similarly, if such matters are no longer contested, then the justification of this should be provided in order to inform the decision-maker.
44. I do not have any substantive evidence from ESBC as to why they refused permission on the grounds of highway safety at the committee stage. This is even more bizarre when, at the time ESBC made their decision, the Local

⁵ Emphasis mine.

⁶ ESBC Planning Committee Report, 27 February 2024, page 29 of 57, Paragraph 13.6

⁷ Ibid, page 30 of 57, Paragraph 13.8. Emphasis mine.

Highways Authority responsible for such matters were satisfied that they could be mitigated or controlled through a combination of powers under the Highways Act, and/or planning conditions. Planning permission was refused by ESBC in April 2024, an appeal was submitted in October 2024, with both Councils notified at that point. On 17 January 2025, ESBC contacted the Applicant indicating that they were commissioning independent advice regarding the committees highways reason for refusal. A few weeks later, on 11 February 2025 ESBC indicated that the highways reasons no longer forms part of the ESBC case.

45. However, it was not until the point that ESBC advised the Applicant that there could be any certainty as to whether the independent advice would concur with that of the Applicant's Highways expert or the LHA. Given the position in terms of the Council's own independent landscape expert at the committee stage, where their professional advice was, in essence, given limited weight by the Planning Committee, it was prudent for the Applicant to have considered that the matter of highway safety remained a 'live issue' that they needed to address. Moreover, the fact remains that there is extremely limited information from ESBC which provides any justification for the reason for refusal in the first case.
46. Taken in the round, ESBC refused permission, in part, on the grounds of highway safety concerns even though the LHA did not raise an objection to the scheme on such matters. The justification for this is contained solely within the reason for refusal. It was not until February 2025 the ESBC indicated that it was no longer contesting that reason for refusal, and not until March 2025 (a few weeks before the Hearing opened) that the Statement of Common Ground was agreed between the Applicant and the Councils.
47. There remained a number of interested parties who, aware of ESBC's reason for refusal on highways safety, continued to present evidence to the Hearing. Not only was evidence presented – both orally and in written form – but it also included short videos allowing the appointed Inspector to see and understand specific occasions where the concerns over the narrowness of the road and lack of formal passing bays were borne out in practice. In contrast, the evidence and reasoning for ESBC to have originally refused the proposal on this ground, and then no longer contest the third reason for refusal, is markedly absent.
48. Considering all of the above matters in respect of highway safety matters, I find that ESBC has acted unreasonably in respect of the Hearing process. This has resulted in unnecessary and wasted expense on this matter in the Hearing. That is because there is a lack of reasoning as to why the third reason for refusal by ESBC was stated in the first instance, and then there was limited evidence or justification from ESBC in qualifying why that reason for refusal was no longer contested.
49. This would have come as a surprise to local interested parties who, rightly, would have at the very least expected to understand why ESBC, as the Local Planning Authority, was no longer contesting this issue. These circumstances also meant that the Applicant felt, quite reasonably given it was a reason for refusal and because of the concerns of local people, that they needed to provide highways evidence and a witness at the Hearing. This unreasonable behaviour meant that the Applicant was subjected to unnecessary or wasted

expense in needing to address this seemingly unjustified (at least in respect of ESBC) reason for refusal at the appeal stage.

Conclusion

50. There is no issue with the respective Councils acting as the Local Planning Authority in refusing planning permission. This can be decisions which are contrary to the recommendation of their professional Planning Officers. The Members of the Planning Committee, when carrying out their functions as the Local Planning Authority, can refuse to grant planning permission. They may do so for a number of reasons which can be informed by their own local knowledge.
51. Nonetheless, in exercise of its duties, the Local Planning Authority will be aware that it needs to comply with relevant legislation and Regulations, such as that set out in the DMPO 2015. There will be an awareness that if permission is refused, robust justification needs to be provided. These are matters which are typically explained in the training that Members are provided; and which the response indicates they have had in this case.
52. In this case, I have found that both ESBC and SMDC did act unreasonably in respect of landscape, character and appearance matters as they only provided generalised and vague assertions on the harm arising from the proposal. This unreasonable behaviour resulted in unnecessary and wasted expense as the Applicant needed to address them at the appeal stage.
53. In terms of residential amenity, I find that SMDC did not act unreasonably. They have specifically identified the dwelling whose occupiers they considered were adversely affected by the proposal in amenity terms. This is a matter which is, to a degree, subjective, and relies upon the planning judgement of the decision-maker considering the impact from that building arising from the proposed development.
54. With regard to highway safety, this is not a matter that SMDC refused permission or contested. Therefore, they did not act unreasonably in this regard.
55. In terms of ESBC, I have found that they did act unreasonably in respect of residential amenity. This is because not only was it unclear as to which specific buildings and occupiers would be affected by the proposal, but it became apparent at the Hearing that the objection mainly revolved around glint and glare from two windows in one building situated some distance from the proposed panels. It was unreasonable, when glint and glare was not a contested matter between the main parties and it was not mentioned in the reason for refusal, to then rely upon it as the principal matter in respect of residential amenity. This caused unnecessary and wasted expense on behalf of the Applicant who had to provide an expert to address this matter at the Hearing.
56. With regard to the highway safety matter, I have found that ESBC was unreasonable in its approach, for the reasons stated above. This was unreasonable behaviour which resulted in unnecessary and wasted expense for the Applicant in having to provide highways evidence and a highways expert in order to ensure that this matter was fully addressed at the Hearing.

57. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.
58. In respect of ESBC (Appeal A), I find that this demonstration has been on all three matters contested, namely; character and appearance including landscape, residential amenity, and highway safety. Accordingly, I find that an award for full costs for the appeal is justified. That is because the behaviour that arose resulted in the need for a Hearing, which could have been avoided altogether had the LPA considered their stance significantly earlier in proceedings. Furthermore, in the main, the evidence presented at and before the Hearing related to these matters was primarily based on vague and generalised assertions.
59. In respect of SMDC (Appeal B), whilst a full application for costs was sought, the award is only partial, and restricted to the landscape, character and appearance issue. Therefore, I find that an award partial costs only on this matter is justified.

Costs Orders

Appeal A – 3352967; ESBC

60. 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 East Staffordshire Borough Council shall pay to Lightrock Power Ltd, 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.
61. The applicant is now invited to submit to East Staffordshire Borough 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.

Appeal B – 3352966; SMDC

62. 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 Staffordshire Moorlands District Council shall pay to Lightrock Power Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the first main issue relating to landscape, character and appearance matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
63. The applicant is now invited to submit to Staffordshire Moorlands 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

APPEARANCES

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