COSTS APPLICATION

GROUND MOUNTED SOLAR ARRAY

LAND NORTH OF THE M6 BETWEEN BIRMINGHAM AND COVENTRY

OCTOBER 2024

ENVIROMENA

Enviromena Project Management UK Limited, 15 Diddenham Court, Lambwood Hill, Grazeley,

Reading, Berkshire, United Kingdom, RG7 1JQ. Company Number: 11225654

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Contents:

""Unreasonable" is used in its ordinary meaning as established by the Courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature."

(Inspector Training Manual, Costs Awards V6 and Planning Practice Guidance)

" Whilst in strict legal terms the Planning and Development Board is under no obligation to follow the advice of officers, s.38 (6) of the Planning and Compulsory Purchase Act 2004 provides that any planning determination shall be in accordance with the development plan unless material considerations indicate otherwise. Thus, ***there must always be clear and convincing planning reasons for the Board's decision****. If decisions are taken for non-planning reasons,* ***or for reason which are not sustainable at an appeal, there is the potential for an award of costs*** *to be made against the Council. Therefore if the Board makes a decision contrary to the officer's recommendation (whether for approval or refusal),* ***a detailed minute of the Board's reasons should be made*** *and a copy placed on the application file.* ***Officers should also be given the opportunity to explain the implications of the contrary decision before it is taken****.* [...] ***The Board will be advised as to the strength of the suggested reason for refusal and any possible financial implications for the Authority****"*

(North Warks Constitution).

Statement Revision and Issue Date	Report Author	Position	Signed off By	Position
October 2024	Steven Bainbridge BSc MSc MRTPI	Head of Planning	Mark Harding	European Development Director

1. Introduction

1.1 This full application for costs follows the format of the Planning Inspectorate's application for costs template.

2. Information about the claimant

2.1 The application for costs is made by the appellant:

Enviromena Asset Management Uk Ltd
Unit 15-16
Diddenham Court Lambwood Hill
Grazeley
Reading
Berkshire
RG7 1JQ
sbainbridge@enviromena.com

2.2 Enviromena are pursuing a full award of costs. "An application for a full award of costs: relates to the applicant's whole costs of the statutory process, including submission of the appeal statement and supporting documentation (including the expense of making the costs application)"[1].

3. Information about the party being claimed against

3.1 Enviromena are pursuing costs against the North Warwickshire Council's Planning Board's overturn of an officer's recommendation of approval, which las lead to an unnecessary appeal.

North Warwickshire Borough Council
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE
01827 715341
PlanningControl@NorthWarks.gov

4. Information about the appeal

4.1 Planning appeal reference number: APP/R3705/W/24/3349391

4.2 Name of local planning authority: North Warwickshire Borough Council

4.3 Description of development: "*Construction of a temporary Solar Farm, to include the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure*"

[1] Inspector Training Manual, Costs Award V6

4.4 Address of the site:

Land 800 Metres South Of Park House Farm, Meriden Road, Fillongley
Easting 427624.17
Northing 286021.23

5. Relevant guidance and advice

5.1 The PPG is clear on the following (our emphasis underlined):

*"**What does "unreasonable" mean?***

The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

procedural – relating to the process; or

substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account."

Paragraph: 031 Reference ID: 16-031-20140306

Revision date: 06 03 2014

*"**What counts as unnecessary or wasted expense?***

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

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."

Paragraph: 032 Reference ID: 16-032-20140306

Revision date: 06 03 2014

*"**When might an award of costs be made against a local planning authority?***

Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances."

Paragraph: 046 Reference ID: 16-046-20140306

Revision date: 06 03 2014

"What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- *lack of co-operation with the other party or parties*
- *delay in providing information or other failure to adhere to deadlines*
- *only supplying relevant information at appeal when it was previously requested, but not provided, at application stage*
- *not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties*
- *introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen*
- *prolonging the proceedings by introducing a new reason for refusal*
- *withdrawal of any reason for refusal or reason for issuing an enforcement notice*
- *failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined*
- *failing to attend or to be represented at a site visit, hearing or inquiry without good reason*
- *withdrawing an enforcement notice without good reason*
- *providing information that is shown to be manifestly inaccurate or untrue*
- *deliberately concealing relevant evidence at planning application stage or at subsequent appeal*
- *failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment*

[This list is not exhaustive.]"

Paragraph: 047 Reference ID: 16-047-20140306

Revision date: 06 03 2014

"What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*
- *acting contrary to, or not following, well-established case law*
- *persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*
- *not determining similar cases in a consistent manner*
- *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*
- *refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage*
- *imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations*
- *requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations*
- *refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal*
- *not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.*
- *if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn*

(This list is not exhaustive.)"

Paragraph: 049 Reference ID: 16-049-20140306

Revision date: 06 03 2014

5.2 The Council's constitution is clear that (our emphasis underlined):

" 11. Decisions contrary to Officer's Recommendation

11.1 Whilst in strict legal terms the Planning and Development Board is under no obligation to follow the advice of officers, s.38 (6) of the Planning and Compulsory Purchase Act 2004 provides that any planning determination shall be in accordance with the development plan unless material considerations indicate otherwise. Thus, there must always be clear and convincing planning reasons for the Board's decision. If decisions are taken for non-planning reasons, or for reason which are not sustainable at an appeal, there is the potential for an award of costs to be made against the Council. Therefore if the Board

makes a decision contrary to the officer's recommendation (whether for approval or refusal), a detailed minute of the Board's reasons should be made and a copy placed on the application file. Officers should also be given the opportunity to explain the implications of the contrary decision before it is taken.

11.2 Any Member who is contemplating proposing a motion to refuse an application contrary to the officer's recommendation should contact the relevant officer to discuss his/her intention. The officer will advise the Member whether the Member's concerns would constitute a valid planning reason for refusing permission; and if so, assist the Member in drafting reason[s] for refusal. The Board will be advised as to the strength of the suggested reason for refusal and any possible financial implications for the Authority."

5.3 The House of Commons Library briefing paper "Must planning committees follow officers' advice in reaching decisions" is also very clear (our emphasis underlined):

"*1.2 Overturning the advice of officers*

In cases where councillors overturn the advice of officers, reasons have to be given. The LGA/PAS guide to probity in planning for councillors and officers suggests that councillors should be ready to explain why they have not accepted the officer's recommendation and that officers should be given an opportunity to explain such a decision's implications, including those for any appeal and award of costs: If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made".

6. The unreasonable behaviour

6.1 Enviromena do not dispute that a planning committee is free to make a decision contrary to its officer's recommendation.

6.2 However, in those circumstances it is vital for planning committee to construct their planning-reasons clearly. Where planning officers convey their recommendation for approval in clear policy terms, it is essential for committee to do the same in the alternative.

6.3 The Council's official 'minute' of the July committee meeting does not match the planning committees' comments as set out in the transcripts. The Council's constitution and the House of Commons briefing paper are clear on the need for a detailed minute in the event of a committee overturn. Therefore, Enviromena have provided a transcript (written by a

professional transcriber) of the planning committee meetings in March and July 2024. This is because PINS do not accept audio or visual files. For verification, the transcripts can be cross referenced to the meetings recorded on the Council's YouTube account here:

- Planning and Development Board - 4th March 2024 (youtube.com)
- Between 2:19:38 and 3:14:20.
- Planning and Development Board 8 July 2024 - YouTube
- Between 3:54:05 and 4:42:22.

6.4 The transcripts make it very clear that:

- Planning committee's reasoning for overturning the officer's recommendation was *vague, with generalized and inaccurate assertions* about the proposal's impact. An example of those can be found on page 11 of the July meeting transcript where Cllr Phillips is quoted saying he is "very suspicious" about a matter which was incoherent.
  - Another example is on page 9 of the July meeting transcript where Cllr Simpson says "*The report makes it clear that harm will be created, the final paragraph says, landscape harm is thus reduced to moderate in impact. I trouble is I don't want my epitaph when I retire from the Council to be, oh dear old Cllr Simpson, he did his best to make sure that harm was never worse than moderate. Harm is harm and this is going to create harm*". This is patently incorrect and diverts, in an unevidenced way, from the officer's classifications of harm. The Councillor's claim is not based in policy or fact.
  - Another example is on page 10 of the July meeting transcript where Cllr Hayfield claims that "this is a huge development that will have a very substantial visual impact", providing no reason why the applicant's LVA or the officer's report should be doubted, or any alternative methodology for coming up with that result.
  - Another example is on page 13 of the July meeting transcript where Cllr Ridley claims the development "is visible from everywhere" and was not corrected by other councillors or officers.
  - Another example on page 14 of the July meeting transcript where Cllr Simpson states, in referring to landscape character impacts from a temporary development, claims "once its gone its gone".
  - Another example is on page 14 where, again Cllr Simpson, is clear in his understanding from the officer's report that there is "moderate actual green belt harm, moderate landscape and minor visual impacts" but goes on to conflate this into "substantial harm" having provided no evidential basis to do so.
- Planning committee *failed to produce any evidence to substantiate their reasons for refusal*. An example can be found on page 10 of the July meeting transcript where Cllr Simpson lists policies but provides no reasoning, and no reference to the tests within the policies themselves.
  - Another example can be found on page 14 of the March meeting transcript where Cllr Simpson claims, in reference to the exercise of benefits clearly outweighing green belt harm, that "it can't just about do it, it has to clearly outweigh the harm caused". This is of course incorrect. Recent caselaw is clear that the exercise of outweighing is a qualitative one of 'clarity', as long as the separation of harm and

benefits is clear, it need not be quantitatively large. Therefore, using Cllr Simpsons parlance; 'it can just about do it'. Cllr Simpson was not corrected by planning officers or the council's legal officer.

- Planning committee have *prevented and delayed development which should clearly be permitted, having regard to its accordance to the development plan, national policy and material considerations,* as set out in the officer's report.
  - Planning committee provided no clear and convincing reasons for their decision. An example can be found on page 10 of the July meeting transcript where Cllr Simpson states "*from the bottom of my heart, appeal to you to vote against this application*". This is not a planning reason.
  - Officers were not given the opportunity to explain the implications of the contrary decision before it was taken, there having been 1 minute and 50 seconds only, between the confirmation of the proposal to refuse at 4:40:15 and the decision at 4:42:05.
  - The committee was therefore not advised as to the strength of the suggested reason for refusal and any possible financial implications for the authority. Evidence for this is that neither the planning officers or council's legal officer intervened, staying entirely silent instead.

6.5 The recommendations of approval were clear. Less clear were the reasons given by planning committee for their overturn of the officer's report.

6.6 As shown by the detailed transcript of the committee meeting, the Council's planning committee failed to articulate what level of harm they were concerned about, how they reached that conclusion, and how any harm related to the relevant policies and the policy tests.

6.7 A further factor was the speed at which the committee moved from the end of debate to the decision being made.

6.8 This can be seen in the transcript of the third committee meeting and consists of only a few sentences, with no input from Council officers on "*the implications of the contrary decision*" or "*the strength of the suggested reason for refusal and any possible financial implications for the authority*" (North Warwickshire constitution). This shows that the Council's planning committee denied themselves the opportunity to seek advice from their planning or monitoring officer and therefore denied themselves the opportunity of understanding the implications and costs of their decision. This much is clear from the transcripts in Appendix 1.

6.9 The table below shows how the unchallenged comments from the planning committee meeting made their way into the reason for refusal which are vague, unevidenced and inaccurate:

RfR claim	Enviromena response
"the development's proposed size"	Three committee members refer to the size of the development thus: Cllr Hayfield "*this is a huge development that will have a very substantial visual impact*" Cllr Simpson "*This is a huge development, 60+ hectares in the Green Belt*" Cllr Hayfield reiterating Simpson "*this is a huge development that will have a very substantial visual impact on the Green Belt*". The committee members provided no source or methodology for their claim of "substantial visual impact". The committee provided no reason for disagreeing with their officer's opinion on visual impact, and officer's provided no steerage to the committee's unfounded assertions, in contradiction to the Council's constitution which recommends such actions are taken in the event of committee overturns. The transcript of the March meeting records the head of planning cautioning committee on this point: "*this is the largest of the Applications that Members of the Board have had to deal with and the size itself is not a reason for refusal; that is my advice to you*".
"its siting on higher land"	There is no apparent source for this claim. The Council do not explain what is meant by 'higher land', higher than what or where? It is not said. There is no reference to view points, and no disagreement with the Appellants LVA. Topographical mapping shows that there is higher ground some 2km to the west, and some 1km to the south on the other side of the M6, but there is nothing to say these positions represent sensitive locations.
"there being no surrounding higher land"	The relevance or meaning of this point is unclear, and no source for the claim can be found.
"its public visibility over a	The July transcript records one instance of a committee member discussing visibility. Cllr Ridley stated "*Thank you Chair. I'm completely conflicted like a lot of people are. Yes we have a*

wide area"	*climate emergency, we need green energy, we need it now, we don't need it in five years time. The issue I find with this is it's visible from everywhere*". Evidently the proposal is not "*visible from everywhere*. The committee member was not dissuaded of this view by officers, and it appears to have crept into the reason for refusal unchallenged and unevidenced. The March meeting transcript records the Head of Planning cautioning the committee on this very point: "*in terms of visibility, the fact that you can... Members will be aware of this when dealing with other applications, the fact that you can actually see the development is not a reason for refusal*'.
"substantial harm is clearly outweighed by any benefits"	The transcript of the July planning committee meeting records the committee chair reiterating the committee's reason for refusal: "*the planning reasons given were harm to the Green Belt because of the scale and the landscape harm, the use of Best and Most Versatile land and of course, it's not consistent with the Neighbourhood Plan. Right so I've got that put down*" There is nothing about substantial harm outweighing benefits. However, looking elsewhere in that transcript, earlier in the meeting, it can be seen where this claim originates from. Cllr Simpson (our emphasis): "***Once it's gone, it's gone***. *I know the argument is it's a temporary Application because it's only for 40 years. But I'm concerned for my life that's pretty [?] and for most of the people who live in that area it is permanent. And the planning content, I get that 40 years can be argued to be temporary.* ***What is the planning basis****? The report makes it quite clear the long mitigation [?since] the question of how much do you agree with the mitigation compared to the harm. [?4:38:09.0] the report says its considered the [?] of the planning balance comprises a substantial definition of Green Belt harm, moderate actual Green Belt harm, moderate landscape and minor visual impacts and the harm caused to the Best and Most Versatile land as well as, what's less than substantial harm for local heritage assets.* ***None of that is saying there is no harm****. There is clear harm to*

	the Green Belt. Now agreed, there are advantages and it is important that we have green energy, but in my honest view, the advantages of this Application do not outweigh the ***substantial harm that is clearly outweighed by any of the benefits*** *of [?the] development. This is a long-term, you know I get we need to [?deliver] green energy, we don't need to do it everywhere and we certainly do not need to do it in sensitive locations and we do not need to do it for the benefit of future generations in an area where 95% of the land is our Best and Most Versatile land. We do need to sort out energy, but on the land that grows more than anything else? Cllr, I get your point for the benefit of future generations, but* ***future generations need to eat too***". Taking these comments in turn: "*Once it's gone its gone*". Incorrect, the proposal is temporary. The Councillor was not corrected on this point. "*what is the planning basis*". The Councillor was not corrected and/or directed to the PPG. "*none of that is saying there is no harm*". There is no policy authority for the Councillor to take a "*no harm*" stance on development. The Councillor was not corrected on this point. *"substantial harm that is clearly outweighed by any of the benefits".* Even if the claim of substantial harm were based in any authoritative source, it should have been weighed against all the benefits, not "*any*". This is critical, and important. The Councillor was not corrected on this crucial matter, which appears to have been extracted from an early point in the meeting, and used to justify the planning committee's overturn.

7. Conclusion

7.1 North Warwickshire Planning committee were twice recommended to approve the planning application by the Council's Head of Planning who made such clear comments as:

- "*this is the largest of the Applications that Members of the Board have had to deal with and the size itself is not a reason for refusal*".

  Despite this clear advice, one of the reasons for refusal being "*the development's proposed size*".

- "*So at the end of the day Madam Chairman, this comes down to a final planning balance and because this is in the Green Belt the test is whether the benefits and the case put forward by the Applicant clearly outweigh the harms that might be caused by this particular Application. You will see from the report Madam Chairman that I feel that that is in fact the case in this situation and that is very much due to the amendments that have been made recently in terms of the additional landscaping and planting proposed on the site*".

  Despite this clear advice, one of the reasons for refusal being "*substantial harm* [not] *outweighed by <u>any</u> benefits*".

- "*in terms of visibility, the fact that you can... Members will be aware of this when dealing with other applications, the fact that you can actually see the development is not a reason for refusal*".

  Despite this clear advice, one of the reasons for refusal being "*public visibility over a wide area*".

7.2 As the transcripts show, planning committee failed to articulate the necessary detailed reasons required to substantiate the overturn of an officer's recommendation of approval.

7.3 The planning committee 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. The planning committee produced no evidence of their own, instead orientating their decision around such emotive comments as:

- "*very suspicious*"
- "*from the bottom of my heart I appeal to you*"
- "*we've got an awful lot of people saying they don't want it*"
- "*this one is just far too big for us*"

7.4 The planning committee failed to give officers an opportunity to advise on the implications of their decision, before taking it.

7.5 The planning committee failed to listen to the positive comments made by some Councillors:

- "*we have no planning objections to make*"
- "*there are no planning reasons really why we should vote against this*"

7.6 The planning committee's decision has led directly to a planning appeal. An appeal for which the planning committee received no advice about risks and costs.

7.7 Enviromena respectfully requests the Inspector grants a full award of costs, based on the events before the appeal, which have caused unnecessary time spent by Enviromena and their representatives, in preparing for the appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses, for a development that should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Appendix 1

[Transcriber note: Poor Audio: [?] = inaudible - [...] = audio breaks up causing inaudibility]

Cllr Simpson: Ladies and gentlemen, welcome to tonight's meeting of the Planning and Development Board. I'm delighted to see so many members of the public. [*Housekeeping & apologies*]. Agenda item 3 is disposable pecuniary and non-pecuniary interest. Cllr Whapples?

Cllr Whapples: Yes I'd like to declare my non-pecuniary interests for 6h, thank you.

Cllr Simpson: Thank you. Cllr Melia?

Cllr Melia: Dordon Parish Council, the Neighbourhood Plan.

Cllr Simpson: Thank you, on the same Application?

Cllr Melia: On the same.

Cllr Simpson: Cllr Parsons.

Cllr Parsons: Polesworth Parish Council [?].

Cllr Simpson: Thank you everyone. Now as Members I'm sure will have recognised we have a large number of people in the public gallery. My spies advise me that the majority are here for the Fillongley Planning Application and then after that a number of people are here for the Dordon Application. So Members I'd like to vary the agenda so that we take the Fillongley Application first and then the Dordon Application second, which will save members of the public spending their entire evening. So we'll do that if that's acceptable. Members as I might speak as a local Councillor on the Fillongley application I will vacate the chair at that point and Cllr Bell will chair the meeting for that item. We now move then to consider Application no. 71 for Land 800m South of Park House Farm, Meriden Road, Fillongley and I will hand over to Cllr Bell.

Chair Cllr Bell: Thank you very much Chairman. So on this item we've got a few speakers. So can Mr Adrian White sir, like to take a seat in the chair while Mr Brown introduces this item.

Planning Officer Mr Brown: Thank you Madam Chairman. The slides are replicas of what you have in your papers in front of you. Right two plans, the top one is an ordinance survey plan illustrating the site edged in red. The easiest landmark there is the blue line that crosses the plan, which is the M6 and Fillongley you'll see is the settlement just to the north of that particular site. And then the bottom plan, the aerial photograph shows you that again. The red line is the application site, you can see the motorway there and also you can see the footpaths, which are referred to in the

report. This plan is the latest plan [?] report showing the up to date layout of the site together with the additional landscaping and mitigation measures that were included and are referred to in the report. I've just included those plans and the rest of those are actually in the papers in front of you. Madam Chairman, I'm going to attempt to go through the report, this is a very [?old] report and I just need to update members on what's happened since the report was circulated. We had another five objections from residents in Fillongley and those reiterate the matters which are already summarised in the report in the papers in front of you. The Fillongley Parish Council, that I believe are registered to speak tonight, have submitted a couple of photographs, which they have... are circulated and are in front of you on your desks and they've also been circulated to the Applicants in advance of the meeting. One or two things Madam Chairman that happened today, and I apologise for the short notice, but this is the way things happen, we've had a letter of objection from the MP, who said he's been approached by several residents in Fillongley and basically the letter refers to objections which are already contained in the report, namely inappropriate development in the Green Belt, a potential flooding issue and also the biodiversity issue. This morning we had another objection from the North Warwickshire Heritage Forum, and they basically related to two matters: the loss of agricultural land and the impact on the conservation area. And then finally, later on today, we had an objection from the Fillongley Flood Group, who raised a number of matters to do with flooding and drainage, and I'll come back to that in a minute Madam Chairman. In terms of the conservation area, then the report, as you will see, does acknowledge that less than substantial harm would be caused. That is the view of the Council's Heritage Officer and that's the reason that it's included in the report. So the Heritage Officer is advising you that there is less than substantial harm caused to the conservation area and other heritage assets and that, as the report indicates, has to be weighed against the public benefits or anything the public [?] and might outweigh that harm. In terms of the Fillongley Flood Group then they raise a number of issues and I also understand that they intend to speak to you tonight and therefore they will update, I hope, what they said in the letter. The reason for that Madam Chairman is because I understand that they met representatives of the Applicant this afternoon on site and discussed much of the content of their objection. And I will precis this, I understand Madam Chairman, that when the speakers speak they can confirm or otherwise what I'm saying. I understand that the Flood Group is not satisfied but understand that the matters they

have particular concern about, which is the maintenance of ditches on the site, can be covered by a condition in terms of the management of the particular site by the Applicant. But I understand that the Flood Group representatives and the Applicant will refer to those matters as we go through. On the drainage issue, as you will see from the report, it's the substantial weight that the Lead Local Flood Authority has not objected. And members will know that Officers of the county of that Authority are fully aware of the flooding situation in Fillongley and it's my understanding that they would not have raised no objection had they had issues with the Application. And that's the substantial weight, as I said, because of the local knowledge that the Authority has of the local issues. In general terms Madam Chairman, this is not the first solar farm application that you've had before you and therefore you will be familiar, Members will be familiar, with the operational requirements that solar farm operators need to run through in their search for sites. And that's very much to do with the capacity of the National Grid and the associated sub-stations, which Members were aware of when we discussed the other three Applications in this part of the Borough. And therefore I don't intend to go through that, I suspect the Applicant will refer to that later on. Having said that, this is the largest of the Applications that Members of the Board have had to deal with and the size itself is not a reason for refusal; that is my advice to you. The size of the site is not a reason for refusal unless you consider there is significant and substantial harm arising from that size. Similarly, in terms of visibility, the fact that you can... Members will be aware of this when dealing with other applications, the fact that you can actually see the development is not a reason for refusal. No one has a right to a view and that's not a material consideration as you're aware. So at the end of the day Madam Chairman, this comes down to a final planning balance and because this is in the Green Belt the test is whether the benefits and the case put forward by the Applicant clearly outweigh the harms that might be caused by this particular Application. You will see from the report Madam Chairman that I feel that that is in fact the case in this situation and that is very much due to the amendments that have been made recently in terms of the additional landscaping and planting proposed on the site. Thank you Madam Chairman.

Chair Cllr Bell: Thank you very much Mr Brown. And Mr Wright, I'll hand over to Mrs Ryan, who will explain [...].

Mrs Ryan: Mr Wright, I understand that you're going to speak for two minutes and then Katherine France is going to speak for one minute, is that correct?

Mr Wright: Hmm.

Mrs Ryan: Would you like to come down? Between you you'll have three minutes to speak and I'll set the clock when you, Mr Wright, start speaking and then I'll let you know when there's one minute left. Okay I'll set it when you start speaking.

Cllr Wright: Madam Chairman, Members of the Board, I'm here tonight representing Fillongley Parish Council, that's the same Parish Council that the parishioners of the village helped to form our Neighbourhood Plan and I feel that is relevant. Our objections for this Application have been distributed to you, they're in the report, our views haven't changed and I will not repeat them other than to say, obviously, as Mr Brown has just commented on, this Application is on the Green Belt and we feel that that has got significant weight contrary to him saying that it isn't. I've sent you the two snapshots to show you how it can be seen that our Neighbourhood Plan [?] to have a transitory view of the solar farm and I don't think the topography of the land has been fully appreciated. And it can be seen, I accept it isn't a view but it can be seen, and the flow of our land around the village from several areas, specifically the one on Sandy Lane, which is 1.3 km away from the site, and that's over the other side of the village. The other aspect, which we think is important, is that the Best and Most Versatile, the BMV, is designed as grades I, II and III in the NPPF. In this case it's at 95%, 95% as opposed to the other applications mentioned in the report at 78%, there's clearly quite a difference. And obviously our Neighbourhood Plan was geared to Fillongley, not to the rest of the Borough and the report goes to great lengths to talk about how many percent of the Borough there is etc. Our Neighbourhood Plan was for Fillongley not for the Borough.

Mrs Ryan: One minute left.

Cllr Wright: At that stage we would like you to support us in accepting that this Application is contravening both FNP01 and FNP02 and as such we would like the Board to uphold that. The word 'temporary' is mentioned eight times in the report. It is our belief that 40 years is not

temporary. I would hate to think that this Planning Board was going to leave a legacy for successors to sort out when many of us will not be here in 40 years time.

Mrs Ryan: Mr Wright, are you going to allow your fellow speaker to speak because you've got less than a minute left.

Katherine France: Thank you, thank you Lady Chairman, Members of the Board, good evening. You should have the Fillongley Flood Group letter of objection before you together with visuals. I have only got 30 seconds to persuade you to adjourn this matter. We have had a useful site visit with the Applicant this afternoon but it has raised more queries. As a Flood Group we haven't had the opportunity to collectively meet and liaise and we also want to speak to the Lead Local Flood Authority, questions have been raised, which are in our letter of objection. If you're not with me as far as adjournment is concerned, we are objecting [...].

Cllr Bell Chair: Thank you very much. Do we have any questions for our speakers please? Cllr Simpson.

Cllr Simpson: Thank you Madam Chairman. I'd just like to ask the second speaker if she would assist us in expanding a little more on the reasons for the Flood Group's request for an adjournment, particularly if she could give us some more information in terms of what happened at the meeting earlier tonight.

Katherine France: Thank you very much Mr Simpson. Yes we're seeking an adjournment because we understand that the Local Flood Authority have withdrawn its objection [?officially] to the development. However, we noted from the paperwork that because the consultation only took place via email and telephone conference, there appears to have been no site visit. What we don't know is whether the Lead Local Authority have actually seen the revised plans and the Landscape Strategy Plan, which was actually only placed on the Planning Portal on the 6 February from recollection. This is vital. We need to know; furthermore we've had no consultation with the Local Flood Authority. Today's site visit was useful, we were able to walk around the site, but we did ask questions about where the fencing was to be placed, whether there would be access for them to maintain the trees, the hedgerows because we're concerned about the debris falling into the water courses and then causing a problem with flooding. Flooding in Fillongley is quite unique,

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there's a trash screen there and debris collects with rainfall, if it's not cleared it causes a flood, that's a very simple way of putting it. And so we asked lots of questions about management and how that was going to be managed and whether we could have a condition that before the development started that the ditches, the waterways were cleaned, but we could quite clearly see today that there was debris in that. So there are more questions that we do need to ask. We appreciate that the Drainage Strategy and the Flood Risk Assessments have been on the Portal for a couple of months, but we have only just seen the revised plans and we certainly haven't been consulted by the Local Flood Authority. We as a Flood Group in the village are affiliated to the National Flood Forum and we do take what we do very seriously and we believe that we are trying to protect the village of Fillongley from flooding.

Cllr Bell Chair: Again...

Cllr Simpson: Thank you Madam Chairman. As I'm getting on a bit I just need to check that I have understood properly. What I think I heard you say was that the Lead Local Authority submitted their letter of no objection without consulting your local group.

Katherine France: Yeah.

Cllr Simpson: And without visiting the site.

Katherine France: As far as I understand, there's... Cllr Simpson I read I think in the Drainage Statement, a letter from BWB saying there had been an email between the Local Flood Authority and themselves and there had also been a telephone conference. I'm not aware [of a] site visit. Now if there was a site visit why wasn't it put in that letter? I just don't know. We've emailed the Flood Authority this morning; we were told that there was going to be... they had 21 days in which to respond. So therefore, we feel we need to have an adjournment. Till next month or the month after would be helpful. This is a big development, this is... it could potentially have a huge impact on the village and it shouldn't be taken lightly.

Cllr Simpson: Thank you Chairman.

Cllr Bell Chair: Alright Cllr Simpson and thank you, Cllr Parsons.

Cllr Parsons: Thank you Chair. Thank you for that explanation. Yeah I mean two things really, I mean how are you attempting to ascertain whether there's been a site visit or are you going on

sort of the fact that it's not mentioned in the letter? And that's secondary, and then whose responsibility are the ditches, is it the farmers that have responsibility, because you know ditches generally aren't without responsibility.

Katherine France: Can I answer the last?

Cllr Parsons: Yeah absolutely.

Katherine France: I understand, because my own property backs onto a brook, that owners have repairing responsibilities and that those responsibilities takes you to half away into the brook. From looking at the site today, we weren't sure where the boundary went, where the watercourse went, although clearly on the map you can see that the two watercourses go through the site, but there was a question about where the fencing was going to be put and whether access was available for a tractor or a low maintenance vehicle to get through because that's going to have an impact on maintaining the area. And the first question, I can only take it from the letter; we haven't been able to make further enquiries. I'm afraid that the Flood Group are busy with their own commitments and have jobs and we haven't had the opportunity to make any further enquiries, we just spotted it in the letter. Thank you.

Cllr Bell Chair: Thank you. Are there any other questions of our speakers? In which case thank you very much both of you for your thoughts and we will move on to the discussion Members. I am going to start by asking Cllr Wright, who is not a Member of the Board [?2:42:34.1] local Member...

Mrs Ryan: Can I just ask, is there another speaker?

Cllr Bell Chair: No. There was a bit of confusion but no we don't have another speaker.

Mrs Ryan: Okay then.

Cllr Simpson: There is a speaker.

Cllr Bell Chair: We do?

Mrs Ryan: Yes I thought so. Mr Adams.

Cllr Bell Chair: I'm so sorry, I haven't got it on my list. Thank you very much. The next speaker [?]. Mr Adams I'm so sorry.

Mrs Ryan: Mr Adams you'll have three minutes in which to speak and I'll let you know when its one minute left and start the clock when you start speaking.

Lee Adams: Good evening Chair and Committee, my name is Lee Adams, Chief Commercial Officer, Environmena. Firstly I'd like to praise the [?former] Chair and the pre-Committee process [?] the Officers and Members for their input [?in the formal] process. Environmena differ from other such operators in that we propose to construct, manage and maintain the scheme over its lifetime, as such we are heavily invested in the scheme and area. We have sought to work with the community and have presented several times to the Fillongley Parish community, informed and received their feedback. This has led to amendments to the layout including the provision of additional community garden and planting and screening. Should permission be granted we would love to work with the Parish to design the garden space. In addition, and outside of the planning consideration, we have committed to provide new play equipment for Fillongley Village and also support [?2:44:21.0]. The scheme presented today has had significant additional landscaping implemented and to directly address local concerns [?] regarding key viewpoints. In total 81 trees, 2.7 km of new hedgerow is proposed, reinstatement of former [?] boundaries, reinforcing existing planting and delivering significant biodiversity gains of 64%. Detailed discussions have been held with the Local Lead Flood Group and additional drainage testing has been undertaken at that request. The additional testing supports our drainage strategy which has been agreed by the LLFA as appropriate and suitable and will not increase the flood risk on [?2:44:58.3]. It is acknowledged that Fillongley Village has been subject to historic flooding, but it has been demonstrated and agreed with the LLFA that the site is not the source of the flooding and with its drainage improvements the proposal will not increase flood risk in the Village. Furthermore, in acknowledging the [?] comments received from the Fillongley Flood Group this morning, it should be noted that the watercourses and ditches will be cleared on a regular basis as part of our ongoing management plan, both pre and post construction, and we're happy for these to be a condition. Regarding Green Belt, there are [?multiple] decisions to support renewable energy and, as established, [?] exists special circumstances...

Mrs Ryan: One minute left.

Lee Adams: ...to justify development in the Green Belt. The potential scale of impact has been examined and agreed [?] by your Officers. In summary, there are no significant impacts arising from the scheme where harm has been identified, mitigation measures is proposed to minimise [?]. There are no objections from statutory consultees and North Warwickshire Officers and significant environmental, social and economic benefits can be delivered. As such we support the Officers' conclusion and respectfully request that the Planning Permission be granted. And I'm happy to take any questions [?].

Cllr Bell Chair: Of course. Do we have any questions to ask Mr Adams Cllr Simpson followed by Cllr Parsons.

Cllr Simpson: Thank you Madam Chairman and welcome back to Cllr House.

Cllr House: Thank you.

Cllr Simpson: Just a couple of questions if I may. The first one is largely following on from the discussion we just had. Are you aware whether the Lead Local Flood Authority visited the site?

Lee Adams: I honestly don't know whether they did or they don't, they were sent the report and they're working with the Council to evaluate it. I wouldn't like to comment. My understanding of it previous how the surveys happened is that they would have visited the site, but I wouldn't like to put on record, but I would be surprised if they came to their conclusion without understanding a lot of information including a site visit.

Cllr Simpson: Sure, thank you. So you're not aware they actually... they didn't approach you saying they were going to go?

Lee Adams: No, no. No but all of our [?surveys] have got access to the site, so I wouldn't like to say they didn't [?or they did] other than they came to the conclusion that they've got no objection.

Cllr Simpson: Thank you. And my second question, in his report the Senior Planning Officer makes a significant [?] attaching to the changed plans for landscaping the site and the additional screening that [?you will] put in.

Lee Adams: Yes.

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Cllr Simpson: Do you think you've gone as far as you can, as far as you should and as far as any other applicant on a similar site would have done in the UK?

Lee Adams: I can tell you from our original plans we have probably quadrupled the amount of planning and additional hedgerows and if I look back at the original plans, when we originally presented to the Council by our Design Team, this has led to probably, like I say, a four-fold increase in planting hedgerows, trees that we would have placed for a project of this size having a number across the UK. So in short, yes all [?].

Cllr Simpson: Thank you, that was very helpful although I'm not sure it entirely answered my question. Is there anything else you could do to mitigate the impact of this Application on the local area?

Lee Adams: No. In terms of, like I said, if I just reiterate, in terms of the flood measures, following the site visit today and discussing with my Team, we're happy that we understand the drainage and the ditches were a big concern, I understand the challenges, they are not very well maintained at the moment, given the ditches in question will be surrounding our... within our red line, we are happy and encourage the Officers, if it was to be approved, that both the cleaning and the maintenance and annual [?additions] would be conditioned and that would be over and above its current condition there.

Cllr Simpson: I'm sorry, I've just remembered one question Madam Chairman, I apologise. I understand that the additional landscaping, at the end of its reasonable growing period, will be a certain height. How much higher will the landscaping be than the panels are?

Lee Adams: The trees that are proposed?

Cllr Simpson: Well I was thinking more of the hedgerows.

Lee Adams: The hedgerows are designed to be... the plants that are proposed as part of the plan would be designed to grow higher than the [?] of the module, which I believe its 2.8 metres [?] I'll need to refer to my design, but the hedgerows are proposed and designed, that would need to be signed off by the Council and the Council's Landscaping Team would be proposed to disguise the modules.

Cllr Simpson: Okay, I'm not trying to lead you honestly...

Lee Adams: No.

Cllr Simpson: ...but I thought that the landscaping was about 3 metres.

Lee Adams: Yeah, and the [?fact] that the modules are 3.8 metres high, so in short, yes.

Cllr Simpson: So less than the full height.

Lee Adams: Yes.

Cllr Simpson: Thank you, thank you Chairman.

Cllr Bell Chair: Thank you Cllr Simpson. Cllr Parsons.

Cllr Parsons: Thank you Chair. If I can pursue the flooding aspect [?of it]. I represent Polesworth and we do know a little bit about flooding in Polesworth [?]. And I've dealt with flooding issues and often its maintenance is in the hands of farmers because it always [?] onto [?] and yeah, I've seen that. Am I getting it right, are you saying that the operators of the site will assume responsibility for the maintaining and clearing those ditches, which appear to be [?]?

Lee Adams: Yes 100%, which will be a condition, which we're proposing and happy to take it by condition and obviously under the operations on being a power plant, we take our responsibility, not to bring planning conditions, but obviously economical reasons, very, very seriously.

Cllr Parsons: And that is throughout the duration of the site?

Lee Adams: 100%.

Cllr Parsons: Thank you.

Cllr Bell Chair: Cllr Hobley.

Cllr Hobley: Thank you Chair. It's only a quick one. I appreciate all the information is in... will be in there a lot, but it keeps popping up, the glint and glare, can you just go over that one more time?

Lee Adams: So I...

Cllr Hobley: Is it going to be a problem?

Lee Adams: No.

Cllr Hobley: Its not.

[Transcriber note: Poor Audio: [?] = inaudible - [...] = audio breaks up causing inaudibility]

Lee Adams: There is a substantial [?] solar farm sited beside motorways, I would need to check with my Team, but I can maybe ask [?] there would have been a Glint and Glare Assessment done and I would imagine the Highways would have been a statutory consultee, but there's no objections. Like I said, we site our projects beside railway lines and motorways for the reason that they are of less impact than the actual motorway itself.

Cllr Hobley: Yeah, thank you.

Cllr Bell Chair: That's alright Cllr Hobley, okay.

Cllr Hobley: Thank you. Sorry.

Cllr Bell Chair: That's alright. Are there any other questions of the last speaker? Thank you very much.

Lee Adams: Thank you Chair.

Cllr Bell Chair: So we're going to move into discussions, but I'm going to ask Cllr Wright to speak first as the Local Member as he has requested to speak [?].

Cllr Wright: Thank you Chair. I would like to speak against this proposal for the following reasons: first of all I disagree with the Lead Planning Officer, I think there is significant [?] special circumstances for this size of development in the Green Belt are not being met, this is high grade agricultural land and the loss of that will have a serious detrimental impact on the area. I would like to ask the Board if they would consider deferring this, following Katherine's Flood Group. We've heard that there's no site visit been met and this is, in my opinion, ludicrous and you know, desktop exercises, not just flooding but the traffic, is just wrong. And again, Mr Brown said that the Local Authority, Flooding Authority for the County have got no objection, well it wont be the first time they've been wrong, they are particularly useless in my opinion and we should seek to listen to local people, the Local Flood Group, they are the ones. We've seen significant increase in flooding in Fillongley since the motorway was turned into a smart motorway. Highways UK said they were going to provide flood alleviation or mitigation measures when they did that, but then they didn't because they ran out of money and, with all due respect to the Applicant, in my opinion again, clearing out the ditches will just make the water flow faster down to the village and flood it even quicker. So, as I say, there is significant harm to the Green Belt, the [?2:55:10.7]

special circumstances outweigh, as I say, I disagree with Mr Brown on that, and I'd ask the Board if they would defer for further reports and analysis to be undertaken.

Cllr Bell Chair: Thank you very much. Cllr Simpson.

Cllr Simpson: Thank you Madam Chairman. I have a couple of questions for the Planning Officer first if you don't mind. In his report the Planning Officer makes a point that it was of substantial weight that the Local Lead Flood Authority had withdrawn its objection. I'd like to ask if the Planning Officer still thinks that it is of substantial weight given the fact they didn't visit the site before withdrawing their objection.

PO Mr Brown: As I said in the introduction Madam Chairman, the Lead Local Authority is aware of the situation in Fillongley and they are aware of the Fillongley Flood Group and therefore they know the circumstances in the village and therefore they took those into account when they considered the Application and therefore withdrew their objection. They do know the site, they do know the situation there and therefore I still give it substantial weight as I indicated in the introduction.

Cllr Simpson: Thank Chairman. Could I ask the Officer, would you really not have expected them, given an Application of this magnitude and this importance, not go and visit the site before choosing to withdraw their objection?

PO Mr Brown: That's a matter for the Lead Local Authority Cllr Simpson, they know the site, they know the village, they know the circumstances, they know the contacts with the Fillongley Flood Group, so therefore, with that background, I still give substantial weight to their withdrawal of the objection.

Cllr Simpson: Thank you Chairman. My final question, before I make my other comments, is we've heard and in the report there is substance credence given to the revised landscaping. I accept there are some trees in there as well, I'm not saying it's entirely trees, but the hedgerows will be, from what I understand, 0.2 of a metre around a foot in old money, higher than the solar panels. I'd like to ask Mr Brown, given the height of the topography around this site, how much difference does he think, less than around a foot, 0.2 of a metre, will actually make to the impact that this

will have across the site? From the houses that overlook the site on both sides, do you really think that 0.2 of a metre will make any difference?

PO Mr Brown: There are two answers Madam Chairman, the first is that it is not the intention of the landscaping to completely disguise or screen the site, that's not the purpose of mitigation, that will not be achieved and in fact that hasn't been achieved on any of the other sites that we've looked at in the Borough, its to whether or not the landscaping would mitigate it to a degree that the harm would be acceptable and that's what the policy says. And the second answer is that I think the length of the hedgerows is far more important than the height. In other words it's compartmentalising the site and it's that splitting up of the site which in fact provides the mitigation.

Cllr Simpson: Thank you Madam Chairman. This is a significant Planning Application for the Borough as well as for Fillongley Ward. You know, I don't seek to hide the fact that I am broadly in favour of solar power and alternative sources of power, the country needs these issues. You know, as a whole I understand the country is making substantial progress towards reducing its reliance upon fossil fuels and non-environmentally sources of power. Last week I had several panels fitted on part of the roof of my house that I can't see. It's important that we do move in that direction. But there's nothing in the Planning Policy that says that means you have to accept every application, that every application is acceptable. The National Planning Policy Framework, so far as I understand it, says that there has to be only special circumstances if you're going to grant a consent in the Green Belt. So this is not, so far as I understand it, you know Mr Brown, please tell me if I'm going wrong here, where you have to vote for this where it is inevitable if there's an application, that it will become acceptable in planning terms. Paragraph 4.52 makes it clear that the Applicant's case has to provide sufficient weight so as to clearly outweigh the cumulative harm caused and it's important, it can't just about do it, it has to clearly outweigh the harm caused. The reason for my questions to the Applicant and to Mr Brown were that I am not in the place where I believe, having read all the papers, having had presentations from the Applicant, that I can honestly say I believe this clearly outweighs the potential harm caused. I think the issues in terms of flooding are unclear and they may be possible to be resolved by condition, but frankly colleagues, I don't really know that. We were told there was a meeting today and this is of such

importance locally, given the impact of flooding in Fillongley, that I sort of don't want to take that as the, oh we'll sort it out afterwards thank you very much, I'd like certainty on that and I haven't got it. In terms of the environmental impacts, in his initial comments Mr Brown said quite correctly that size is not a reason for refusal. I completely agree, but impact is, impact on the Green Belt, impact on the landscape of the area, those are issues that we should be considering. So this is difficult isn't it? We need an alternative source of power but we don't need it everywhere, we don't need to grant every application if there are genuine areas of harm that are being created. I particularly asked the Applicant if there was more they could do and the answer was no, there isn't anymore. But I would actually like us to go through that in a bit further detail and try and understand is there anything that could be done to make this Application acceptable to get us to a point where we can all say, or at least the majority of us can say that the Applicant has done sufficient to clearly outweigh the cumulative harm caused. I think that absolutely calls for a deferment so that we can consider those issues in greater detail, both with the Local Flood Group, with the Lead Authority on Flooding and with the Applicant as well as the objectors. So Madam Chairman, I move for deferral for the reasons I've just said.

Cllr Bell Chair: Thank you Cllr Simpson. I've got two speakers left, so I've got Cllr Parsons:

Cllr Parsons: Thank you Chair. I'd just like to make sure that we do... the Applicant has said that they are willing to be varied by condition to the maintenance of the ditches, streams across the site and I would like to see that enshrined as a condition whether we defer or whatever, I think that is an essential part of this. Thank you Chair.

Cllr Bell Chair: Thank you very much. Cllr Hobley.

Cllr Hobley: Thank you Chair. I mean I'm sure we all are, we're all aware of the need of alternative power sources and solar energy obviously is something that's massive at the minute that we're hearing about. My only worry is with deferring this Application is that I feel as its been written and conditions have been put in place, the Applicant has done what its been asked to do and I don't quite understand what... if its going to be able to go any further ever if that makes sense. Sorry, if that makes sense. I don't understand what more they can do to mitigate the whole Application because it's... there's a lot that's been done and I just don't understand how it's going to move

forward if that makes sense. But it's not really a question or anything, its just a... I just don't even know why I was saying this, I just don't get it. Thank you Chair.

Cllr Bell Chair: Thank you. Cllr Fowler.

Cllr Fowler: Thank you Madam Chair. I would like to second and support what Cllr Simpson has said. I've listened to the speakers on the residential side from Cllr Wright talking about deferment and its clear there are still some hurdles to be overcome on this Application. And like Cllr Simpson, he knows that I very much like the thought of solar panels and the need to move forward in the UK for the obvious reasons, however, I still think that there needs to be deferment as Cllr Simpson has alluded to, so we can get clarity on this. Thank you Madam Chair.

Cllr Bell Chair: Cllr Humphreys.

Cllr Humphreys: Thank you Madam Chair. I would like to support what Fillongley have said there and stating the obvious, water does run downhill, it all ends up in the centre of the village. I've actually been at that village with the Lead Authority before where the inundation happens and there's a lady sat in the background there, she's actually showed me the tide mark where its gone through her front window and ended up half way up the wall. It does happen and anything that might make it worse I think the Lead Flood Authority needs to go back and have a proper look on site, not do a desktop arrangement; we need to try and make sure of that. And so I would also support a deferment so that we can fill in the blanks. Thank you.

Cllr Bell Chair: Thank you very much. And Cllr Hayfield.

Cllr Hayfield: Thank you Madam Chair. Yeah I too would support a deferment. This really is a [?] certificate application and I know [we would feel] comfortable [?]. I think Fillongley deserves that certainty that all the information has been gathered and presented [?] because, as the Chief Planning Officer says, it's a question whether, in terms of Green Belt, whether this Application can override the presumption against development in the Green Belt. And I'm not there on that yet, most certainly not there on that yet. Because yes, we need to encourage solar energy, but there is a balance in terms of its impact on the landscape and its impact on the local population of Fillongley. Yes I've seen cars under water by the Post Office in Fillongley or what was the Post Office in Fillongley, but the drainage area that causes those floodings goes right back to this area.

It isn't just the immediate environment to the village that cause the flooding, as [?] says, water drains down and it's got a long way to go before it gets to the village, but it doesn't half get there. So I'm looking for more reassurance in terms of what the Flood Group have been saying and [?] I don't quite understand the size at issue because if you're building a building that size is usually held up as being an issue, this is a huge Application, it will be visible to large areas and that impact to me is a key factor of whether this overrides Green Belt considerations or not. So, cut to the chase, I support Cllr Simpson's [?].

Cllr Bell Chair: Thank you. Cllr Clews.

Cllr Clews: Thank you Chair. I know tonight that we're sitting and talking about Fillongley and the flooding, but I think most of the Cllrs here in all the Wards over the last few weeks have suffered the floods and [?] people and [?] saying about floods. So if by deferring this for another month would give me a bit more confidence and give the Cllrs and the Parish Council a little bit more to go into the flooding, then I'd like to support the deferment.

Cllr Bell Chair: Thank you. Cllr Dirveiks.

Cllr Dirveiks: Thank you. I've heard a lot of information this evening already. I have to admit that when I arrived here I wasn't at all sure whether I should support this Application or not because it's very very difficult to find planning reasons to turn it down. There is a need for electric and electricity being produced in greener ways, which holds that we need to have this. It is important we've declared a climate emergency, [what] are we actually doing about it. So [?] [?build] it I'm sure. I think what has convinced me not to support the Application tonight is the fact that I can't be absolutely certain that for [?] that is as large and as important as this one that the Lead Local Flood Authority has not actually sat down at the site with the company that is applying for it and the Local Flood Group and actually gone through it properly because, as has been said, you can't do it all on a desktop or even from memory because things change. And I know that the weather conditions that we've been having have changed the flooding in Fillongley and continue to do so because of the debris and the [?] that is washed down when we have downpours like this. So I would also support, as has been suggested, a deferment so that that can actually happen before this is determined. Thank you.

[Transcriber note: Poor Audio: [?] = inaudible - [...] = audio breaks up causing inaudibility]

Cllr Bell Chair: Cllr Whapples.

Cllr Whapples: Thanks Chair. Just to echo something that Cllr Dirveiks said. As a resident and Cllr at Polesworth, Cllr Parsons mentioned earlier that you know, it's not our first rodeo when it comes to floods. And one of the frustrating statements that we've had to endure is they haven't visited but it's not a flood area. And that really sickens me that people make these decisions based on what they think is going on locally. So I again would support. I'm not against the idea of solar panels at all, but I think we owe it to the residents of any of the Wards in the Borough to do a thorough due diligence of everything that we need to get on paper properly with proper site visits for people that matter and then make that decision based on facts rather than what they assume from desktops. So again, I'm not dissing the idea of the solar, but I think we owe it to the residents to make sure that we, as a Council, have provided them with all the information that we can do before the decision is made. So I will support the deferment.

Cllr Bell Chair: Thank you. Have I got any more speakers on this? Cllr Parsons.

Cllr Parsons: I've already spoken once I know, but with your indulgence Chair. I mean yes certainly I'm inclined to agree absolutely. What I would like though is to move from the anecdotal to the certain, and I appreciate what Mr Brown has told us, but I think we need to know exactly when this does occur, exactly what their conclusions are. And so what I'm asking for is some pretty rigorous detailing of the evidence essentially. I think tonight we don't know whether these people have visited or whether they haven't, we need to know that. Thank you Chair.

Cllr Bell Chair: Thank you. Anyone else? Okay, in which case I've got a proposal by Cllr Simpson seconded by Cllr Fowler that we defer this Application in order that we can look further into the flooding issues, and from Cllr Parsons' words, we can get some more definitive evidence about why decisions have been taken and also to look at any wider mitigation issues that can be put in place in terms of this Application. So if the proposers are content with that description then we'll move to the vote. So we're voting on whether we should defer this Application. Those in favour please show. And those against. Any abstentions? So [?] the Application is deferred. Thank you.

Appendix 2

[Transcriber note: Poor Audio: [?] = inaudible - [...] = audio breaks up causing inaudibility]

Cllr Simpson: Members, we're now about to move onto Application No. 0071 for Land 800m South of Park House Farm, Meriden Road, Fillongley. As this is an Application in my Ward which I would wish to speak on it would be inappropriate of me to chair the meeting at this point, so I'm going to hand over to Cllr Bell, who I'm sure will guide you through this Application.

Chair Cllr Bell: Thank you. As you say, this is the Application 0071, Land 800m South of Park House Farm, Meriden Road, Fillongley. So the first speaker is Katherine France, who is going to come in via Teams. So I'm going to pass over to Mr Brown, who is going to take us through the Application and then we'll go onto Teams.

Planning Officer Mr Brown: Thank you Chair, I'll just run through the slides, there are not many of them. The first, Members will have seen before, the site outlined in red here north of the motorway. Meriden Road comes down through here and the Village of Fillongley is here with Corley Down here, Members are familiar with that and also the aerial photograph, those have been copied from previous reports. This is the current drainage scheme with additional ponds that's referred to in the report, 1, 2 and 3. The addition of the green lines here are the swales which have been put in, which Members were aware of originally as one of the amendments that came in through the Application. And details of these new ponds in terms of cross-sections are also at the bottom of the slide there and then finally, an extract where the additional planting is going to be, which is referred to in the report. Chair I'll go back to that I think because everything is on that slide so it shows you where it is. The report Chair obviously brings us up to date where following deferral back in March when we heard from the Flood Group and you can see that at the time of preparing the report the Flood Group had not yet come back following a joint meeting they had with the Applicant and the Lead Local Authority on site. I circulated a supplementary report this afternoon, which is in front of Members again tonight Chair, and I'll go through that because it is quite short and some Members may not have actually seen it. It brings Members up to date on two items. The first is on the Flood Group. As you can see from the main report on paragraph 2.8, I said that the Group had not yet responded to the latest plans at that time. We actually received a response from the Group late on Friday afternoon, 5 July, that was circulated to Members immediately and I also sent it to the Applicants and to the Lead Local Flood Authority at that same time. That letter is attached, as you can see, in the form of a report, which is Edenvale

Young report, which you have in front of you as part of that package. There is also a timeline that the Flood Group has outlined and is contained in that same package, which goes through the time period [after] the last deferral to show you what they have been doing between the 4 March and effectively the weekend. The Local Flood Authority was asked to comment if it was possible to come back as soon as it could, and you can see that they came back in fact this morning. And that email is also attached to the package that you can see in front of you this evening. In effect the Local Authority is saying it still retains no objection to the proposals, even given the latest information and comments from the Flood Group. So I've attached that as part of the package. The Applicant, I've not heard from the Applicant because as the Applicant has said, he is going to speak tonight Chair, I suspect the Applicant may comment on it during that particular three minutes. Also you'll see in the supplementary report that I've received further representations since the report was written. One particular one draws attention to what the objector considers to be an omission from the report and you can see that in paragraph 3.1 of that supplementary report. He considers that an alternative site assessment is necessary and it was not mentioned in the July report and the different papers that you have in front of you. That's quite an important statement Chair so therefore I had to do a supplementary report for you. And paragraph 3.2 is the starting point of that. Each Appeal is determined on its own merits, each Planning Application is determined on its own merits and just because its [?factoring] one decision, it criticised the lack of an alternative site assessment doesn't mean to say that another Inspector would do the same, just as in a planning decision, Members of this Board Chair will take the decision based on the merits of the case in front of them. And that's explained in paragraph 3.2. This is why we have different appeal decisions, and also different decisions from the Local Authorities. An Inspector's decision can be a material planning consideration and Members will be familiar with material planning considerations, it can be a material planning consideration, [?] what weight do you give to it. You may not want to ignore it but you have to give it a weight. Fundamentally in this particular case, as explained in paragraph 3.3 of the supplementary report, there is no statutory requirement for such an assessment. In other words, each case is determined on its own merits. Plus, more significantly, the latest update that we've had from the government is the written ministerial statement, which is again attached to the main papers of your report; there is nothing in there requiring an assessment to be made. That ministerial statement deals with solar farms at the

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greater capacity in this one and those are nationally significant infrastructure projects, this is not a nationally significant infrastructure project, it falls below the threshold. And in that particular case the statement goes on to explain what Local Authorities should be looking at and that's quoted to you in paragraph 3.4. The final sentence of that is that there is a greater onus on the developers to show that the use of high quality land is necessary. In other words, the test that you have in front of you tonight Chair, is has the Applicant shown that the use of that land is necessary and then that relates back to the point I talked about, about each case being considered on its own merits, so is it necessary in this particular case. Finally, the Applicant has undertaken that test and there were issues that included the BMV, the use of BMV is necessary in this particular case. Now that test and the evidence that the Applicant has to show that is included in the paragraphs I've mentioned there in the July report that went out to you. That is from the previous report back in March, where the report went into some detail about Best and Most Versatile land. That report considered that test and we came to the view on balance that an alternative site assessment was not necessary. And the reasons for that are given to you in the same appendix and I haven't changed my view since the receipt of this further representation. Chair that's basically a quick run through of the report and I'll finish there because I know you have speakers for and against.

Chair Cllr Bell: Thank you Mr Brown. So Miss France, I think you're online and welcome, and over to you.

Mrs Ryan: Hello Miss France, you've probably already heard me say this a few times tonight, but I understand that you are just speaking for one minute and Cllr Robert Pargetter is speaking for two minutes. So I'll set the clock going when you start speaking and I'll let you know when you've spoken for one minute and then you can change over.

Katherine France: Good evening ladies and gentlemen, Members of the Planning Board, Chair, I am the Secretary of the Fillongley Flood Group. We were seeking a deferment, that has been refused, therefore we object to the Application. We had a site visit with the Lead Local Flood Authority and the Applicant on the 18 March, the tick box exercise and questions still remain. The Fillongley Flood Group instructed their own hydrology report – it sadly was only received last Thursday, I hope you have had the opportunity to read it – highlighting three of several issues in that report. The Applicant's modelling has not taken into account the runoff from the M6. The

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swales proposed are not fit for purpose, quote, 'the swale design as shown will not reduce the runoff rates anticipated', the same is said of the attenuation ponds. We do not accept the measures put forward by the Applicant in terms of betterment with mitigating the flood risk and therefore the Applicant and the Lead Local Flood Authority appear to be in breach of Warwickshire County Council's Local Flood Risk Management Strategy April 26th.

Mrs Ryan: One minute gone.

Chair Cllr Bell: Can we pass over to Cllr Robert Pargetter please?

Cllr Pargetter: Thank you Madam Chair, Members of the Board. Fillongley Parish Council would like you to reject this Application and our objection is backed by the majority of parishioners, I'd like to mention on three points, firstly the Green Belt. The NPPF states that building in the Green Belt is deemed inappropriate unless there are special circumstances. This Application has not demonstrated any special circumstances and therefore should be rejected on those grounds alone. Secondly, [?] for this proposal is on Best and Most Versatile land, 95% of the proposed area is BMV land. We do not deny the need for renewable energy; however, average yield on this land is capable of producing 1.1 million large loaves of bread every single year. The Applicant does say that sheeting goes under the panels, which has also come into the Parish Council Meeting about the bill for grass cutting, so the Applicant can't have it both ways. Also pollution from importing food is absolutely greatly significant. A further aspect is the enormous visual aspect that will be on the many many Parishioners, many that are here...

Mrs Ryan: One minute left.

Cllr Pargetter: The land is seen from Sandy Lane, car parks, contra roads, green and red and the number of the effectiveness and [?] to support that [?]. It will be an inherent nuisance and a blot on the landscape to the residents and of course it will be seen by all vehicles travelling on the motorway in both directions. The huge development [?], which I'm sure you've seen Madam Chairman, would actually dwarf the area, its almost 150 acres. Screening proposals are ineffectual, the hedges would take time to grow and actually the topography of the land, even when fully grown would still be ineffective. I am therefore asking you please to reject this Application. Thank you.

Chair Cllr Bell: Thank you very much. Have you got questions to Cllr Pargetter? Cllr Whapples.

Cllr Whapples: Thanks Chair. You mention that the majority of Parishioners have objected to this. How did you gather their votes please?

Cllr Pargetter: At a Parish Council Meeting we took a vote and I think there were about 70 Parishioners there. I believe there are three people, one of whom is a couple, wish to go ahead and all the rest voted against it.

Cllr Whapples: So it was just the majority at the meeting, not Parishioners.

Cllr Pargetter: Yes, which have all been [?].

Cllr Whapples: Okay thank you.

Chair Cllr Bell: Thank you. Are there any more questions? No. Okay, thank you very much Cllr Pargetter, thank you very much Miss France. And we have a second speaker, Mr Mark Harding, would you like to come forward, thank you.

Mrs Ryan: Hello Mr Harding, you've got three minutes in which to speak and I'll set the clock going when you start to speak and let you know when you've got one minute left.

Mr Mark Harding: Good evening Chair, Members of the Committee and Mr Brown. I'm Mark Harding, European Development Director, Environmena. In March the Council Planning Committee deferred the Officer's recommendation of approval, seeking additional information on local drainage issues and landscaping. The scheme in front of you today has been embellished in line with those requests. Following a site visit undertaken with the Flood Group and the LLFA shortly after the March Committee, the LLFA confirmed they still had no objections to the proposals, in fact indicating that the planning perception plan would act to provide betterment to the existing surface water runoff rates and that the improved vegetation cover on the land would slow the flow of water into the watercourses. Whilst meeting their requirements in terms of flooding, as set out in Planning policy, as part of our commitment to support the Village of Fillongley and their battle against flooding, we had agreed to add further attenuation features to the site by way of three retention basins to further help slow water flow into the watercourses. The Flood Authority has since approved the embellished scheme subject to conditions on two occasions with the latest no objection response received as recently as this morning. The

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landscape strategy has also been reviewed in response to the direct request of Members. An additional 16 trees are proposed along the eastern and northern boundaries interspersed with native hedgerow to help screen and assimilate the site from potential long-range views from Fillongley. In total 108 trees, almost 2,800 mm of native hedgerow and almost 12,000 sqm of native [?trug] planting is proposed within the site alongside a 980 sqm garden area. We have made extensive efforts to screen and filter views as far as practicable. Our Landscape Impact Assessment concludes the impact will be less than significant, which is acceptable in planning terms. I trust Members can see that we have paid considerable effort to drainage and landscaping matters as requested at the March meeting to help allay and address concerns. We also note recent concerns regarding the technical ability of the site to accommodate the proposed solar farm. I can confirm we have an agreed point of connection to the National Grid and a viable and feasible cable connection is achievable.

Mrs Ryan: One minute left.

Mr Mark Harding: Returning to the principle of this proposal, there is an urgent need for renewable energy projects in the UK. The National Energy Security Policy sets out that 70 GW of solar energy is required by 2035 if net zero targets are to be achieved and the UK's lights are to stay on. To assist with this and to tackle the continuing cost of energy prices, the government are driving the rate of solar deployment with 50 GW of solar energy to be generated by 2030. The Fillongley Scheme can be at the forefront of this solar resurgence. To summarise, there are still no significant impacts arising from the scheme, there are no objections from the statutory consultees or North Warwickshire Officers and significant environmental, social and economic benefits can be delivered. As such, we continue to support the Officers' conclusions and respectfully request that Planning Permission be granted.

Chair Cllr Bell: Thank you Mr Harding. Members do we have any questions for Mr Harding? Thank you.

Male Cllr: I just wanted to band around here [?] there's questions all bandied around the Council [?4:12:45.7] specialty. What is the carbon footprint of the actual installation and [?] so far?

Mr Mark Harding: The carbon footprint of the build and the sub [?]?

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Male Cllr: Yeah.

Mr Mark Harding: I don't have those figures to hand with me, I've got the carbon savings of the project once it goes live, which is, again, the avoidance of 10,000 tons of carbon on an annual basis for the term of the development, which is 40 years. I think one of the things, which [?4:13:22.7] mentioned, is we do also model up the front end of all of our projects in line with our ESG credentials, the build aspect of that in terms of sourcing our modules from far afield and obviously from local as well. So all of that is captured but I don't actually have that data for this project.

Male Cllr: Thank you.

Chair Cllr Bell: Thank you. Over to you Cllr [?4:13:47.7].

Female Cllr [?4:13:50.0]: Thank you Chair, everybody's struggling with my name. Thank you Mr Harding. I just wondered you did say Environmena has got a commitment to support the villagers from flooding going forward. I take it if you're going to be there for 40 years would it be, flooding could change dramatically over that time, and I wonder, I think everybody's concerns would be flooding does seem – and its been a terrible year this year – it does seem to be getting worse and worse. So what guarantee can you give the villagers if this Planning Application was to go through, that they would be able to call on Environmena to assist should things get dramatically worse?

Mr Mark Harding: I think that you just did touch on a couple of points [?] before I actually answer that question. So you're right, Environmena as a developer are here to develop, build, own and operate the asset in terms of the project, so unlike some other developments which you may well see in the solar industry, renewals industry, where you have a developer who then sells on the project to someone else, but that isn't the case. So first of all, the custodian of this project, Environmena, we're here for good. I think, as I said before, our commitment to the community with all of our projects is key. We've looked to engage with the Fillongley local community from the outset of this project. I think from a flooding in the village, it quite clearly became evident as a real issue that Fillongley face. I think with regards to our site plans, I think all of the relevant kind of data that has been assessed, so the drainage strategy and the flood risk assessment, takes into account predicted changes in climate change. Now clearly like I sit here today, not everyone knows what climate change might be, so there's a lot of added kind of buffers added to that to

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actually ensure that we look to capture climate change, as we do on all of our projects. And I think the [?] is that our commitment to be here today, I think there was a suggestion that the Fillongley Flood Group having an annual walk around of the site as part of one of the comments that came in today to add to the conditions of this project to be granted. I mean we're happy very much to continue that ongoing engagement with the Flood Group to help support the wider picture, albeit recognising that with the repeated no objection now from the statutory consultee, the Lead Flood Authority who have actually now suggested even that the further betterment for each [part of the] development proposed, we do not believe that the development is going to impact on Fillongley flooding as a wider picture.

Chair Cllr Bell: Okay, thank you. Are there any more questions for Mr Harding? No. Thank you very much then, thank you. Just before we go into discussions Members, can I just check that everybody's happy to do this. Mr Brown has taken us through; if anybody needs any time to read please indicate. Nobody's indicating so I assume you've all read it and you all [?]. Thank you very much. So we now move into discussion. Who would like to start? Cllr Simpson.

Cllr Simpson: Thank you Madam Chairman. This is the second time Members that you've all seen this Application. We've had a site visit and [we all] understand what the Application is. I think it's also important to recognise what the local community feel. The Parish Council of Fillongley object, Corley Parish Council object, the Chairman of Fillongley Parish Council indicated that a substantial number of residents had been to a meeting and objected and we've had 60 letters from a very sparsely populated area. So this is not something that local people could be said to be desperately keen for. I think it's important to recognise with the climate emergency and energy security that alternative forms of energy are important and are required across the country. I think by and large across the country we're making pretty significant strides towards achieving that, and that's something that I think we all agree with, we'd all like to see cleaner energy and better energy. You know we all use phones, electricity all the time, so there is a lot of good in what the Applicant is trying to achieve. I genuinely support the use of alternative energy and I've voted for a number of Applications in our Borough where we have consented so far. So I'm not here before you as a NIMBY saying I hate it, I don't like it. I recognise the importance of greener energy and the positive impact that that can have to all of us, but that doesn't mean that every Application should be

granted, however good some aspects of it are. This is a huge development, 60+ hectares in the Green Belt, 95% of the land that it will use is classified as the Best and Most Versatile in the country. And that may be said to be a relatively small proportion of the land in the Borough and I daresay it is an even smaller proportion of the land in the country, but nevertheless, 95% of the land that will be taken out of agricultural production on this site is the Best and Most Versatile land we have. Cllr Pargetter mentioned earlier on that that land is estimated in its agricultural production to equate to 1.1 billion loaves of bread a year. We have an issue on energy security; we equally have an issue on food security. The ability of our farmers to continue to farm and feed us is pretty important as well as green energy. This site is in the Green Belt, the strongest policy we as a Council have, we all try and protect the Green Belt. This will take a substantial amount of Green Belt land. The report, you know I'm just glancing over it again, I didn't see anything in here that said it would be positive, they are all mitigations to the damage and the harm, but there is still harm nevertheless. It also talks about the impact on LP30 and the need to enhance. The NPF, broad as it is, requires that, at paragraph 180, the decision should recognise the intrinsic character and beauty of the countryside. I can't, with my hand on my heart, honestly say that covering fields with solar panels recognises the intrinsic character and beauty of the countryside in what is one of our most beautiful areas, it's not on the edge of the issue, it's in the heart of the countryside and 95% is our Best and Most Versatile, most productive agricultural land. I'm deeply concerned about the impact this will have on landscape harm. The report makes it clear that harm will be created, the final paragraph says, landscape harm is thus reduced to moderate in impact. I trouble is I don't want my epitaph when I retire from the Council to be, oh dear old Cllr Simpson, he did his best to make sure that harm was never worse than moderate. Harm is harm and this is going to create harm. Planning, at the end of the day, is all about balance [?4:22:11.4], about what [?] is better and what is worse. We do definitely need greener energy, I have no doubt we all do, but we don't need green energy at the expense of our Best and Most Versatile land and a 62 hectare hole in the middle of the Green Belt. Some of my concern, like this Application said, it is vast. I have voted for a number of successful solar farm Applications and I'm sure I will in the future, but this Application is too much and in too sensitive an area. Now I'm not going to say it was an easy call to go against it because I see the merit on both sides, but in the final analysis, when you look at the impact on Green Belt, the impact on landscape, the impact on our Best and Most Versatile land, together

with the issue that there are issues that are unresolved if you will in terms of drainage. In my final analysis I condone to giving substantially more weight to the impact on the Green Belt and the Landscape Assessment. I can't, with my hand on my heart, say that there is not an adverse impact on the Green Belt, on agricultural production and on the landscape. So Madam Chair, I'd like to move that consent is refused. The Application is inappropriate development of the Green Belt and I don't consider that it will preserve the openness and therefore is contrary to policy LP3; it also doesn't accord with policies LP1, LP14 and LP13 of the North Warwickshire Local Plan. It does not concur with policy FNPO1 and FNP02 of the Fillongley Neighbourhood Plan. If we're going to put people to the effort, ages of effort in having a Local Plan, why would we just ignore it? It's important and we've got an awful lot of local people saying they don't want it for sound reasons, not just 'not in my back yard' but through a democratically constituted and adopted Local Plan. There are so many reasons why I am concerned about this Application, first and foremost Green Belt, secondly the use of our Best and Most Versatile land and thirdly, but not thirdly, is the impact on the landscape. These are critical issues. Energy security is equally a critical issue, but in my view, Green Belt, landscape character damage and Best and Most Versatile land on this occasion must take precedence. So Members I would honestly, from the bottom of my heart, appeal to you to vote against this Application.

Chair Cllr Bell: Thank you. Cllr Hayfield.

Cllr Hayfield: Thank you Chair. My colleague has been very eloquent as usual and I agree with him. I think the Developers must take credit because they have tried to adapt their Application to meet some of the concerns, however, I agree with Cllr Simpson that it is the impact on the Green Belt that is a step too far in this case. I know this part of Fillongley well, it is a wonderful open countryside area and this is a huge development that will have a very substantial visual impact on the Green Belt. Yes there are benefits, green energy, and we should be working more towards green energy, but the cost of that shouldn't be to the greater detriment of the rural communities that are going to be affected by this. If I sum it up Chair, it's too big and it's in the wrong place.

Chair Cllr Bell: Cllr Hobley.

Cllr Hobley: Thank you Chair. Obviously this has come before the Planning Board before and, as Members of the Board are now on [?4:26:50.3] for renewable energy, I've got a young family who

really try to be as green as we can. As Cllr Hayfield has just said, we've got to give credit to the massive amount of effort put in by the Applicant. I feel like every time we've given them a problem they've given us some sort of solution. I've had to weigh it up, you know we have to do it on this board, I know the further deferral was requested and refused due to the flood risk management. Obviously that's come back with no objections. So there are no planning reasons really why we should vote against this. Just one thing on the visual impact, I understand, I completely understand what you're saying about the visual impact, but as a person in my community, the visual impact is positive as well. You know you can see, if you're driving past, this is Fillongley, this is what we're doing for renewable energy, that's something to be proud of [background voices], it's something to be proud of. And I really appreciate the passion of the residents and everybody coming and making so much effort, but on that note I will be abstaining on this because I am too conflicted with it. So thank you Chair.

Chair Cllr Bell: Thank you. Cllr Fowler.

Cllr Fowler: Thank you Madam Chair. I have to say I join and support the words that Cllr Hayfield has just said and also how eloquent that Cllr Simpson put his thoughts across. As a, firstly, Borough Council's Climate Change Champion, we have supported quite a few solar farms, albeit these are much smaller than this and one thing that Cllr Simpson also echoed as well is the amount of work that Fillongley in particular, spent time on their Local Plan and that people are potentially going against what they've spent so long. And then you talked about the comments that were made at the Parish Council, the amount of letters that we've had far and wide from the area. And yes, I think that, as I said, we've certainly supported [?] on smaller Applications but I have to say I agree with Cllr Simpson and Hayfield that this one is just far too big for us and certainly agree, again, in the Green Belt and is echoed again, best land. I have to say, Cllr Hobley, yes its visual aspect, but its visual for all the neighbours, all the parishes that are in that area that have to see that every single time they pass by. So I'm one Madam Chairman, with Cllr Simpson and Cllr Hayfield's comments that I don't think we should take forward. Thank you.

Chair Cllr Bell: Thank you. Cllr Phillips.

Cllr Phillips: I'd like to echo some of the comments. It always seems very suspicious doesn't it we [interruption], sorry I do apologise. It always seems very suspicious that us with all the green... the

green pastures always seem to be very open [?] and it's always suspicious that it's always our land, its never near housing. So I'm always under the impression that large power stations and other things they could be near population centres and suddenly we're all connected to the Grid when... when we got broadband a couple of years ago. I also think that the visual impact is quite substantial and I think in that respect, even though I would desperately like, for the green reason, I'd like to vote for it, I will be abstaining from this for that reason because I do think they are a [?4:31:14.0].

Chair Cllr Bell: Thank you. Cllr Parsons.

Cllr Parsons: Thank you Chair. Yes, I'm going to sound a different note. I understand the passionate arguments that have been made there and I have to ask the question, yes, if this is the wrong place where is the right place? And when we look at our local planning, places have been allocated things, much of it objected to, and the good [?] those objections have been overruled, those objections have been ignored. Now that isn't a reason for approving this scheme, but looking at this scheme, you know there are many many places that have had their green spaces that are going to be built on. There are going to be many places that are having these schemes put in place and what we're being asked to do here is to make a special case. Now alright, there is Green Belt there, but there is a climate emergency, there is a world need for green renewable energy and I don't see a planning reason for actually objecting to this development. I appreciate that wont be popular in the room, but it is a realistic view I believe. Your mitigation is thorough and well worked. The objections to it have been looked at and rejected. I believe that there are good planning reasons for going ahead with this development and I will be voting [?] for the development.

Chair Cllr Bell: Thank you. Cllr Whapples.

Cllr Whapples: Thanks Chair. I echo what Cllr Parsons says actually and also some of what Cllr Hobley says, but I also understand why there are passionate views from the local residents, but going back to the biggest point of this, and we're on a Planning Board, we have no planning objections to make. So for me I will be voting for. Thank you.

Chair Cllr Bell: Cllr Ridley.

Cllr Ridley: Thank you Chair. I'm completely conflicted like a lot of people are. Yes we have a climate emergency, we need green energy, we need it now, we don't need it in five years time. The issue I find with this is it's visible from everywhere. It's very difficult to mitigate the rows and rows and rows of solar panels. I think efforts have been made by the Environmena to try and disguise it to a certain extent and mitigation that they're trying to put in for flooding I applaud and I'm glad that they did carry on and work with the residents and the Flood Protection Group in order to try and make sure that, going forward, flooding is going to get worse, but Fillongley is protected. The one issue that it is for me is the fact that there is an agreed point of connection. There is so much area there that we could put in solar farms and solar facilities but it can't be connected. It makes it not viable. So that's what I worry about, I worry about actually being able to deliver something and deliver something now. We can't have something in ten years time, we need to start delivering now and we have, like Cllr Simpson said, there are many solar farms that have come to us, certainly within my 18 months, and we have passed all of them. And I am passionate about our green spaces, I represent Dordon, we have no Green Belt and I think, [?though very vocal], everybody knows, on our Neighbourhood Plan [?] trying to preserve the green spaces that we've got. So I completely and utterly respect Fillongley's Green Belt and the preservation that we need to keep a bit. I still think planning weight is [?], we do need to support our green infrastructure. We need to be able to deliver for our children and our grandchildren and we need to start delivering now. I do hope that Environmena and the residents, should this be passed, can actually form some sort of community group and there will be some sort of societal benefit for the residents of Fillongley. And I really do, my heart does go out to [?residents] very much so, but for the future of our children, our grandchildren I think we need to deliver now and I will be supporting this Planning Application. Thank you.

Chair Cllr Bell: Thank you. Cllr Simpson, do you want to speak?

Cllr Simpson: Thank you. I'd just like to answer a couple of the points that have been raised. And, [?like I say], in many ways Environmena have been a model Applicant, they have engaged with the Parish Council, they've engaged with the Borough Council, they have come forward with a number of changes and they've engaged with the Flood Group and I think that that is... there have been some benefits. I'm not trying to say that at all. Planning is about balance. Now you know, I

genuinely do not disagree that we need to do something now, but the Green Belt and for a landscape character is a once only opportunity. Once it's gone, it's gone. I know the argument is it's a temporary Application because it's only for 40 years. But I'm concerned for my life that's pretty [?] and for most of the people who live in that area it is permanent. And the planning content, I get that 40 years can be argued to be temporary. What is the planning basis? The report makes it quite clear the long mitigation [?since] the question of how much do you agree with the mitigation compared to the harm. [?4:38:09.0] the report says its considered the [?] of the planning balance comprises a substantial definition of Green Belt harm, moderate actual Green Belt harm, moderate landscape and minor visual impacts and the harm caused to the Best and Most Versatile land as well as, what's less than substantial harm for local heritage assets. None of that is saying there is no harm. There is clear harm to the Green Belt. Now agreed, there are advantages and it is important that we have green energy, but in my honest view, the advantages of this Application do not outweigh the substantial harm that is clearly outweighed by any of the benefits of [?the] development. This is a long-term, you know I get we need to [?deliver] green energy, we don't need to do it everywhere and we certainly do not need to do it in sensitive locations and we do not need to do it for the benefit of future generations in an area where 95% of the land is our Best and Most Versatile land. We do need to sort out energy, but on the land that grows more than anything else? Cllr, I get your point for the benefit of future generations, but future generations need to eat too.

Chair Cllr Bell: Thank you. Cllr Ririe.

Cllr Ririe: I'm very conflicted about this for the reasons that everybody else has set out. Just one question, a lot has been made of the fact that its good quality agricultural land, but is it currently used as agricultural land?

Chair Cllr Bell: Yes.

Cllr Simpson: Yes.

Cllr Ririe: I thought it was, I just wanted to check because it's a while since I've been. Thank you.

Chair Cllr Bell: Thank you. Any one else want to speak? Right so I have a proposal for refusal from Cllr Simpson, did I have a seconder to that? Cllr Hayfield.

[Transcriber note: Poor Audio: [?] = inaudible - [...] = audio breaks up causing inaudibility]

Cllr Hayfield: I second it.

Chair Cllr Bell: Okay Cllr Hayfield. And the planning reasons given were harm to the Green Belt because of the scale and the landscape harm, the use of Best and Most Versatile land and of course, it's not consistent with the Neighbourhood Plan. Right so I've got that put down. Have I got any other proposal? Cllr Ridley.

Cllr Ridley: Thank you Chair, I've got a proposal to accept [?].

Chair Cllr Bell: Right so a proposal for the recommendation to approve. Have I got a seconder? Cllr Whapples, thank you. [?]. So is everybody clear, this is what we're voting on is to refuse the Planning Application on the grounds that I've mentioned. Can I see those in favour of refusal please? Thank you. And those against refusal? And abstentions? So refusal is carried so this Application is refused.

Transcription provided by KATTS
www.kingaudio.co.uk

Appendix 3

NORTH WARWICKSHIRE BOROUGH COUNCIL

MINUTES OF THE PLANNING AND DEVELOPMENT BOARD **8 July 2024**

Present: Councillor Simpson in the Chair

Councillors Barnett, Bates, Bell, Chapman, Davey, Fowler, Gosling, Hayfield, Hobley, Humphreys, Jarvis, Parsons, O Phillips, Ridley, Ririe and Whapples

Apologies for absence were received from Councillor Reilly (Substitute Councillor Davey), H Phillips (Substitute Councillor O Phillips), Dirveiks (Substitute Councillor Whapples) and Councillor Gosling (Substitute Councillor Barnett)

14 Disclosable Pecuniary and Non-Pecuniary Interests

Councillor Simpson declared a non-pecuniary interest in Minute 16c – Application No PAP/2023/0071 (Land 800 Metres South of Park House Farm, Meriden Road, Fillongley) by reason of wishing to speak on this agenda item. Councillor Simpson vacated the chair and Councillor Bell took the chair for this item.

15 Minutes

The minutes of the meeting of the Planning and Development Board held on 10 June 2024, copies having previously been circulated, were approved as a correct record, and signed by the Chairman.

16 Planning Applications

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

Resolved:

a That Application No PAP/2023/0324 (White Hart Inn, Ridge Lane, Nuneaton, CV10 0RB) be deferred so that Members could visit the site and for officers to arrange that an Independent traffic assessment is undertaken and reported back to the Board.

{Speakers: William Brearley, John Tither and Councillor Clews}

b That Application No PAP/2023/0514 (1 Poplars Yard, New Road, Shuttington, B79 0EJ) be granted subject to the conditions set out in the report of the Head of Development Control;

{Speakers: Steve Harlow and Jilly Mattley}

Councillor Bell took the chair.

c That Application No PAP/2023/0071 (Land 800 Metres South of Park House Farm, Meriden Road, Fillongley) is refused for the following reason:

"The proposed development is inappropriate development in the Green Belt. It is not considered that it would preserve the openness of the Green Belt as required by Policy LP3 of the North Warwickshire Local Plan 2021 and the National Planning Policy Framework (NPPF) 2023. It would additionally cause landscape and visual harm such that it does not accord with Policies LP1, LP14 and LP30 of the North Warwickshire Local Plan 2021, or Policies FNP01 and FNP02 of the Fillongley Neighbourhood Plan 2019. The Local and Neighbourhood Plan policies require new development to conserve and enhance the landscape; to integrate appropriately into the natural environment, harmonise with its immediate and wider settings, as well as to protect the rural landscape of the Parish, the scenic aspects of the village and the setting of the Church. The cumulative harms caused are considered to be substantial because of the development's proposed size, its siting on higher land, there being no surrounding higher land and its public visibility over a wide area. It is not considered that this substantial harm is clearly outweighed by any benefits that the proposal might give rise to".

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.

{Speakers Robert Pargetter, Catherine France and Mark Harding}

Councillor Simpson took the chair.

17 **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

Appendix 4

CONSTITUTION OF THE COUNCIL

The Council House
South Street
Atherstone
Warwickshire
CV9 1BD

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Website : www.northwarks.gov.uk

CONSTITUTION OF THE COUNCIL

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issue. Where possible, the officer will assist the Member in framing his/her concerns where there is a material planning consideration.

9.3 Where a delegated decision can be made and where a consultation response runs contrary to the likely officer decision Ward Members are contacted and given the opportunity to request that the case be referred for Board to make the decision. The test in the preceding paragraph is used to ensure there are planning reasons for such a request.

9.4 All Members are circulated applications and decisions on a weekly basis and can use this information to track the progress of particular applications and the method of decision.

10. Officers' reports to Planning and Development Board

10.1 It is important for the Council to be able to demonstrate in its decision making that there has been adequate consideration of all the relevant issues; consistency; and clear reasoning leading to the decision. Officers' reports to the Board will therefore:

- Be in writing;
- Be accurate, and cover, amongst other things, the substance of any objections, and the views of those consulted;
- Contain clear references to the Development Plan; site or related history; and other material considerations;
- Have a clear recommendation – for approval with conditions, or for refusal with reasons;
- If any recommendation is contrary to the provisions of the Development Plan, the material considerations which justify the departure will be clearly stated.

11. Decisions contrary to Officer's Recommendation

11.1 Whilst in strict legal terms the Planning and Development Board is under no obligation to follow the advice of officers, s.38 (6) of the Planning and Compulsory Purchase Act 2004 provides that any planning determination shall be in accordance with the development plan unless material considerations indicate otherwise. Thus, there must always be clear and convincing planning reasons for the Board's decision. If decisions are taken for non-planning reasons, or for reason which are not sustainable at an appeal, there is the potential for an award of costs to be made against the Council. Therefore if the Board makes a decision contrary to the officer's recommendation (whether for approval or refusal), a detailed minute of the Board's reasons should be made and a copy placed on the application file. Officers should also be given the opportunity to explain the implications of the contrary decision before it is taken.

11.2 Any Member who is contemplating proposing a motion to refuse an application contrary to the officer's recommendation should contact the relevant officer to discuss his/her intention. The officer will advise the Member whether the

Member's concerns would constitute a valid planning reason for refusing permission; and if so, assist the Member in drafting reason[s] for refusal. The Board will be advised as to the strength of the suggested reason for refusal and any possible financial implications for the Authority.

12. Planning and Development Board Site Visits

12.1 The purpose of a visit to an application site is for Members to gain information on relevant planning issues relating to the site which is not available from officers' reports (including in response to Members' questions at the Board meeting) in order to assist Members in reaching their decision. It is not to provide a forum for debate and discussion on the merits of the application. Site visits can cause delay and additional costs for an applicant, and should only be requested where the expected benefit from such a visit is substantial. Agendas are published well ahead of meetings and Members have the chance to visit sites before debate at Board.

12.2 A request from the Ward Member for a site visit is a proper part of the representative role of the Ward Member, and should normally be acceded to, although the 'substantial benefit' test should still apply.

12.3 All site visits will be conducted subject to the following criteria:

- A site visit will only take place once authorised by the Board
- Authorised attendance at a site visit shall be limited to Members of the Planning and Development Board, local Ward Members, relevant officers, the applicant together with his or her representative, and any objector (or a representative of a group of objectors) whom the Board considers should be invited to be present (e.g. where it is claimed that a proposed development will have a significant impact on a neighbouring property)
- At a site visit, all communication between parties (the applicant or his agent, objectors, and Members and officers) should be led by and conducted through the Assistant Chief Executive and Solicitor to the Council or his representative,
- There shall be no discussion of the merits of the application during the site visit. Such discussion shall only take place at a meeting of the Planning and Development Board
- Applicants, objectors, or their representatives shall not be permitted to make representations to Members of the Board during a site visit. They may, however, give purely factual information which is requested by Members and which cannot be ascertained by viewing alone.
- At the Planning and Development Board at which the application is considered, the Assistant Chief Executive and Solicitor to the Council will draw Members attention to any material considerations which arise as a result of the site visit
- The written notification of the site visit will set out these criteria so that all those attending are aware of them

Appendix 5

HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 01030, 30 August 2019

Must planning committees follow officers' advice in reaching decisions?

By Gabrielle Garton Grimwood

Contents:

Contents

Contributing Authors: Cassie Barton, Social and General Statistics

Summary

Controversy sometimes arises when planning committees, composed of elected local authority members, take decisions on planning applications that go against the advice of planning officers. This briefing examines the relationship between planning officers and councillors and how published guidance deals with the considerations that might arise when planning committees overturn officers' advice. It applies to England only.

Who takes planning decisions?

Applications for planning permission are submitted to and considered by the local planning authority (LPA). Applications are managed by planning officers, to whom councillors delegate most decisions. The largest and most contentious applications, though, will be considered by the planning committee.

Do officers have to make a recommendation?

Local authorities will have rules on the roles of councillors and officers, which should conform to the good practice on planning decision-making laid down in the guide to probity in planning for councillors and officers, published by the Local Government Association (LGA) and the Planning Advisory Service (PAS). That guide says (amongst other things) that officer reports to committee should recommend the decision to be made.

Overturning the advice of officers

In cases where councillors overturn the advice of officers, reasons have to be given. The LGA/PAS guide to probity in planning for councillors and officers suggests that councillors should be ready to explain why they have not accepted the officer's recommendation and that officers should be given an opportunity to explain such a decision's implications, including those for any appeal and award of costs.

Rejection of applications by councillors

In this scenario, the disappointed applicant has the right of administrative appeal to a planning inspector. The appeal will be heard on the basis of the national and local planning policy guidance. If the officers made a recommendation based on the planning policy guidance, then a rejection by councillors is more likely to lead to the council losing the appeal. In some circumstances, costs can be awarded against the council, particularly if there has been "unreasonable behaviour". The Planning Practice Guidance on appeals offers a definition of unreasonable behaviour in the context of award of costs.

Research by the property consultants Lichfields found that, for large housing applications in England, Wales and Scotland, refusals against officers' recommendations were more likely than refusals in line with officers' recommendations to be overturned at appeal.

Approval of applications by councillors

There is no analogous right of appeal for third parties when planning applications are approved in circumstances contrary to national policy and guidelines. The Secretary of State does have certain powers to revoke or modify planning permission, but these powers are used sparingly and only in the most exceptional cases.

How has the position of councillors changed?

Over time, the role councillors can play in determining planning applications has changed.

There has been an increase in the use of delegation; the most recent figures from MHCLG show that, for the year ending March 2019, 94% of planning applications in England were delegated to officers. Changes to the rules on pre-determination introduced by the *Localism Act 2011* enabled councillors to speak or vote on a planning application on which they had previously campaigned or expressed a view.

- The Commons Library briefing *Comparison of the planning systems in the four UK countries: 2016 update* offers information about planning in Scotland, Wales and Northern Ireland
- Other Commons Library briefings on various matters to do with planning are available on the topic page for housing and planning.

1. Who takes planning decisions?

In a nutshell: Applications for planning permission are submitted to and considered by the local planning authority (LPA). Applications are managed by planning officers, to whom councillors delegate most decisions. The largest and most contentious applications, though, will be considered by the planning committee.[1]

The Planning Practice Guidance (PPG) on determining a planning application sets out (in quite broad terms) who in a local planning authority makes a planning decision, including the power to delegate (discussed again later), and how elected councillors and other members of the local authority must consider planning applications:

> **Who in a local planning authority makes a planning decision?**
>
> Section 101 of the Local Government Act 1972 allows the local planning authority to arrange for the discharge any of its functions by a committee, sub-committee, or an officer or by any other local authority. An exception where this power may not apply is where the local authority's own application for development could give rise to a conflict of interest, when regulation 10 of the Town and Country Planning General Regulations 1992 applies.
>
> The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.
>
> Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised.
>
> Paragraph: 015 Reference ID: 21b-015-20140306
>
> Revision date: 06 03 2014
>
> **How must elected councillors and other members of the local authority consider planning applications?**
>
> Local authority members are involved in planning matters to represent the interests of the whole community and must maintain an open mind when considering planning applications. Where members take decisions on planning applications they must do so in accordance with the development plan unless material considerations indicate otherwise. Members must only take into account material planning considerations, which can include public views where they relate to relevant planning matters. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.

[1] For a brief guide to the planning process, see Planning Portal, *The decision-making process: the development plan* (undated, accessed 23 August 2019)

> Paragraph: 016 Reference ID: 21b-016-20140306
>
> Revision date: 06 03 2014[2]

Planning decisions must be made in the context of local and national policy, led by the National Planning Policy Framework (NPPF), which provides the background against which local plans are drawn up and applications for planning permission are decided. The NPPF sets out in broad terms how planning applications should be determined:

> Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.
>
> 48. Local planning authorities may give weight to relevant policies in emerging plans according to:
>
> a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
>
> b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
>
> c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
>
> 49. However in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
>
> a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
>
> b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.[3]

1.1 Do officers have to make a recommendation?

Local authorities will have rules on the roles of councillors and officers, which should conform to the good practice on planning decision-making laid down in the guide to probity in planning for councillors and officers, published by the Local Government Association (LGA) and the Planning Advisory Service (PAS). That guide says (amongst other things) that officer reports to Committee should recommend the decision to be made:

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2 MHCLG, *Guidance: determining a planning application*, 6 March 2014, updated 15 March 2019

3 Ministry of Housing, Communities and Local Government (MHCLG), *National Planning Policy Framework*, CP 48, February 2019: page 14

As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.
- Any oral updates or changes to the report should be recorded.[4]

For further information on standards and transparency, see the Commons Library briefings *Local government standards in England* (SN 05707, 7 March 2019) and *Local government transparency in England* (SN 06046, 10 November 2015)

1.2 Overturning the advice of officers

In cases where councillors overturn the advice of officers, reasons have to be given. The LGA/PAS guide to probity in planning for councillors and officers suggests that councillors should be ready to explain why they have not accepted the officer's recommendation and that officers should be given an opportunity to explain such a decision's implications, including those for any appeal and award of costs:

> If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.
>
> The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.
>
> All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly

[4] Local Government Association and Planning Advisory Service, *Probity in planning for councillors and officers*, November 2013: pages 12-3

> identified, and how these considerations justify overriding the development plan must be clearly demonstrated.
>
> The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.[5]

The planning consultancy Lichfields published a report in August 2018, *Refused for good reason?*, which found that residential schemes refused against the recommendation of planning officers were more likely than others to be allowed at appeal. The report looked at appeals on residential proposals decided in 2017 in England, Wales and Scotland. It found that 65% of appeals that had been refused by a planning committee against officers' recommendations were allowed, compared with 40% of appeals where refusals were in line with officers' recommendations. [6]

Lichfields found 78 appeal cases where a residential scheme had been refused against the recommendation of officers. The most common reasons for refusal given by planning committees in these cases were the impact on the landscape or countryside (36% of appealed cases), highways and transport-related issues (24%), and the impact on the character of the area (24%). Cases with these reasons given were also some of the most likely to be allowed at appeal. The report noted:

> Whilst highways and transport issues are frequently among the most contentious in terms of resident concerns about development – views to which councillors will often give significant weight in their decision making – they are also ones where there is greater reliance by planning officers and Inspectors on technical evidence, including quantitative modelling that is in many cases common ground between the appellant and the relevant Highway Authority.[7]

These cases also took longer to resolve. The time between the validation of the planning application and the appeal decision was 19 months for these cases, higher than the 11-month average for all cases going through the appeals process. The report pointed out that decisions on major developments can be expected to be completed within 13 weeks if they are made locally and not appealed.[8]

For examples of decisions taken contrary to officers' advice, reported in the specialist press, see

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5 Local Government Association and Planning Advisory Service, *Probity in planning for councillors and officers*, November 2013: page 14

6 Lichfields, *Refused for good reason? When councillors go against officer recommendations*, August 2018: page 4.

7 As above: page 7

8 As above: page 10. For comment on the research, see "Briefing: The risks of refusing large housing applications against officer advice", *Planning*, 23 August 2018

- "Councillors reject business park plan on agricultural land against officer advice", *Planning*, 22 August 2019[9]
- "High Court overturns Suffolk council's homes approval because members failed to give reasons", *Planning*, 30 July 2019
- "Kent councillors vote to reject plans for 700 homes against officer advice", *Planning*, 1 March 2019
- "Berkshire councillors reject officer advice to approve 424-home mixed-use scheme", *Planning*, 27 November 2018
- "Council fails to defend decision after rejecting officer recommendation", *Planning*, 6 November 2018
- "Court overturns permission granted against officers' advice for inadequate reasoning", *Planning*, 16 February 2018

1.3 Rejection of applications by councillors

In this scenario, the disappointed applicant has the right of administrative appeal to a planning inspector. The appeal will be heard on the basis of the national planning policy guidance. If the officers made a recommendation based on the planning policy guidance, then a rejection by councillors is more likely to lead to the council losing the appeal. In some circumstances, costs can be awarded against the council, particularly if there has been "unreasonable behaviour".

The PPG on appeals offers a definition of unreasonable behaviour in the context of award of costs:

> **In what circumstances may costs be awarded?**
>
> Costs may be awarded where:
>
> - a party has behaved unreasonably; and
> - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
>
> Paragraph: 030 Reference ID: 16-030-20140306
>
> Revision date: 06 03 2014
>
> **What does "unreasonable" mean?**
>
> The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.
>
> Unreasonable behaviour in the context of an application for an award of costs may be either:
>
> - procedural – relating to the process; or
> - substantive – relating to the issues arising from the merits of the appeal.

[9] Subscription required. As the Commons Library subscribes to *Planning*, Members and their staff may obtain copies of this and other articles by ringing 020 7219 3666.

> The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.
>
> Paragraph: 031 Reference ID: 16-031-20140306
>
> Revision date: 06 03 2014[10]

1.4 Approval of applications by councillors

There is no analogous right of appeal for third parties when planning applications are approved in circumstances contrary to national policy and guidelines. The Secretary of State does have certain powers to revoke or modify planning permission, but these powers are used sparingly and only in the most exceptional cases.

The Commons Library briefing on revocation of planning permission offers more analysis (SN 00905, 4 July 2016)

1.5 The Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman for England (LGSCO) can investigate complaints of maladministration but cannot go into the planning merits of a decision.

More information about complaints about how a planning applicant's application has been handled or how a neighbour's planning application has been handled, with examples of complaints considered by the LGSCO, is available from their website.

The Commons Library briefing *The Local Government Ombudsman* provides more information on the service (SN 04117, 17 July 2017)

[10] MHCLG, *Guidance: appeals*, 3 March 2014

2. Involvement in decision making

2.1 Delegation

In March 2002, the Labour Government introduced a target that planning committees should delegate 90% of decisions to officers, so that the planning committee could concentrate its efforts on the remainder. The target was not meant to be an absolute rule.[11]

In January 2008, Norman Baker MP complained about the extent of delegation, suggesting that councillors had almost been excluded from deciding planning applications:

> In recent years, however, the Government have moved almost to exclude elected members from taking decisions on planning applications; there is a push to delegate as much as possible to officers. Why should unelected officers be more accountable than elected councillors? Of course, some applications fit in to a system and are clearly within the terms of the local plan. Such applications are either controversial or uncontroversial, so they can be clearly rejected or accepted. In my day, about 50 per cent. of applications were delegated, so I am not suggesting that councils should take every single decision. However, we are now getting to the stage where 80 or 90 per cent. of applications are dealt with by officers—the figure is even higher in some local authorities.
>
> Council members find that frustrating, but so do members of the public. They do not understand why, when they elect local councillors to take decisions on planning matters and lobby them to that end, a decision on an application that is important to them should be taken by an officer of whom they have never heard in a room that they did not know existed. It might be a small matter in the big scheme of things, but if a person's next-door neighbour gains permission for something that will intrude on them, it is a serious matter to them. The least that such people would wish to do is to lobby the local council and have some influence on the matter, but that is increasingly rare under the current system.[12]

There is no longer a target, and it is for the LPA to decide how to use its delegation powers, as the then planning minister, Brandon Lewis, confirmed in March 2015:

> The exercise of the power to delegate planning functions is a matter for the local planning authority to decide, as set out in the council's constitution. Unlike the last Administration, we have not imposed Whitehall targets on councils requiring the delegation of a specific percentage of planning decisions.
>
> Councils will want to consider the best way of promptly processing uncontroversial planning applications, whilst ensuring elected councillors have the ability to scrutinise and debate contentious applications and applications with a significant impact.[13]

---

11 DTLR Press Notice 085, *New Best Value Indicators Help Deliver Planning Reform*, 11 March 2002

12 HC Deb 8 January 2008 cc56-7WH

13 PQ 225562, 9 March 2015

The most recent figures from MHCLG show that, for the year ending March 2019, 94% of planning applications in England were delegated to officers.[14]

The PPG on determining a planning application suggests that in making its delegation arrangements, the LPA should have regard to "practical considerations including the need for efficient decision-taking and local transparency":

> **Who in a local planning authority makes a planning decision?**
>
> Section 101 of the Local Government Act 1972 allows the local planning authority to arrange for the discharge any of its functions by a committee, sub-committee, or an officer or by any other local authority. An exception where this power may not apply is where the local authority's own application for development could give rise to a conflict of interest, when regulation 10 of the Town and Country Planning General Regulations 1992 applies.
>
> The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.
>
> Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised.
>
> Paragraph: 015 Reference ID: 21b-015-20140306
>
> Revision date: 06 03 2014[15]

2.2 Councillor involvement in planning-related issues and campaigns

Rules for councillors considering planning applications are discussed in the Commons Library briefing *Councillors and planning applications*.[16] As that briefing explains in more detail, the *Localism Act 2011* abolished the previous predetermination rule from 15 January 2012, but councillors must still be careful and (as the PPG points out) must still have an open mind.

Previously, councillors had little scope for intervention in planning. They could not vote on a topic on which they had expressed a view, under the predetermination rule. They were greatly restricted in what they could do if the application was near to where they lived. The planning officers would base their recommendations upon the large volume of

14 MHCLG, *Live tables on planning application statistics: table P134*
15 MHCLG, *Guidance: determining a planning application*, 6 March 2014 updated 15 March 2019
16 SN 00931, 5 January 2012

planning guidance, taking account of targets in the Regional Spatial Strategies.

That has since changed. The notion of predetermination, the Standards Regime, and Regional Spatial Strategies were abolished by the *Localism Act 2011*. The introduction of the National Planning Policy Framework in 2012 greatly reduced the volume of planning guidance, (arguably) making planning officers more reliant on their own judgement when recommending whether an application should be accepted or rejected.

The latest guidance is in the PPG on determining a planning application, which, mentioning the *Localism Act 2011*, deals with the situation where an elected member has previously represented or campaigned with constituents. The PPG does not rule out councillors speaking or voting on a planning application on which they have previously campaigned or expressed a view. On predetermination or bias, it says that councillors must not have a closed mind, but they "may campaign and represent their constituents – and then speak and vote on those issues – without fear of breaking the rules on pre-determination":

> **Can an elected member who has represented constituents interested in a planning application be accused of pre-determination or bias, if he or she subsequently speaks or votes on that application?**
>
> Section 25 of the Localism Act 2011 clarifies that a member is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or campaigned on it. Members may campaign and represent their constituents – and then speak and vote on those issues – without fear of breaking the rules on pre-determination. Members may also speak with developers and express positive views about development.
>
> A distinction can be drawn between pre-determination and pre-disposition. Members must not have a closed mind when they make a decision, as decisions taken by those with pre-determined views are vulnerable to successful legal challenge. At the point of making a decision, members must carefully consider all the evidence that is put before them and be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence.
>
> Paragraph: 018 Reference ID: 21b-018-20140306
>
> Revision date: 06 03 2014[17]

[17] MHCLG, *Planning Practice Guidance: determining a planning application*, 6 March 2014, updated 15 March 2019

3. Probity in planning

3.1 The Nolan Committee

The Nolan Committee, reporting on standards in public life in 1997, argued that councillors should be more willing to take decisions against the advice of officers:

> 286 It should be firmly stated that there is nothing intrinsically wrong if planning committees do not invariably follow the advice of officers. Planning officers exist to **advise** planning committees, which are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to an application. If a decision is thought to be perverse, a planning officer should so advise the committee, but respect the committee's conclusion.
>
> 289 Councillors themselves may be influenced by feelings which do not derive from dispassionate examination of the planning issues. They may see themselves as leaders of local opinion rather than as judges, and they may even have been elected on a specific platform of opposing or supporting a particular development or type of development. In our view, if planning decisions by local authorities were to be regarded as quasi-legal decisions, in which councillors played a role similar to that of inquiry inspectors or judges, there would be no point in involving councillors in such decisions. They might as well be taken by planning officers, or by inspectors. [18]

This conclusion surprised many in the planning field, mainly because they felt that the analysis did not take account of the main issue – the policy framework. The Sweet & Maxwell *Planning Encyclopedia* commented:

> The missing element in the Committee's analysis is the policy framework within [which] decisions must be taken, comprising both national policy (now principally represented by the PPGs) and local policy (now principally represented by the development plan). It is the policy framework which places the greatest constraints upon councillors' ability to reflect local community interests. The principal reason for Britain's national policy framework, indeed, is the need to pursue objectives, such as housing targets, that will often override local community wishes. Part of the impetus for planning gain is that the practice, as with its counterparts in other countries, minimises the cost to local communities of accommodating growth that is the product of national forces. [19]

3.2 The need for transparency

A guide to planning for councillors published by the Local Government Association and the Planning Advisory Service offers advice on probity and transparency – saying that "it is important that you represent the

For further information on standards and transparency, see the Commons Library briefings *Local government standards in England* (SN 05707, 7 March 2019) and Local government transparency in England (SN 06046, 10 November 2015)

[18] Third Report of the Committee on Standards in Public Life, *Standards of Conduct in Local Government in England, Scotland and Wales*, Cm 3702, July 1997

[19] *Sweet & Maxwell Encyclopedia of Planning Law and Practice, Monthly Bulletin,* August 1997: page 19

needs of your residents in discussions with developers" - and refers councillors to their local authority's code of conduct:

> **Are there risks to my involvement in development management?**
>
> Probity and conduct are areas of concern for many councillors. This is understandable given the consequences of behaviour or decisions that are perceived to be driven by a bias. But these concerns shouldn't prevent you from performing your role. Your involvement in the development management process is crucial. It is important that you represent the needs of your residents in discussions with developers.
>
> Your local authority will have a code of conduct for councillors. This will clearly state the parameters for your involvement on proposals. Your role in development management has to be transparent. Your decisions and behaviour in relation to applications are accountable to the public. It is important that you can explain the basis for your decision. You will need to declare personal or prejudicial interests on applications and may not be able to discuss the application or vote with the planning committee. The Localism Act gave provision for members of the planning committee to be able to campaign for or against and discuss planning applications prior to seeing the application at committee, as long as they can show that they are going to make their judgement on the application with an open mind, listening to all the evidence and not having predetermined their decision. National guidance on probity in planning is available to ensure that you understand the situations and behaviour that could be considered inappropriate or even illegal (see further information).[20]

In March 2013, Brandon Lewis made a statement in response to allegations that councillors were taking money from property developers, arguing that the Government had acted to increase accountability and transparency:

> This government has increased accountability and transparency over councilors' interests, to accompany greater power and freedoms for local councils.
>
> Councils should adopt a Code of Conduct that reflects the Nolan principles on conduct in public life, with councillors declaring any private interest that relate to their public duties, and councillors must take steps to resolve any conflicts arising in a way that protects the public interest.
>
> In addition, it is now a criminal offence to fail to declare or register disclosable pecuniary interests - which includes any employment or trade carried out for profit or gain. The register of councilors' interests must be published online by the council.
>
> Councillors should act in an open and transparent way, to avoid conflicts of interest on issues such as planning applications or benefiting financially from the issuing of council contracts.[21]

The Department for Communities and Local Government published a guide for councillors on openness and transparency on personal interests in September 2013.

[20] Local Government Association and Planning Advisory Service, *How planning works: an introductory guide for councillors*, updated May 2012

[21] MHCLG, *Government response: Councillors' interests and planning*, 11 March 2013

4. Further information about planning

4.1 Briefings from the House of Commons Library

- Briefings on various matters to do with planning are available on the topic page for housing and planning.

4.2 Guidance from the Ministry of Housing, Communities and Local Government

- The Department for Communities and Local Government (as it then was) published its *Plain English Guide to the Planning System* in January 2015.
- The National Planning Policy Framework was revised and updated in July 2018, following a consultation, with some further minor amendment in February 2019. It provides the framework against which local plans are formulated and planning applications are decided. More detailed guidance on aspects of planning policy is published in the Planning Practice Guidance.

4.3 The Planning Portal

- The Planning Portal offers advice on a range of planning topics.

4.4 Other sources of information and guidance

- The Local Government Association and Planning Advisory Service have published a guide to how planning works (May 2012) aimed at councillors.
- The Royal Town Planning Institute publishes some online advice about planning. Its Planning Aid Direct page covers a range of topics.

BRIEFING PAPER
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Disclaimer

Appendix 6

The award of costs – general

What is an award of costs?

An award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. The costs order states the broad extent of the expense the party can recover from the party against whom the award is made. It does not determine the actual amount.

Paragraph: 027 Reference ID: 16-027-20140306

Revision date: 06 03 2014

Why do we have an award of costs?

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

Paragraph: 028 Reference ID: 16-028-20140306

Revision date: 06 03 2014

Who can apply for an award of costs and who can have costs awarded against them?

Local planning authorities, appellants and interested parties who have taken part in the process, including statutory consultees, may apply for costs, or have costs awarded against them. A party applying for costs may have costs awarded against them, if they themselves have behaved unreasonably.

An Inspector or the Secretary of State may, on their own initiative, make an award of costs, in full or in part, in regard to appeals and other proceedings under the Planning Acts if they consider that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

Paragraph: 029 Reference ID: 16-029-20140306

Revision date: 06 03 2014

In what circumstances may costs be awarded?

Costs may be awarded where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Paragraph: 030 Reference ID: 16-030-20140306

Revision date: 06 03 2014

What does “unreasonable” mean?

The word “unreasonable” is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.

Paragraph: 031 Reference ID: 16-031-20140306

Revision date: 06 03 2014

What counts as unnecessary or wasted expense?

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

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.

Paragraph: 032 Reference ID: 16-032-20140306

Revision date: 06 03 2014

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.

Applicants for planning permission should not attempt to delay a decision on their application, simply to obtain a fee refund. A local planning authority will be justified in refusing permission where an applicant causes deliberate delay and has been unwilling to agree an extension of time; such behaviour will be taken into account in determining any claim for costs if the applicant then makes an appeal.

Paragraph: 033 Reference ID: 16-033-20140306

Revision date: 06 03 2014

How does the award of costs apply to called-in planning applications?

When a planning application is “called-in”, it is determined by the Secretary of State rather than by the local planning authority. This places the parties at a called-in proceeding in a different position from that in a planning appeal. The local planning authority is not defending a decision to refuse planning permission, or a failure to determine the application within the prescribed period.

In these circumstances, it is not envisaged that a party would be at risk of an award of costs for unreasonable behaviour relating to the substance of the case or action taken prior to the call-in decision. However, a party’s failure to comply with the normal procedural requirements of inquiries, including aborting the process by withdrawing the application without good reason, risks an award of costs for unreasonable behaviour.

Paragraph: 034 Reference ID: 16-034-20140306

Revision date: 06 03 2014

How to make an application for an award of costs

How does a party make an application for costs?

Applications for costs should be made as soon as possible, and no later than the deadlines below:

- In the case of appeals determined via the Householder Appeals Service, Commercial Appeals Service, appeals against the refusal of advertisement consent and appeals against tree preservation orders the costs application must be made in writing when the appeal is submitted, if the application is made by the appellant, or within 14 days of the date of the ‘start date’ letter for the appeal if the application is made by the local authority.
- In the case of appeals determined via written representations, the costs application must be made in writing by any party no later than the final comments stage. The Planning Inspectorate has the flexibility to set an alternative deadline, which would be notified to all parties. Where the costs application concerns

conduct relating to the site visit itself, applications should be received no later than 7 days after the date of the site visit.

- In the case of hearings and inquiries:
  - All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.
  - If the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the hearing is adjourned to the site, or before the inquiry is closed, that they are going to make a costs application. The Inspector will then hear the application, the response by the other party, and the applicant will have the final word. The decision on the award of costs will be made after the hearing or inquiry.
- For all procedures, no later than 4 weeks after receiving notification from the Planning Inspectorate of the withdrawal of the appeal or enforcement notice or other planning matter which is the subject of the proceedings, irrespective of procedure . An application for costs can be made by letter, or by using the Planning Inspectorate's application form.

Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.

Paragraph: 035 Reference ID: 16-035-20161210

Revision date: 10 12 2016 See previous version

When may Inspectors initiate an award of costs?

The award of costs supports an effective and timely planning system in which all parties are required to behave reasonably. In order to support this aim further, Inspectors may use their existing legal powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application has been made by another party. Inspectors, or the Secretary of State, will apply the same guidance when deciding an application for an award of costs, or making an award at their own initiative.

Paragraph: 036 Reference ID: 16-036-20140306

Revision date: 06 03 2014

Can I apply for costs in other types of appeals or planning proceedings?

It may be possible to apply for an award of costs in regard to appeals under legislation made by other government departments. See the full list of appeals where costs may be sought. Information on the award of costs as it relates to major infrastructure.

Paragraph: 037 Reference ID: 16-037-20140306

Revision date: 06 03 2014

Is there an opportunity for the party against which the application of costs is made to provide comment?

Yes. A written application for costs will be disclosed to the party against whom the application is made, so that they can respond in writing. Where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case. The applicant then has the opportunity to make a final reply in writing.

For hearings and inquiries, the party against whom an application is made will have the opportunity to reply, either at the event or in writing. Similarly, a party will be given an opportunity to comment, where an Inspector is considering initiating an award of costs against them.

Paragraph: 038 Reference ID: 16-038-20140306

Revision date: 06 03 2014

Who makes the decision about the award of costs?

Most cost applications are determined by Inspectors. However, the Planning Inspectorate's Costs and Decisions Team may deal with some cases. This includes applications arising from withdrawal of an appeal or enforcement notice. The Team also decides on the admissibility of late applications for costs.

Paragraph: 039 Reference ID: 16-039-20140306

Revision date: 06 03 2014

What is a full award of costs?

A full award of appeal costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.

Where the process concerns a called-in planning application, the eligible costs start from the date of the letter notifying the applicant of the decision to call-in the application.

In other non-appeal cases, the eligible costs start from the date of the notification or statutory publication of, for example, the relevant order. This is the point at which the applicant for costs begins to incur expense in the ensuing statutory process.

Paragraph: 040 Reference ID: 16-040-20140306

Revision date: 06 03 2014

What is a partial award of costs?

Some cases do not justify a full award of costs, for example where the appeal is one of several joint appeals with evidence in common. Where the application for costs relates to one or some of the grounds of refusal but not all of them, an award might relate to the attendance of only particular witnesses. In these circumstances, a partial award may be made. The partial award may also be limited to a part of the appeal process. For example, where an unnecessary adjournment is caused by the unreasonable conduct of one of the parties, the award of costs may be limited to the abortive costs of attending the event on the day of the adjournment. A partial award may result from an application for either a full or a partial award.

Paragraph: 041 Reference ID: 16-041-20140306

Revision date: 06 03 2014

What happens if the appeal or an enforcement notice is withdrawn and the appeal is not decided?

If the appeal or enforcement notice is withdrawn without sound reason, or with avoidable delay, giving rise to unnecessary or wasted expense for another party, an application for costs can be made. Such applications should be made in writing to the Planning Inspectorate's Costs and Decisions Team no later than 4 weeks after receiving confirmation from the Planning Inspectorate or the local planning authority (in the case of an interested party) that no further action is being taken.

In such cases the decision on the award of costs will be taken by an officer in the Planning Inspectorate's Costs and Decisions Team, on behalf of the Secretary of State, following an exchange of written comments from the parties.

Paragraph: 042 Reference ID: 16-042-20161210

Revision date: 10 12 2016 see previous version

Can a claim for an award of costs be withdrawn?

Yes, if the party who applied for an award of costs formally notifies the Planning Inspectorate of the withdrawal. This does not prevent another party from seeking costs, nor the potential for an Inspector to initiate an award against either party.

Paragraph: 043 Reference ID: 16-043-20140306

Revision date: 06 03 2014

How is the amount settled where an award is made?

The Inspector or Secretary of State can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled subsequently between the parties.

Where a costs order is made, the party awarded should first send details of their costs to the other party, with a view to reaching agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office.

Paragraph: 044 Reference ID: 16-044-20140306

Revision date: 06 03 2014

What if the party does not pay?

Once the Planning Inspectorate has made an award of costs, it has no further role and it is for the parties to negotiate the amount and to agree on the arrangements for payment. Failure to settle an award of costs is enforceable through the Courts as a civil debt. If a party has any doubt about how to proceed in a particular case, they should seek legal advice.

Paragraph: 045 Reference ID: 16-045-20140306

Revision date: 06 03 2014

Behaviour that may lead to an award of costs against appeal parties

Local planning authorities

When might an award of costs be made against a local planning authority?

Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

Paragraph: 046 Reference ID: 16-046-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- lack of co-operation with the other party or parties
- delay in providing information or other failure to adhere to deadlines
- only supplying relevant information at appeal when it was previously requested, but not provided, at application stage
- not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties

- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new reason for refusal
- withdrawal of any reason for refusal or reason for issuing an enforcement notice
- failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- withdrawing an enforcement notice without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at subsequent appeal
- failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment

(This list is not exhaustive.)

Paragraph: 047 Reference ID: 16-047-20140306

Revision date: 06 03 2014

When might a local planning authority's handling of the planning application or enforcement notice prior to the appeal lead to an award of costs?

If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.

If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

Paragraph: 048 Reference ID: 16-048-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

(This list is not exhaustive.)

Paragraph: 049 Reference ID: 16-049-20140306

Revision date: 06 03 2014

When might an award of costs not be made against a local planning authority?

Where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

Paragraph: 050 Reference ID: 16-050-20140306

Revision date: 06 03 2014

Appendix 7

The Planning Inspectorate
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Inspector Training Manual | Index






How to use the Inspector Training Manual

The Inspector Training Manual provides practical advice to new Inspectors and serves as a source of continuing professional development for existing Inspectors.

This training material does not constitute Government policy or guidance; nor does it seek to interpret Government policy. In addressing policy issues, you will be expected to have regard to the most up-to-date policy and guidance produced by the relevant Government department. In the event that there appears to be a discrepancy between this material and national policy / guidance, any national policy and guidance will be conclusive.

The Inspector Training Manual is made up of 'living documents'. Please always ensure that you are referring to the most up-to-date version. Any revisions to this material will include an e-mail alert to 'All Inspectors' and subsequently, the version held in the Knowledge Library should be regarded as the current and up-to-date material.

The chapters are catalogued in the Knowledge Library under their relevant headings and in alphabetical order for the themed chapters only. Alternatively, for ease of navigation, you can access the chapters from this Index, by using the links below.

Please be aware of the geographical relevance of each chapter - the relevance of each chapter to England and / or Wales has been specified in this Index (below) and also within each chapter.

Please also note that we have included all the current remaining Procedure Guides and Case Law & Practice Guides for completeness, and ease of accessibility. It is our ambition that these will be reviewed and considered for inclusion in future updates to the Inspector Training Manual.

The Knowledge Centre will be considering what further material would be appropriate to include in the Training Manual, as an ongoing process.

When holding events, and writing decisions / reports, it is important that Inspectors continue to refer to the original policy source – as the Inspector Training Manual is not the source of any guidance.

Our publication policy is to disclose the Inspector Training Manual if requested by an external customer, but not to publish the material externally on a website.

If you have any queries about this training material, please e-mail the Knowledge Centre.

The Knowledge Centre

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The Planning Inspectorate

Costs Awards

Updated to reflect December 2023 Framework (NPPF)

New in this version

Changes highlighted in yellow made 5 April 2023:

- Correction of paragraph 33 to confirm that re-determination of costs applications should be made by Inspectors

The Inspector Training Manual is internal guidance written by The Planning Inspectorate and is aimed at its Inspectors.

As such, it does not constitute Government policy or guidance and does not seek to interpret Government policy. If there appears to be a discrepancy between the Manual and national policy / guidance, any national policy and guidance will be conclusive.

Contents

Information Sources

Planning Practice Guidance: Appeals – The award of costs - general

Gov.uk – Claiming Planning Appeal Costs

Legislation and guidance

1. The legislation underpinning costs awards in planning-related proceedings under the Town and Country Planning Act 1990 is:

   Section 320 – This section incorporates s250(5) of the Local Government Act 1972 into the 1990 Act[1] and by doing so allows orders as to costs to be made by Inspectors in circumstances where a **local inquiry** has been held.

   Section 322 – this section applies the costs regime (as set out in s320 above) for orders as to costs to be made by Inspectors in **hearings and written representations** appeals in the same way as it applies to local inquiries.

   Section 322A – this section allows orders as to costs to be made where a local inquiry or a hearing has been scheduled but the inquiry or hearing does not take place.

   Section 322B – this section applies the costs regime (as set out in s320 above) for orders as to costs to be made by Inspectors in circumstances where a local inquiry is held as a result of the London Mayor directing refusal of a planning application.

2. Guidance can be found in the Planning Practice Guidance (PPG) Section 16: Appeals, The award of Costs – general[2].

Introduction

3. This chapter deals with costs applications and costs decisions in relation to planning appeals by written representations, hearings and inquiries cases. The principles governing applications for an award of costs and the basis of such an award are the same irrespective of how the appeal is processed. Please note that costs applications for other casework types dealt with by PINS may proceed under different legislation/guidance.

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[1] For the Planning (Listed Buildings and Conservation Areas) Act 1990, section 89 incorporates s250(5) of the Local Government Act 1972.

[2] Which replaced DCLG Circular 03/2009: Costs Awards in Appeals and Other Planning Procedures

4. This training material applies to English casework only[3].

What is an award of costs?

5. An award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. The costs order states the broad extent of the expense the party can recover from the party against whom the award is made. It does not determine the actual amount[4].

General Principles

6. Parties in planning appeals and other planning proceedings normally meet their own expenses.

7. The costs regime is intended to support a well-functioning appeal system and encourage proper use of the right of appeal. It is aimed at ensuring that all those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of case. That other avenues may be available to resolve a dispute (for example a fresh planning application or seeking a certificate of lawful use or development) is immaterial. Once an appeal is made the parties are within the scope of the costs regime and their behaviour should be judged against the advice in this chapter and the Planning Practice Guidance.

8. The appeal decision will not be affected in any way by the fact that an application for costs has been made; the two matters are entirely separate. Accordingly, it is possible for costs to be awarded against the 'winning' party to an appeal.

When can costs be awarded?

9. Costs will normally be awarded where the following conditions have been met:

- a party has made a timely application for an award of costs;
- the party against whom the award is sought has behaved unreasonably; and
- the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

[3] In Wales WO Circular 23/93 applies and PINS Wales have produced separate material on the policy differences. Any guidance required in addition to WO Circular 23/93 should be raised direct with PINS Wales.

[4] Planning Practice Guidance ID: 16-027-20140306.

What are the deadlines for making an application?

10. The procedures for costs applications are not statutory, so while there are strict deadlines[5] for making an application for costs there is discretion to accept applications outside the time limits set. However, anyone making a late application for an award of costs will need to show good reason for having made the application late, if it is to be accepted for consideration. For a costs application to be timely it should be made:

    - orally at a hearing or inquiry – before it closes;
    - in writing[6] – at the same time as a householder, commercial or tree preservation order appeal is made by the appellant (14 days from the 'start date' letter for the LPA) – or no later than the final comments stage for all other appeals determined via written representations;
    - In relation to conduct at a site visit – no later than 7 days from the date of the site visit; and
    - In relation to a withdrawn appeal or enforcement notice – no later than 4 weeks from the Inspectorate's notification of the withdrawal.

Who can apply for an award of costs and who can have costs awarded against them?

11. Local planning authorities, appellants and interested parties who have taken part in the process, and exceptionally the Mayor of London. Also statutory consultees where the power to direct a planning authority to refuse permission has been exercised or where they are party to an appeal. A party applying for costs may have costs awarded against them, if they themselves have behaved unreasonably.

12. An application for an award of costs may be for a full award of costs, or a partial award of costs.

What is unreasonable behaviour?

13. "Unreasonable" is used in its ordinary meaning as established by the Courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774, and not in the stricter public law definition of "Wednesbury" unreasonable.[7]

[5] PPG ID: 16-035-20140306

[6] While a form for use in applying for costs in writing is available on .GOV.UK, this is not a requirement and pplications can be made by letter.

[7] TM: "The role of the Inspector", paragraph 13 sets out what Wednesbury unreasonableness is ie a decision that is so unreasonable that no reasonable authority would ever consider taking it.

14. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The Inspector has discretion when deciding an award to take into account extenuating circumstances.

15. Examples of unreasonable behaviour that may lead to an award of costs against appeal parties (LPA, appellant, Statutory consultees and interested parties) are given in the PPG[8] and may concern (this list is not exhaustive):

- non-compliance with procedural requirements;
- failure by the planning authority to substantiate a stated reason for refusal of planning permission (the planning authority must be able to show that it had a reasonable basis for its stance, even though it may have lost the appeal or failed to win on that particular ground). When an LPA refuses a planning application because it is contrary to the provisions of the development plan (for example, retail to restaurant in a prime shopping frontage) the LPA is exercising its Planning and Compulsory Purchase Act 2004 section 38(6) duty, giving reasons which are entitled to some weight and such a decision is therefore unlikely to meet the test of being 'unreasonable'[9];
- planning authority clearly failing to have regard to government policy or its own adopted policies;
- appellant pursuing a clear "no hope" case, for instance inappropriate development within the Green Belt without very special circumstances advanced, or development plainly in conflict with the development plan without material considerations to the contrary; and
- the withdrawal of an appeal, late cancellation of an event or withdrawal of an enforcement notice.

What is unnecessary or wasted expense?

16. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Such costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses. If necessary and at events it may be possible to clarify the unnecessary or wasted expense that is alleged to have occurred. However, if it is

[8] PPG ID: 16-046-20140306 to 16-056-20140306

[9] A recent Court case, where the Secretary of State submitted to judgment, illustrates that an Inspector exercising planning judgement and weighing all matters in the balance can take a different view from the LPA on the same planning decision and (in this respect) the main appeal decision was not challenged. However, in determining a linked costs application it was incumbent on an Inspector to remember that the starting point of decision-making is plan led, and where that was shown to be the case, a Court challenge to an Inspector's award of costs against the Council on grounds of unreasonable behaviour was considered likely to succeed.

obvious from the application and evidence provided that there will have been a direct consequence in terms of expense arising from the unreasonable behaviour then it is not essential for this to be specified in the application itself. For example, when considering a partial award, if the imposition of one of the reasons for refusal was unreasonable then the expense incurred in contesting it is likely to be readily apparent given what is referred to in the PPG and does not need to be spelt out by the applicant. No details of actual expenditure are required but the kind of expense or time should be identified in broad terms to assist the parties in settling the amount. In addition, you should bear in mind the following:

- expense should be identifiable or capable of being quantified;
- expense may be wasted because the entire appeal could have been avoided;
- expense may be unnecessary because time and effort was expended on a part of the case that should not have had to be pursued;
- the power to award costs relates to costs necessarily and reasonably incurred in the appeal process[10]. For an appellant, typically the costs of employing an agent to submit the appeal and represent them throughout the process. For a planning authority, costs will be typically incurred in resisting the appeal and defending its decision (or stance, in "failure to determine" cases);
- awards cannot extend to compensation for indirect losses (eg delay in obtaining planning permission); and
- any unnecessary costs should relate to the appeal process.

17. The important principle to be aware of is that the unnecessary expense should follow directly from the unreasonable behaviour and that there should be both 'cause and effect'

18. Annex A provides some key judgments concerning the general principles outlined above.

When may Inspectors initiate[11] an award of costs?

19. In order to support an effective and timely planning system in which all parties are required to behave reasonably, you may on your own initiative[12] make an award of costs, in full or in part, if you consider a party has behaved unreasonably resulting in

[10] Costs of the planning application are ineligible, but the LPA behaviour in dealing with the application may have a bearing on the award of costs. Advice about the role of the Local Government Ombudsman in relation to allegations against LPAs is in Annex B.

[11] Note - Costs may be awarded at the initiative of the Inspector in relation to planning appeals received on or after 1 October 2013 (including appeals relating to lawful development certificates, listed buildings, enforcement and planning obligations) and called-in planning applications where the date of the call-in letter is 1 October 2013 or later.

[12] PPG ID: 16-036-20140306

unnecessary expense and another party has not made an application for costs against that party.

20. You must not announce at the hearing or inquiry that you are considering making an award of costs as this may be perceived as pre-determination of the appeal.

21. After the event, if you are considering an award of costs, you should contact the Costs and Decisions Team (CDT) at the same time as sending the appeal decision in for issuing. CDT should be provided with a draft letter stating that you are considering whether to make an award of costs against a party and setting out the reasons for considering that there may have been unreasonable behaviour leading to unnecessary or wasted costs and inviting comments by a deadline to be set by CDT. CDT will issue letters to the parties and monitor the timetables. This letter should be sent for comment to the relevant party only, within one week of the issue of the appeal decision, at the latest.

22. If you are a Salaried Inspector you must inform your case officer so that you can be allocated the appropriate reporting time. Any Non-Salaried Inspectors will need to ask NSI CMU to authorise allocation of the appropriate reporting time.

23. Any costs award should be drafted in the usual way using the most up-to-date guidance. A dummy Inspector initiated cost award is at Annex C1.

24. CDT will write to the relevant party to confirm the decision to award costs and copy any party who has the benefit of the award. It is important that if, having initiated the costs award process, you decide not to make an award, you should ask CDT to write to the party to confirm that, having considered all of the evidence, no award is being made.

25. To date this power has been rarely used and it is advisable to discuss with your SGL first.

An application for a full award of costs

26. An application for a full award of costs:

- relates to the applicant's whole costs of the statutory process, including submission of the appeal statement and supporting documentation (including the expense of making the costs application); and
- could be granted in full, refused or allowed in part *(*even if the applicant has applied for a full award and has made no specific reference to a partial award).

An application for a partial award of costs

27. An application for a partial award of costs:

- may be made in appropriate circumstances, for instance where the application relates only to one ground of refusal, or to a particular aspect or part of the appeal process up to (or after) a specified date;
- in such cases, an award of costs would be limited to the expense caused by the unreasonable behaviour identified, e.g. the time and effort expended on pursuing that particular part of the case (you do not have to define the specific amount of any award); and
- may be allowed in the terms of the application; refused; or allowed in part (that is, a smaller partial award than that sought may be made).

Costs Order

28. A costs award, where justified, is an order which can be enforced in the Courts:

- it states that one party shall pay to another party the costs, in full or in part, which have been incurred during the appeal process;
- the costs order states the broad extent of the expense the party can recover from the party against whom the award is made;
- it does not determine the actual amount (however, where a full award has been sought but partial costs awarded, you must be specific as to what failing is being awarded against); and
- settling the amount is for subsequent agreement between the parties. In the event of failure to agree a sum, the successful party can apply to the Senior Courts Costs Office for independent assessment[13].

Inspector's Task

29. Assuming that an application has been made in a timely fashion the task before you is to judge whether there has been unreasonable behaviour on the grounds claimed, resulting in unnecessary or wasted expense with reference to the guidance in the PPG. Costs decisions are taken on the balance of probability. This is an entirely separate matter to the appeal decision, although a costs decision should be logically consistent with the appeal decision. You may therefore need to explain in your decision how the unreasonable behaviour has directly led to the unnecessary expense having regard to the facts and circumstances of the case. Where some elements of behaviour have been unreasonable you will need to be particularly careful in deciding the extent of any unnecessary expense. To assist with this, it might be worth considering what would have occurred if there had been no unreasonable behaviour.

30. You are only concerned with the principle of whether costs should be awarded and not the amount. Should one party deny that the other has incurred unnecessary expense,

[13] PPG ID: 16-044-20140306

you need to be satisfied that it has occurred because even if unreasonable behaviour is evident, both tests need to be met.

Costs and Decisions Team

31. Most costs applications are determined by Inspectors in conjunction with transferred appeals. However, the Costs and Decisions Team (CDT) also deal with a range of costs casework in England on behalf of the Secretary of State under delegation arrangements[14] following an exchange of written comments from the parties. CDT make decisions on costs applications in a variety of circumstances including:

- the admissibility of "late" applications for costs[15];
- where an appeal or enforcement notice has been withdrawn and the appeal is not decided[16] or circumstances leading to no further action being taken on an appeal;
- where the appellant (or LPA) fails to attend the hearing/inquiry/site visit;
- where there are unusual or novel issues indicating that the costs decision is more appropriately taken by the Secretary of State on the basis of an Inspector's costs report;
- when the party against whom the application is made is not present[17];
- re-determination of a freestanding costs application resulting from a successful High Court challenge[18].

[14] In Wales these duties are carried out by the Wales Assembly Government.

[15] PPG ref ID: 16-035-20140306– applications made after the stated time limits, summarised in "What are the deadlines for making an application" within this TM.

[16] PPG ref ID: 16-042-20140306 – If the appeal or enforcement notice is withdrawn without sound reason (ie a material change in circumstances relevant to the planning issues) or with avoidable delay, giving rise to unnecessary or wasted expense for another party, an application for costs can be made. Such applications should be made in writing to CDT no later than 4 weeks after receiving confirmation from PINS or the local planning authority that no further action is being taken.

[17] PPG ref ID: 16-047-20140306 and 16-052-20140306

[18] Please note that where successful High Court challenges have been made to **both** an appeal decision and a related costs decision C&DT do not need to get involved in the re-determination of a costs application – the relevant Inspector can deal with it with a view to issuing the re-determined costs decision at the same time as the decision on the re-determination of the appeal. But please bear in mind that Inspectors are also responsible, via a separate decision letter, for deciding any fresh application for costs made solely in connection with appeal re-determination proceedings e.g. procedural misconduct at an inquiry (see section below on High Court Re-determinations).

High Court Re-determinations

32. Appeal and costs decisions are two separate decisions for which (usually) separate challenges must be made if both the decisions are to be quashed and re-determined. If only the appeal decision is successfully challenged, and unless the Court judgment clearly states that the Inspector's costs decision is also being quashed and remitted to the SoS for re-determination, **the original costs decision remains extant and cannot be revisited** even if, in the context of re-determining the appeal, it seems odd.

33. However, you can entertain a fresh costs application made solely in connection with the re-determination of the appeal decision (as opposed to the need for the original costs decision to be re-determined following a successful challenge to that costs decision). It is important that any such costs determination does not stray into matters previously addressed in the earlier, and still extant, costs decision. In practice this is likely to relate only to procedural misconduct for the period post the High Court in the re-determination proceedings.

34. Re-determination of costs applications, whether or not there is a related redetermination of an appeal, are dealt with by Inspectors.

Can a claim for an award of costs be withdrawn?

35. Yes, if the party who applied for an award of costs formally notifies the Planning Inspectorate of the withdrawal. However, this does not prevent another party from seeking costs, nor the potential for an Inspector to initiate an award against either party.

Procedural matters (written representations: PCO)

36. The costs application will be made by written submissions and all the costs correspondence will be found in the 06 Costs Folder of the Inspector E File. For hearing appeals the costs correspondence may also be placed in a yellow folder on the right-hand side of the paper file.

37. When a timely costs application is made, the Case Officer will invite the other party to respond within 7 days, giving the applicant a further 7 days for final comment on the response, before the decision can be issued (the applicant always has the opportunity to make a final reply in writing).

38. The Case Officer will check correspondence received to identify either an application for costs or any costs response and, where possible, this will be added separately to the 06 Costs Folder (yellow folder within paper file for hearing/inquiry cases). If the costs application or response is contained within another document such as the full statement of case then the case officer will rename the document to include COSTS as a suffix, that is: 02 STATEMENT AND APPENDICES AND COSTS (or attach a costs flag to the hard copy document on the paper file for hearing/inquiry cases).

39. Whilst the Case Officer will aim to identify and put all of the costs application material in the 06 Costs Folder/yellow folder, you will need to satisfy yourself that you have had regard to all the relevant costs material when writing the decision.

40. Costs applications in relation to appeals following the expedited written representations "householder appeal" procedures (HAS) and the "minor commercial appeal" procedures - including advertisement appeals (CAS) are dealt with by Inspectors within the time allocated for the HAS/CAS appeal. However, if dealing with a costs application takes a substantial amount of time – then additional time can be charted (discuss you're your SGL/SIT).

41. You should decide all costs applications in non-HAS/CAS cases where the application has been received by the deadline for final comments. Applications received after this deadline will be dealt with by CDT. CDT will also deal with any applications which concern conduct at the site visit whether or not received within 7 days of the event. To assist CDT you should record in a file note what happened at the event.

42. It is usual practice, where possible, to issue the appeal and costs decisions at the same time. However, given the tight targets for HAS/CAS appeals, it can be acceptable although not advisable (because of the associated risk of prompting further costs submissions) to issue the appeal decision first, so that the target is met.

Procedural matters (inquiries and hearings)

43. The PPG[19] states that all costs applications must be formally made and heard before the inquiry or hearing is closed. You should therefore indicate in opening the event that any such application should be made before closure of the inquiry/hearing or before departure to a site visit. Before closing the inquiry/hearing ask if there are any applications for costs (unless advanced written warning of a costs application has already been made – see paragraphs 43 to 45 below). Check that the parties have nothing further to add and that there are no other matters they wish to raise. It is not advisable to try and hear a costs application on site and it is best to avoid the inconvenience of having to return to the venue.

44. **Oral applications** – ideally, as a matter of best practice, the grounds for seeking an award of costs should be made in writing (see paragraph 43 below). However, if an application is made orally without prior written warning it must still be raised and dealt with at the inquiry/hearing, and it may be necessary to allow the parties a short period of thinking time (for example 10/15 minutes) to prepare their oral response. If both parties make applications these should be heard or taken one after the other.

45. When a costs application is made, or an advance application supplemented in the light of events 'on the day', the other side should always be given the chance to respond -

[19] PPG ref ID: 16-035-20140306, 3rd bullet

ensuring that the party against whom the costs application is being made is able/capable of responding (that is where a junior officer is present and is not able/authorised to respond). The costs applicant should be given the chance to make any final comments on any new points raised. You will need to take full notes. In most cases this process need not lead to an adjournment for a response to be prepared, but it may be necessary, in certain instances, in the interests of fairness.

46. Only in **very exceptional** circumstances where a different approach is required (ie where it is not practical to hear an application and/or response at the event) you may use your discretion (sparingly) to allow written costs submissions - the PPG being guidance not statute. In such exceptional cases you should give very clear guidance as to what is required, what will be accepted and by when. This avoids a paper chase and or revisiting any of the appeal evidence. **You will also need to ensure that the appeal decision is not issued before the costs submissions process is complete.**

47. **Advance written submissions on costs received from both sides** – Where a party has indicated their intention to make a costs application during the processing of the appeal the case officer will invite written submissions before the event. If it is not possible to complete the process of receiving a response/final response the case officer will inform the parties that responses can be provided at the oral event. You should review the relevant costs correspondence in the 06 Costs Folder/yellow folder

48. Check if the submissions have been fully exchanged and that there is nothing to add. If you and both sides have had adequate opportunity to read and understand the written submissions there is no need for these to be read out as a matter of course. The making of a costs application should not take up hearing or inquiry time because the written submissions can simply be taken as read and appended to the file.

49. **If only the applicant has produced something in writing in advance** (see paragraph 43 above) - if given to the other party beforehand you should check that there is nothing to add before inviting the respondent to reply orally and then allowing the applicant to have the 'final say' on any new point raised. Should the respondent not have received the written submission in advance you should ensure that sufficient time is allowed for this to be absorbed and a response prepared. Time may also be needed for you to read it and, in these circumstances, an adjournment may be required.

50. **Application at site visit** – where an inquiry or hearing is kept open for a site inspection and a party then makes an application, in the interests of fairness you would have to determine if the relevant party could reasonably hear and respond to the application on site. If not, and they require time to consider the application, it may be that an adjournment is required before meeting back at the original venue or somewhere else suitable to properly hear the application and response.

51. **Hearing or inquiry resumed on another day** - any costs applications should be heard at the end of the resumed event. It should also be briefly recorded in the Preliminary Matters section (this is to assist CDT if any costs application is made after

the close of the hearing). If the appeal is withdrawn before it resumes then a note should be placed on the file to also cover this eventuality.

52. **Costs application made against a party who fails to attend the inquiry/hearing** – you should hear the costs application but it would be unfair to proceed, in the absence of hearing a response to the costs application, to decide the costs application yourself. In such cases you should submit a costs report (to the Secretary of State) for the attention of the CDT (for more information see paragraph 31). The report should summarise the costs application and record (if appropriate) your tentative conclusions, however, you should **not** make any recommendation on costs – no firm conclusions can be drawn in the absence of considering any response to the costs application.

Charting arrangements

53. You will normally be charted half a day per costs application (except for HAS/CAS appeals).

54. For inquiry and hearings cases where applications are not known about in advance of the event, you should 'claim' reporting time by e-mailing the Case Officer and by adding an entry to your Movement and Work Record (MWR). This will be added to your work programme at the earliest available opportunity.

55. For inquiry and hearings cases where costs applications are made in advance, time will be allocated as part of the reporting on the case.

56. In written representations cases, costs reporting time will be added as soon as the Case Officer is made aware of the costs application. The reporting will be charted as close to the site visit as possible taking into account the latest deadline for comments on the costs application.

Writing the Decision

57. The appeal decision should include a reference to the costs decision at the outset. This is to indicate that an application for costs has been made and is (or will be) the subject of a separate decision.

58. The relevant costs decision template can be selected from DRDS (see "Which decision template should I use?"), and a costs decision template is shown at Annex C.

59. If a late application has been accepted the decision should say why.

60. Costs do not follow the appeal outcome. However, costs decisions should be consistent with the appeal decision. Address the points made by the applicant one by one and reach a view on them, referring to, where necessary, relevant sections of the PPG.

61. For an award to be made the two parts of the test have to be met – unreasonable behaviour that also results in unnecessary or wasted expense. It therefore follows that

the costs decision must specifically address, and clearly conclude on, these two questions.

62. In written representations cases the application and response[20] will have been submitted in writing and will already be a matter of record. There is therefore no need to rehearse the cases of the parties before setting out the reasoning.

63. Your reasoning should address the applicant's arguments as to why costs should be awarded, taking into account the counter arguments made in response by the other party. This reasoning should lead logically to your conclusion

64. The same principle applies in hearing and inquiry cases. However, the gist of any additional oral submissions should be noted. It may also help the sense of the decision if a very brief indication is given of the matters raised but this is not essential.

65. If both submissions were made verbally then these should be summarised as part of the decision to ensure that there is a record of them.

66. In Secretary of State casework, as well as following the above advice, the costs report should also record any written submissions in the list of inquiry documents appended to the main report. These should be cross-referenced at the start of the costs report and placed on the file.

67. If an application is made for a full award but does not succeed, then consideration should also be given in the same decision as to whether only a partial award is justified. As a general rule guard against making a full award of costs (as opposed to a partial award) against a successful appeal party[21].

68. If full and partial awards are sought as alternatives, deal with these in one decision but distinguish clearly between them.

69. You may have to disentangle the moment at which unreasonable actions 'kicked in' as opposed to the normal costs of undertaking an appeal. Specify in your decision in broad terms, what were the matters on which costs were expended unnecessarily or were wasted. If a partial award is made then the extent of that award should be clearly specified - this may require explanation about the time in the appeal process when the unreasonable behaviour led directly to unnecessary expense.

70. If both main parties apply for an award against each other you can deal with these in one decision letter (but remember to conclude separately in relation to each

[20] Where a party has given advance written warning of an intention to apply for costs and has clearly set out the basis for the claim, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case (PPG ID: 16-038-20140306).

[21] For example it would seem illogical to make a full award of costs against an appellant, on grounds of an unreasonable appeal, in circumstances where the appeal is allowed. But a partial award could be made for an element of unreasonable behaviour e.g. causing an adjournment of a hearing/inquiry.

application and to give a separate decision on each application). Alternatively, it might be more straightforward to deal with them as separate decisions.

71. Give clear reasons for your findings and be sensitive to the losing party (if they have lost the planning appeal this will be an added blow). Bring in the evidence given to you to back up what you say and ensure that your costs decision is 'on all fours' with the appeal decision.

Statutory consultees

72. Statutory consultees[22] play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. Where a local planning authority has relied on the advice of the statutory consultee in refusing an application, they may wish to request that the consultee in question attends the event or makes written representations to substantiate its advice as an interested party. In doing so this would make the statutory consultee a party to the appeal.

73. When the statutory consultee is a party[23] to the appeal, they may be liable to an award of costs to or against them. However, if they have not been party to the appeal then usually the LPA are the only party against whom an award can be made. You may wish to discuss the matter with the CDT before proceeding to a decision on the costs application.

Mayor of London Direction

74. Where the Mayor of London[24] (or any other statutory consultee) exercises a power to direct a planning authority to refuse planning permission, this party will be treated as a principal party at the appeal and may be liable for an award of costs if they behave unreasonably or have an award of costs made to them.

[22] PPG ID: 16-055-20140306

[23] s322(2) of the 1990 Act now states "The Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to the costs of the parties) in relation to proceedings in England to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry"

[24] S322B of the 1990 Act makes special provision for a award in the circumstances of a direction to refuse planning permission by the Mayor of London.

Third parties

75. The definition of a third party[25] includes a participating Government Department[26].

76. Interested parties who choose to be recognised as Rule 6 parties under the inquiry procedure rules may be liable to an award of costs if they behave unreasonably. They may also have an award of costs made to them. See the Planning Inspectorate guide on Rule 6 for more detail.

77. It is not anticipated that awards of costs will be made in favour of, or against, other interested parties, **other than in exceptional circumstances**[27]. An award will not be made in favour of, or against interested parties, where a finding of unreasonable behaviour by one of the principal parties relates to the merits of the appeal. However an award may be made in favour of, or against, an interested party on procedural grounds, for example where an unnecessary adjournment of a hearing or inquiry is caused by unreasonable conduct. In cases dealt with by written representations, it is not envisaged that awards of costs involving interested parties will arise.

Called-in planning applications

78. A "called-in" planning application places the parties in a different position from that in a planning appeal. The local planning authority is not defending a decision to refuse planning permission, or a failure to determine the application within the prescribed period.

79. In these circumstances, it is not envisaged that a party would be at risk of an award of costs for unreasonable behaviour relating to the substance of the case or action taken prior to the call-in decision. However, a party's failure to comply with the normal procedural requirements of inquiries, including aborting the process by withdrawing the application without good reason, risks an award of costs for unreasonable behaviour[28].

Non-planning casework

80. It may be possible to apply for an award of costs in regard to appeals under legislation made by other Government departments. An illustrative list of case types (covering

[25] PPG ID: 16-056-20140306

[26] Following commencement of Part 7, Chapter 1 of the Planning and Compulsory Purchase Act 2004, which ended the Crown's immunity from the planning system, Crown bodies are no longer immune in principle to an award of costs.

[27] PPG ID: 16-056-20140306

[28] PPG: Reference ID: 16-034-20140306

most planning and examples of other case types) where costs may be sought is available on the GOV.Uk site (here) and is reproduced at Annex D.

Which decision template should I use?

81. The appeal decision should refer to the costs application (using the standard paragraph) making clear costs is the subject of a separate decision.

82. The relevant costs decision template should be selected from DRDS options:

- Costs Decision – w rep
- Costs Decision – I/H
- Costs report

83. An example decision template is shown at Annex C.

Annex A: Relevant Court decisions

Meaning of 'unreasonable' in the costs context

***Manchester CC v SSE and Mercury Communications*, 1988 JPEL 774**. This case established that the word "unreasonable" has its ordinary meaning for the purposes of a costs award. It can be distinguished from the higher public law test for the courts namely unreasonable in the Wednesbury sense taken from the case of **Associated Provincial Picture Houses v Wednesbury Corporation (1948 1 QB 223).**

***Ealing R v Secretary of State for the Environment ex parte London Borough of Ealing* [1999] EWHC Admin 345**, in which the Judge stated that because of the discretionary nature of the award of costs by an Inspector, and the fact that the Inspector would be in the best position to judge whether a party had acted unreasonably, it would only very rarely be proper for this court to intervene and strike down a decision.

The Ealing case was followed by a number of cases including;

***R (Mole Valley DC) v SSETR [2000] WL and R v SSCLG ex parte Stratford upon Avon DC* [2014] unreported** – The court approved the Ealing case stating the Inspector is best placed to advise whether a party has acted unreasonably

Partial awards and reasons

***R v SSE, ex Parte North Norfolk DC* (12 July 1994)** - In dismissing the appeal on one main ground the Inspector had nevertheless awarded (partial) costs in relation to the Council's refusal of the other two main grounds (density and amenity). But there were no clear and intelligible reasons for the award. The question for the Inspector should have been not just that there was insufficient evidence to substantiate those two grounds but also how it was that the Council had acted unreasonably.

Scrivens v SSCLG [2013] unreported - In making a partial award of costs to the Council on the basis of (an unreasonably large) quantity of evidence produced by the Appellant, the Inspector should have indicated the proportion of evidence upon which that award was based. In the absence of such an indication the decision had to be quashed.

Annex B: The Local Ombudsman

Role of the Local Ombudsman

There may be allegations which suggest the basis of a complaint to the Local Ombudsman - on grounds of alleged maladministration by the LPA at the planning application stage or in handling a previous application; or perhaps the appellant says they have already made a formal complaint.

The Local Ombudsman regards the costs regime as a way of enabling complaints against an LPA's handling of a planning application to be resolved satisfactorily. This is because at that stage the applicant still has the remedy of exercising their statutory right of appeal against a refusal or failure to determine and can apply for an award of costs as part of that statutory process.

For this reason, if allegations are included in a costs application suggesting maladministration by the LPA, they should not simply be "ruled out" on the ground that they are a matter for the Local Ombudsman. However, if an applicant for costs does not mention the Local Ombudsman, neither should the Inspector. If the Local Ombudsman is referred to then this should be recorded (unless the application is made in writing) but need not be specifically referred to in the Inspector's conclusions. However, any allegations should be considered against the advice in the PPG[29].

The power to award costs is limited to those necessarily and reasonably incurred in the appeal process (see PPG[30]). So expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.

[29] Planning Practice Guidance ID 16-046-20140306 to 16-050-20140306

[30] Planning Practice Guidance ID 16-032-20140306

Annex C: Costs Decision Template

The Planning Inspectorate

Costs Decision

Site visit made on [insert date]

by [insert Inspector's name and qualifications]

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: [insert ref]

[insert address]

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 Name 1 for a [partial] [full] award of costs against Name 2.

The hearing was in connection with an appeal against the [refusal of] [failure of the Council to issue a notice of their decision within the prescribed period on an application for] [grant subject to conditions of] planning permission for [ ].

Decision

The application for an award of costs is allowed in the terms set out below. – **Or**:

The application for an award of costs is refused.

Reasons

The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. (DRDS, *PINS Help menu - Costs Circulars – England)*

[insert reasoning]

I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a [full][partial] award of costs is justified. – **Or**:

I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Order [where awarding costs]

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 [full name or respondent] shall pay to [full name of applicant], the costs of the appeal proceedings described in the heading of this decision [limited to those costs incurred in]; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to [person/body awarded against], to [whom] [whose agents] a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

[insert name] INSPECTOR

Annex C1: Inspector initiated Costs Award template

The Planning Inspectorate

Costs Award

Inquiry opened on [insert date]
Site visit made on [insert date]

by [insert Inspector name and qualifications]

an Inspector appointed by the Secretary of State

Award date:

Costs award in relation to Appeal Ref: [insert ref]

[insert address]

The award is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
The appeal was made by YYYY against an enforcement notice issued by ZZZZ District Council.
The inquiry was in connection with an appeal against an enforcement notice alleging the erection of rear roof extensions to the main roof of the dwelling house and to the roof of the two storey rear wing, including raising the ridge of the main roof of the property, and the erection of a roof extension on the rear wing.
The inquiry sat for[x] days from [x] to [x] 20xx.

99. **Summary of award: A partial award is made against the appellant.**

Procedural matters

Following the issue of my decision on [x] the Planning Inspectorate's Costs and Decision Team (CDT) wrote to the appellant to say that I was considering whether to make an award of costs against the appellant, because the appellant had pursued an appeal on ground (c) where there was no evidence to support the appellant's case, and in consequence there was no need for a Public Inquiry. Ground (c) is concerned with whether the matters alleged in the enforcement notice (if they occurred) do not constitute a breach of planning control.

The appellant responded in accordance with the timetable CDT set out.

The response by the appellant

The appellant had raised all along the fact that the Council had never responded to any correspondence, and for that reason an Inquiry was necessary, to find out what the evidence really was.

The appellant agreed that ground (c) should not have been pursued if there was compelling evidence that it was not permitted development. It was for the Council to have supplied this evidence in advance so that a sensible appellant would have said they would not continue. The Council did not do so and the appellant had no choice but to continue with the Inquiry.

Reasons

The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

It is clear from the evidence that …

For all of these reasons the development cannot be considered to be permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015.

I therefore conclude that the appellant had no reasonable prospect of success on the ground (c) appeal, and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated, and that a partial award of costs is justified. As the consequence of pursuing the ground (c) appeals an Inquiry was held; it was the sole reason for holding an Inquiry, a request which was made by the appellant and for the reasons given accepted by The Planning Inspectorate. In the event, based on the Criteria set out in Annexe K of Planning Appeals – England dated 23 March 2016, the appeal on the planning merits would normally have been dealt with by Written Representations, and I therefore consider that the unnecessary and wasted expense for the Council in preparing for and attending a Public Inquiry is also to be part of the award of costs.

Costs Order

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 [the appellant] shall pay to [the Council] the costs of the appeal proceedings described in the heading of this award limited to those costs incurred in dealing with the appeal on ground (c), and the costs of preparing for and attending a Public Inquiry over and above preparing for and attending a Written Representations appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

[The Council] is now invited to submit to [the appellant], to whose agent a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

[insert name] INSPECTOR

Annex D: Illustrative list of case types for which costs awards are available

It may be possible to apply for an award of costs in regard to appeals under legislation made by other Government Departments. An illustrative list of case types (covering most planning and examples of other case types) where costs may be sought is available on the GOV.Uk site (here) and is reproduced below:

Case types under the Planning Acts

Unless otherwise stated, costs applications can be made irrespective of procedure

Planning appeals under section 78 Town and Country Planning Act 1990 [TCPA]

Planning applications referred to the Secretary of State under section 77 TCPA

Enforcement appeals under section 174 TCPA

Listed building enforcement appeals under section 39 Planning (Listed Buildings and Conservation Areas Act 1990 [P(LB&CA)A]

Lawful development certificate appeals under section 195 TCPA

Advertisement appeals under 78 TCPA and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Tree preservation order appeals under section 78 TCPA and Regulations

Tree replacement enforcement notice appeals under section 208 TCPA and Regulations

Listed building consent appeals under section 20 P(LB&CA)A

Listed building enforcement notice appeals under section 39 P(LB&CA)A

Listed building consent applications referred to the Secretary of State under section P(LB&CA)A

Conservation area consent applications referred to the Secretary of State under section 74 (2)(a) P(LB&CA)A

Conservation area consent appeals under section 74 (3) P(LB&CA)A

Conservation area enforcement appeals under section 74 (3) P(LB&CA)A

Purchase notices referred to the Secretary of State under sections 139 and 140 TCPA

Listed building purchase notices referred to the Secretary of State under sections 33 and 34 P(LB&CA)A

Orders under section 257 or 258 TCPA relating to public rights of ways affected by development (Note: exceptionally, awards are available in these cases only if inquiry or hearing is held)

Appeals under section 22 of, and Schedule 2 to, the Planning and Compensation Act 1991 against determination of conditions to be attached to a registered old mining permission

Prohibition orders and orders (after suspension of winning and working of minerals or the depositing of mineral waste) for the protection of the environment, under Schedule 9 to the Town and Country Planning Act 1990, as amended by Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008

Appeals under Section 96 of, and Schedules 13 and 14 to, the Environment Act 1995 against, respectively, an initial determination of conditions to be attached to a mineral site or the terms of a working rights notice accompanying an initial determination, and a periodic determination of conditions to be attached to a mining site

Appeals under section 106B TCPA in respect of planning obligations

*Orders under sections 97 and 98 of, and Schedule 5 to, TCPA, revoking or modifying a planning permission

*Orders under sections 23 and 24 P(LB&CA)A, revoking or modifying listed building consent

*Orders under sections 220 TCPA and Regulations revoking or modifying a grant of advertisement consent

*Discontinuance orders under sections 102 and 103 of, and Schedule 9 to, TCPA

Completion notices requiring confirmation by the Secretary of State under section 95 TCPA

Hazardous substances applications referred to the Secretary of State under section 20 Planning (Hazardous Substances) Act 1990 [PHSA] and Regulations;

Hazardous substances consent appeals under section 21 PHSA and Regulations

Appeals under section 25 PHSA and Regulations against hazardous substances contravention notices

*Orders under section 14 and 15 PHSA and Regulations, revoking or modifying hazardous substances consent *These cases are regarded as analogous to compulsory purchase orders.

Examples of case types under non-planning legislation

Awards are available only if inquiry or hearing held, except where stated Otherwise

Appeals under section 18 Land Compensation Act 1961 (Note: awards available only if inquiry held)

Opposed definitive map orders under sections 53 and 54 Wildlife and Countryside Act 1981 relating to public rights of way

Opposed public path and rail crossing orders under sections 26, 118 to 119A Highways Act 1980 (as amended)

Applications referred under section 36 of the Electricity Act 1989 (Note: awards available only if inquiry held)

Appeals concerning integrated pollution control authorisations and waste management licenses under the Environmental Protection Act 1990, waste carrier licenses under the Control of Pollution (Amendment) Act 1989, and abstraction licenses and discharge consents under the Water Resources Act 1991;

Opposed compulsory purchase orders [Note: awards may also be made if the written representations procedure is followed