Planning Inspectorate

# Costs Decision

Hearing held on 3 November 2026

Site visit made on 4 November 2026

**by Diane Cragg DipTP MRTPI**

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

**Decision date: 25 November 2026**

**Costs application in relation to Appeal Ref: 6011988**
**Land at West Fen Farm, Whitemoor Road, March, PE15 0AF**

- 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 Alex Ross of PACE sunshine Energy Ltd for a full award of costs against Fenland District Council.
- The appeal was against the refusal of planning permission for Installation of solar photovoltaic (PV) farm with battery storage, substation and associated works including 3.0m high pole mounted CCTV cameras and 4.0m high acoustic fence.

## Decision

1. The application for costs is refused.

## The submissions for PACE sunshine Energy Ltd

2. The costs application was submitted in writing. However, further oral submissions were made by the applicant at the hearing:

3. Fundamentally the appeal has not been necessary. In terms of BMV the hearing evidence has raised additional concerns that there was no evidence about whether meat production must be as productive as arable production, there was incorrect assessment with regard to the minimum viable site in the site justification report, and the Council misunderstood or was not aware of the whole of the site selection evidence.

4. In relation to landscape matters, when questioned about specific viewpoints, the Council's responses were framed largely in general terms and did not refer to the effects arising from individual viewpoints. Furthermore, having regard to paragraphs 2.21 and 2.22 of the Guidelines for Landscape and Visual Impact Assessment, Third Edition, the Council's assessment did not appear to accord with the distinctions between landscape and visual effects. The Council's evidence was that some landscape effects would remain even after the proposed landscaping had matured. However, the evidence presented did not substantiate the degree of impact suggested elsewhere in the Council's case. Moreover, the landscape advice obtained by the Council during the application process concluded that the proposed mitigation would reduce the effects of the development to acceptable levels. Furthermore, the Council's position at the hearing was that the proposed hedgerow planting would provide effective mitigation.

5. In terms of the planning balance as the Council agrees that S5.1 of the Framework applies, the significant harm that has been identified, would not be sufficient with regard to earlier submission regarding the planning balance. Therefore, the

applicant maintains that the Council acted unreasonably by preventing or delaying development that should clearly have been permitted.

**The response by the Council Fenland District Council**

6. The Council's response was made partly in writing with the following additional points made at the hearing:

7. Site selection was based on the information submitted at the time of the application and discussed at the appeal; the appeal discussions did not change that assessment.

8. Regarding landscape even with the LVIA assessment the judgment is about planning harm, the impact of the development on the character of the area and the ability of people to perceive that harm. The reason for refusal is not specifically a criticism of the LVIA it is a planning judgment around harm including harm from the hedge. While the hedge would hide the built form it would appear as an alien feature which would not accord with the intrinsic character and beauty of the countryside.

**Reasons**

9. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

10. The application for an award of costs is made on substantive grounds. The applicant contends that the Council prevented or delayed development that should have been permitted, having regard to the development plan, national policy and other material considerations, failed to substantiate its reasons for refusal during the appeal process and relied on vague, generalised or inaccurate assertions about the proposal's impact that is unsupported by objective analysis. Alternatively, the applicant seeks a partial award of costs in relation to Reason for Refusal 1, on the basis that the Council failed to substantiate that reason. The PPG indicates that costs may be awarded in such circumstances.

11. In relation to best and most versatile agricultural land (BMV agricultural land), there was no dispute that the appeal site comprises BMV agricultural land or that the proposal would result in a change from its existing arable use for the duration of the development. The applicant's case was that this would not result in a significant loss of BMV agricultural land because agricultural use would continue through sheep grazing and the land would remain capable of agricultural production following decommissioning. The applicant's agricultural evidence further concluded that any harm to the BMV resource would be modest. Similarly, the planning officer's report attributed only moderate negative weight to the effect on BMV land, and the applicant endorsed the stance in this report.

12. The Council reached a different conclusion and considered that the proposed change from arable production for a period of approximately 42 years would represent a significant and prolonged loss of productive arable agricultural capability, to which significant weight should be attached.

13. The principal disagreement between the parties therefore concerned the significance of the effect on the agricultural land resource and the weight to be

attached to that effect. While I ultimately concluded that the proposal would not conflict with policy relating to BMV agricultural land, I am not persuaded that the Council's position amounted to a vague, generalised or unsupported assertion. Rather, it reflected a different interpretation of the evidence and a different exercise of planning judgment from that advanced by the applicant.

14. In these circumstances, I am not persuaded that the Council acted unreasonably in pursuing its case on BMV agricultural land or that it failed to substantiate the reason for refusal.

15. Nevertheless, the Council did not identify any alternative non-BMV sites and did not substantively engage with the applicant's site selection evidence. Instead, it maintained that the applicant had failed to demonstrate that the use of BMV agricultural land was unavoidable. However, that is not the policy test. As set out in the main decision, I found that the applicant had demonstrated that poorer quality land was not reasonably available. In the absence of evidence to the contrary, I conclude that the Council acted unreasonably in pursuing this criticism of the proposal.

16. Nevertheless, although site selection was discussed at the hearing, the applicant's case relied on evidence that had already been submitted at application stage. No additional site selection assessments, technical reports, or other notable substantive evidence were required in response to the Council's position and only limited time was required at the hearing to respond to this matter. Consequently, I am not satisfied that the Council's unreasonable behaviour in this respect resulted in wasted expense.

17. Although I agreed with the applicant's assessment that the landscape and visual harm would be moderate, the Council's position was supported by its officer's assessment and by an agreed baseline position that some harm would occur. Both parties considered the landscape and visual effects of the development, the matters are closely aligned, and I am satisfied that the Council sufficiently explained its reasoning. While the Council's landscape consultant did not attend the hearing, there is no requirement for specialist consultant to appear, and it was clear enough that the mitigation itself was part of the Council’s concerns.

18. In these circumstances, I am satisfied that the Council provided evidence capable of supporting its conclusions with regard to landscape matters and did not act unreasonably in defending this reason for refusal.

19. In relation to the planning balance, the Council was entitled to reach a different planning judgment on the significance of the identified harms and the weight to be attached to them. While the revised Framework introduced a different policy context for renewable energy development, the application of Framework Policy S5 nevertheless required the exercise of planning judgment. The fact that I ultimately reached a different conclusion on the overall planning balance does not demonstrate that the Council acted unreasonably.

20. Both parties were invited to comment on the implications of the revised Framework for the appeal. The applicant did not respond to that invitation and did not suggest, prior to the hearing, that the Council's case had become untenable as a result of the policy changes. Having explained its position on the effect of the revised Framework and the planning balance, the Council did not act unreasonably in continuing to pursue the appeal.

21. Overall, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in this case.

*Diane Cragg*

INSPECTOR