Case Name: *Low Carbon Solar Park 6 Ltd, R (On the Application Of) v Secretary of State for Levelling Up Housing and Communities & Anor* [2024] EWHC 770 (Admin) (05 April 2024)

Full case: Click Here

Commentary: This case concerned the Secretary of State for Levelling Up Housing and Communities decision to refuse planning permission for the construction and operation of a solar park near Manuden, Essex. Interestingly the decision by the SoS did not follow an appeal but rather an application made directly to the SoS for determination under section 62A of the Town and Country Planning Act 1990 due to the relevant local planning authority (Uttlesford DC) being placed in "special measures" due to inadequate performance of its planning functions.

The High Court claim was made by Low Carbon Solar Park 6 Ltd (the "Claimant") on grounds that the planning inspector appointed by the SoS had dealt with the Claimant's application in a way that was procedurally unfair and in doing so had failed to have regard to an obviously material consideration.

The central issue was whether procedural unfairness had occurred through the inspector's decision to disregard additional representations received from the Claimant after the close of the representation period pursuant to regulation 6(2)(b) of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013.

Following the receipt of the S62A application and the associated environmental statement, the SoS confirmed that written representations could be made from 9 February 2023 until 20 March 2023. During that period over 150 parties (including statutory consultees) responded and their representations were uploaded to the PINS website on a rolling basis.

On 27 April 2023 the Claimant submitted a "rebuttal statement" to PINS which included technical evidence in response to objections received during the consultation period regarding a wide range of planning matters. Of particular note was the Claimant's argument that uncertainty relating to the significance of underground archaeological assets (as raised in consultee comments) was immaterial as the above-ground foundation design could ensure that there would be no harm to the assets.

The inspector declined to accept the rebuttal statement without providing a reason and thereafter refused planning permission identifying a range of planning harms which were not outweighed by the benefits of the scheme.

While accepting the inspector's general discretion provided by regulation 6(2)(b), the Claimant asserted that in the circumstances the Claimant was entitled, as a matter of procedural fairness, to rebut the consultation objections arising because of the detailed

and technical nature of those objections which the Claimant could not have rebutted before they were made.

The SoS in defending the claim emphasised that:

a) the S62A process is designed to promote transparent and faster determination of planning applications; which is why the timeframes are tight and applicants are encouraged by guidance to front load applications; and

b) that the Claimant was aware of the gist of the objections as there had been previous refusal in relation to substantially the same site in 2021 which was refused for similar reasons.

In his judgment HHJ Jarman KC found that while some Inspectors may have accepted the Claimant's rebuttal statement that was not the legal test. Ultimately the inspector had discretion to refuse the rebuttal and no procedural unfairness arose since the Claimant knew the gist of the key objections and had adequate opportunity to respond prior to the end of the representation period. The claim was therefore dismissed on this basis.

HHJ Jarman KC also clarified that in his judgment the inspector would have come to the same conclusion even if he had taken into account the rebuttal statement due to the Claimant's failure to identify the significance of the heritage assets, which made it impossible to carry out the balancing exercise required by the NPPF. On this point HHC Jarman KC explained that the rebuttal statement had approached the issue from the wrong way round, the correct starting point being the identification of the significance of the asset before then moving to consider whether mitigation appropriately addresses the harm.

Case summary prepared by Chris Todman