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## Costs Decision

by Ken McEntee

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 19 July 2017

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### Appeal ref: APP/K0235/L/16/1200082: Application for costs

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by Bedford Borough Council against the appellant, [REDACTED]
- The appeal was made under section 218 of the Planning Act 2008 and on Regulation 117(1)(a),(b) and (c) and Regulation 118 of the CIL Regulations.

**Summary of decision: The application fails and no award of costs is being made.**

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### Reasons for the decision

1. The Council are claiming a full award of costs in relation to all the grounds of appeal made as they contend that they stood no reasonable prospect of succeeding. However, while I was constrained to dismiss the appeal on Regulation 117(1) (a), I am satisfied that the appellant presented an arguable case on this ground in relation to the surcharge for late payment. With regards to the surcharge for failure to assume liability, while I acknowledge that the appellant did not submit any evidence to support his case, for an award of costs to be made, it must be demonstrated that the appellant's actions caused the Council to incur wasted or unnecessary expense. With that in mind, I note that reference is briefly made to the [REDACTED] surcharge in paragraphs 3.3, 3.4 and 4.1 of the Council's statement. I am not satisfied that these references could reasonably be construed as involving quantifiable expense and I consider it more reasonable for such expense to be described as *de minimis*. Therefore, I do not consider an award of costs in this respect would be justified in these circumstances.
2. With regards to the application in relation to 117(1) (b), I have concluded in the appeal decision that I was satisfied the Council clearly issued a Liability Notice as required by Regulation 65. The appellant did not support his appeal on this ground with any evidence to the contrary. Therefore, I conclude that it stood no reasonable prospect of succeeding and the appellant acted unreasonably in submitting an appeal on this ground. However, as explained above, for an award of costs to be awarded, it must be demonstrated that the unreasonable behaviour has caused wasted or unnecessary expense to be incurred. I note that the Council did not actually respond to the appeal on ground 117(1) (b) in their statement of

case. Therefore, there is no evidence before me to show that the appellant's actions in appealing on ground 117(1) (b) resulted in the Council incurring any wasted or unnecessary expense in resisting it. An award of costs will therefore not be made in relation to ground 117(1) (b).

3. The basis of the appellant's case on ground 117(1) (c) is that as he considered the surcharges should not have been imposed in the first place, it followed that the surcharges in relation to late payment of the CIL were calculated incorrectly. While this argument may have been misguided, I do not consider it can be described as unreasonable behaviour. In any event, as the Council clearly miscalculated the late payment interest surcharge, it follows that the appeal on ground 117(1) (c) did stand a reasonable prospect of succeeding, at least in part.
4. However, part of the appeal on this ground also concerned the surcharge in relation to the failure to assume liability. As explained in paragraph 1 above, I am satisfied the appellant acted unreasonably by not submitting any evidence in relation to this issue. He also did not submit any evidence to demonstrate that the Council incorrectly calculated the surcharge of ██████████. However, as I also explained in paragraph 1, I take the view that any expense incurred in relation to this issue is *de minimis*. Therefore, I do not consider an award of costs is justified 117(1) (c).
5. The Council also argue that the appeal on ground 118 was invalid as it was not submitted within 28 days as required by Regulation 118 (2). However, the revised Demand Notice was issued on 8 December 2016 and the appeal was received on 5 January 2017, which amounts to exactly 28 days later. Therefore, the appeal was clearly received on time and was valid. I am also satisfied that the appellant produced an arguable case and supported it with documentary evidence. Therefore, I cannot conclude that the appeal on this ground stood no reasonable prospect of succeeding.

### **Conclusions**

6. The overall conclusion reached is that I cannot be satisfied on the evidence before me that the appellant acted unreasonably in the appeal process.

### **Formal decision**

7. For the reasons given above, I do conclude that the appellant did not act unreasonably, causing the Council to incur wasted or unnecessary expense as a result. No award of costs is therefore justified in the particular circumstances.
8. A copy of this letter has been sent to the appellant.

*K McEntee*