# **Costs Decision**

### by Ken McEntee

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

Decision date: 28 March 2019

## Appeal ref: APP/W0340/L/18/1200222: Application for costs

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by West Berkshire District Council against
- The appeal was made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (c) of the CIL Regulations.

Summary of decision: The application succeeds to the extent that a partial award of costs is being made.

#### Reasons for the decision

- The application for costs has been considered by reference to the Planning Practice Guidance on awards of costs (as published on the Gov.uk website), the appeal papers, the correspondence on costs and all the relevant circumstances. Paragraph 053 of the guidance is considered to be particularly relevant to this case by analogy.
- 2. The Council's application for costs against the appellant is made on procedural and substantive grounds. The alleged stated procedural grounds are as follows:-
  - The appellant failed to submit any evidence in support of the appeal under ground 117(1)(c).
  - The appellant failed to submit the correct Demand Notice.
  - The appellant failed to disclose key e-mail correspondence.

The alleged stated substantive grounds are as follows:-

- The appellant failed to accord with Regulation 67(1) by failing to submit a Commencement Notice.
- The appellant failed to inform the Council of a change in ownership of the site.

I shall address these allegations in turn.

3. Although the appellant ticked the box for an appeal under Regulation 117(1)(c), he has not explained or provided any supporting evidence to demonstrate why he

considers the surcharge has been calculated incorrectly. It is expected that the right of appeal is exercised responsibly with appellants ensuring they are in a position to support their case. As the appellant was professionally represented in this appeal, it is reasonable to expect the grounds of appeal to have been supported with evidence and reference to the relevant Regulations to demonstrate how the surcharge has been miscalculated. As this clearly did not happen in relation to the appeal under Regulation 117(1)(c), I can only take this as a concession by the appellant's agent that the appeal on this ground stood no reasonable prospect of succeeding at the outset. This amounts to unreasonable behaviour, the result of which caused the Council to incur wasted expense in having to address the appeal in relation to this ground. An award of costs will therefore be made.

- 4. The Council also allege that the appellant acted unreasonably by failing to submit certain documents with his appeal, such as the correct Demand Notice (dated 14 September 2018), seemal of 21 May 2018 and her e-mail of 26 October 2017 to . However, I can confirm that the bundle of appeal papers that the appellant submitted, included the Demand Notice of 14 September 2018 and 's e-mail to ■ of 21 May 2018. This bundle was automatically e-mailed to the Council by the Inspectorate's case officer on 22 October 2018 and an automated e-mail response was received. With regards to se-mail of 26 October 2017 to the appellant's agent points out, neither he or the appellant were party to correspondence sent to the previous land owner. In any event, notwithstanding the above, while it is expected that each party submit evidence in support of their case, it is also a matter for them to decide what that evidence entails and what they consider to be relevant to their case. Therefore, I do not conclude that the appellant acted unreasonably in this respect.
- 5. Turning to the claims made on substantive grounds, the Council are suggesting that the appellant acted unreasonably in failing to submit a Commencement Notice. However, while it is clear the appellant failed to follow the correct procedures by failing to submit a Commencement Notice to the Collecting Authority, it does not automatically follow that this amounts to unreasonable behaviour. The appellant was clearly convinced that he had correctly submitted a Commencement Notice and was therefore entitled to exercise his right of appeal in order to have this tested. The fact that his appeal was ultimately unsuccessful does not mean the appellant acted unreasonably in pursuing it on this ground.
- 6. Although the appellant did not notify the Council of the change of ownership of the site until 11 April 2018, I do not see what relevance this has to the appeal and cannot conclude that it amounts to unreasonable behaviour which caused the Council to incur wasted or unnecessary expense in relation to the appeal process.
- 7. The overall conclusion reached is that while I am satisfied the appellant acted unreasonably by failing to support his case under Regulation 117(1)(c), I am not satisfied he acted unreasonably in respect of any of the other allegations made. To this limited extent an award of costs will be made.

#### Formal decision

8. For these reasons, a partial award of costs, on grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.

## **COSTS ORDER**

- 9. Accordingly, in exercise of my powers under CIL Regulation 121 and all other powers enabling me in that behalf, I **HEREBY ORDER** that shall pay to West Berkshire District Council their costs of the appeal proceedings, limited solely to those costs incurred in responding to the appeal under Regulation 117(1)(c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
- 10. The Council are now invited to submit to details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to him.

K McEntee