

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), [REDACTED]'s e-mail of 21 May 2018 and her e-mail of 26 October 2017 to [REDACTED]. However, I can confirm that the bundle of appeal papers that the appellant submitted, included the Demand Notice of 14 September 2018 and [REDACTED]'s e-mail to [REDACTED] 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 [REDACTED]'s e-mail of 26 October 2017 to [REDACTED], as 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 [REDACTED] 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 [REDACTED], 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