



## Costs Decision

by **Ken McEntee**

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

Decision date: 17/09/2019

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### Appeal ref: APP/J3720/L/19/1200273: Application for costs

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by ██████████ against Stratford-on-Avon District Council.
- The appeal was made under section 218 of the Planning Act 2008 and under Regulations 117(1)(c) and 118 of the CIL Regulations.

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

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### Reasons for the decision

1. 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 under "Appeals"), my appeal decision, the appeal papers, the correspondence on costs and all the relevant circumstances. Paragraph 048 of the guidance is considered to be particularly relevant to this case by analogy.
2. The appellant initially appealed<sup>1</sup> against the Demand Notice of 5 February 2019. However, due to it stating an incorrect CIL payable amount and surcharge, it was superseded by the Demand Notice of 2 April 2019, the subject of this appeal. I do not consider that the Council acted unreasonably in determining the development to be CIL liable and for imposing a surcharge, for the reasons explained in my appeal decision. However, the errors in the Demand Notice of 5 February 2019 caused the original appeal to be aborted and a new one to be submitted. It is reasonable to conclude that had the Demand Notice of 5 February 2019 been correct at the outset, there would have been no need for a further appeal. Therefore, I conclude that the council's actions amounted to unreasonable behaviour within the scope of the guidance.
3. As this appeal was made on the same grounds as the previous one, with the majority of the same documents submitted, I consider that most of the expense incurred in this appeal was re-useable from the previous one and therefore was not wasted. However, as the appellant was professionally represented, I am satisfied that, although limited, at least some quantifiable expense was incurred

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<sup>1</sup> APP/J3720/L/19/1200261

by the appellant in the submission of this appeal. An award of costs will therefore be made, limited to any expense that was not re-useable from the original appeal.

### **Formal Decision**

4. For the reasons given above, I conclude that the Council acted unreasonably, causing the appellant to incur wasted or unnecessary expense in the appeal process. A partial award of costs is therefore justified in the particular circumstances.

### **COSTS ORDER**

5. Accordingly, in exercise of my powers under Regulation 121 of the CIL Regulations 2010 (as amended), and all other powers enabling me in that behalf, **I HEREBY ORDER** that Stratford-on-Avon District Council shall pay to [REDACTED] costs of the appeal proceedings before the Secretary of State, limited to those costs that were not re-useable from appeal APP/J3720/L/19/1200261; such costs to be assessed in the Senior Courts Costs Office if not agreed.
6. You are now invited to submit to [REDACTED] at Stratford on Avon District Council, details of those costs with a view to reach agreement on the amount. A copy of this letter has been sent to her.

*K McEntee*