



Costs Decision

by Ken McEntee

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

Decision date: 8 October 2019

Appeal ref: APP/D1590/L/19/1200262: Application for costs

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

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

Procedural matters

1. Much of the appellants' application for costs focusses on the fact that the Council did not serve Liability Notices in relation to Prior Approval permissions [REDACTED]. They claim that had the Council done so, the appellants would have been alerted to the CIL requirements at the outset. However, I can only consider whether or not the Council has acted unreasonably specifically in relation to this appeal. Therefore, it is only relevant to consider whether the correct procedures were adhered to by the Council in relation to permission [REDACTED], the subject of this appeal. If the appellants are unhappy with the Council's conduct or their adopted procedures, they may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

Reasons for the decision

2. 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.
3. It is clear from paragraph 3 of my appeal decision, that I do not consider the Council acted incorrectly in relation to the appeal under Regulation 117(1)(b) and therefore they have not acted unreasonably. However, in relation to the appeal under Regulation 118, I consider that the Council's error in issuing the Demand

Notice with an incorrectly deemed commencement date was one of their own making as it did not comply with the requirements of Regulation 7. Therefore, I conclude that the Council's error amounts to unreasonable behaviour, the result of which caused the appellants to incur wasted expense in having to submit an unnecessary appeal under Regulation 118. An award of costs will therefore be made, limited to any expense incurred in submission of the appeal under Regulation 118.

Formal Decision

4. For the reasons given above, I conclude that the Council acted unreasonably, causing the appellants 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 Southend on Sea Borough Council shall pay to [REDACTED] their costs of the CIL appeal proceedings before the Secretary of State, limited to those costs incurred solely in relation to the appeal under Regulation 118; such costs to be assessed in the Senior Courts Costs Office if not agreed.
6. You are now invited to submit to Amanda Rogers, Senior S106 & CIL Officer at Southend on Sea Borough 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