



Costs Decision

by **Ken McEntee**

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

Decision date: 21 November 2019

Appeal ref: **APP/F0114/L/19/1200295: Application for costs**

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by [REDACTED] against Bath & North East Somerset District Council.
- The appeal was made under section 218 of the Planning Act 2008 and under Regulations 117(1)(a) and Regulation 118 of the CIL Regulations.

Summary of decision: The application succeeds and a partial award of costs is being made.

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 basis of the appellant's claim is that due to the Collecting Authority (Council) conceding that they had issued a Demand Notice with an incorrectly determined deemed commencement date and issuing a revised Demand Notice, he incurred wasted expense in submitting an unnecessary appeal. The Council accept that the appellant should be entitled to the costs incurred in relation to this appeal, but contend that the award should not include any additional evidence the appellant has decided to include in the new appeal¹ against the revised Demand Notice that was not directly caused by the Council's error.
3. I am satisfied that the Council's actions amount to unreasonable behaviour which has caused the appellant to incur unnecessary expense. However, as an appeal has been made against the revised Demand Notice on the same grounds, I consider that a significant amount of the costs incurred by the appellant in this appeal are re-useable in the new appeal. I also agree with the Council that while it is reasonable that there may be amendments to the evidence, given the new deemed commencement date given in the revised notice, any additional evidence

¹ APP/F0114/L/19/1200323

the appellant has decided to submit in the new appeal that was not as a result of the Council's actions, should not be included in the award of costs. Nevertheless, as the appellant was professionally represented, I am satisfied that at least some quantifiable expense was incurred by the appellant in submission of this appeal. An award of costs will therefore be made.

4. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the proceedings before him. He does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

Formal Decision

5. 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

6. 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 Bath & North East Somerset Council shall pay to [REDACTED], his costs of the CIL appeal proceedings before the Secretary of State, limited to those costs that are not re-useable in relation to appeal APP/F0114/L/19/1200323; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. You are now invited to submit to [REDACTED], of Bath & North East Somerset Council, 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