



Costs Decision

by Ken McEntee

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

Decision date: 26 March 2020

Appeal ref: APP/W0340/L/19/1200307: 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 Council against the appellant, [REDACTED]
- 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 fails and no 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), the appeal papers, the VOA costs decision, the correspondence on costs and all the relevant circumstances.
2. The basis of the Council's claim is that the appellant acted unreasonably by not providing any supporting evidence in relation to both grounds of appeal made. However, it appears clear to me that in relation to the Regulation 117(1)(a) appeal the appellant's agents clearly argue that the claimed breach did not occur as the appellant was not required to submit a Commencement Notice due to the development not being CIL chargeable. Therefore, I am satisfied the appellant provided supporting arguments in relation to this ground of appeal.
3. An appeal under Regulation 117(1)(c) is that the surcharge has been incorrectly calculated. As the appellant's main purpose in appealing was to challenge the imposition of the surcharge, rather than its calculation, an appeal under this ground was technically not appropriate. I also note that no supporting arguments were submitted in support of this ground until the agents' final comments of 1 November 2019. Although I agree that the appellant's supporting case should have been set out with the original appeal submissions, I am not satisfied the failure to do so caused the Council to incur any wasted or unnecessary expense. In their statement of case, the Council explained how the surcharge was calculated in line with Regulation 83, which is something they would be required to do irrespective of what an appellant's supporting arguments might be. In other words, the appellant's lack of supporting arguments did not

cause the Council to carry out any further work than that automatically expected in resisting an appeal under Regulation 117(1)(c). No award of costs will therefore be made.

Formal decision

4. For these reasons, no award of costs, on grounds of “unreasonable” behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.
5. A copy of this letter has been sent to [REDACTED]

K McEntee