

Costs Decision

by Ken McEntee

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

Decision date: 27 March 2020

Appeal ref: APP/L5810/L/19/1200320: Application for costs

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by **Example 1** against the London Borough of Richmond upon Thames.
- The appeal was made under section 218 of the Planning Act 2008 and under Regulation 118 of the CIL Regulations.

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

Reasons for the decision

- 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 049 of the guidance is considered to be particularly relevant to this case by analogy.
- 2. The main basis of the appellant's application for costs is that the Council acted unreasonably by not contacting him to find out when works began on the chargeable development. He contends that had they done so it would have avoided the need to incur expense in having to submit an appeal.
- 3. The Council point out that they did not receive a valid Commencement Notice (CN) prior to works beginning on the chargeable development as required by Regulation 67(1). However, before a valid CN can be submitted a Liability Notice (LN) must be issued as it acts as the trigger for a CN to be submitted. Providing information by other means, such as the Council's website, does not act as a substitute for the required LN. It is not possible without a LN for a valid CN to be submitted as a CN requires the LN to be identified in accordance with Regulation 67(2)(b). There is no evidence before me that a LN was issued at the time planning permission was granted. Inexplicably, one was not issued until some 6 years later, which understandably came as a complete surprise to the appellant. In the absence of a LN, it was simply not

possible for the appellant to have informed the Council of the intended date of commencement of the chargeable development by way of a valid CN.

- 4. Therefore, although the Council argue that there is no requirement within the CIL Regulations to proactively contact developers requesting information, I take the view that in this case it was reasonable to expect the Council to have done so in view of the fact they did not issue a prompt LN. They contend that they did not receive a response to the covering letter that accompanied the Liability Notice until 12 August 2019. However, they do not state that the covering letter requested the appellant to provide the date of commencement of the chargeable development. Had they made such a request, it is reasonable to conclude that the appellant would have provided the necessary information and the Council would have prevented the appellant from incurring expense in submitting an unnecessary appeal. An award of costs is therefore considered justified.
- 5. The appellant requests the award of costs to include expense incurred on all matters arising from the service of the Liability Notice. However, an award of costs can only be made in relation to those costs incurred in the appeal proceedings. I have no power to award costs for expense incurred outside of the appeal process.

Formal Decision

6. 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 full award of costs is therefore justified in the particular circumstances.

COSTS ORDER

- 7. 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 the London Borough of Richmond upon Thames shall pay to **Exercise** his costs of the CIL appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed.
- 8. You are now invited to submit to the London Borough of Richmond upon Thames, 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