Planning Inspectorate

Costs Decision

Site Visit held 14 February 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2025

Costs application in relation to Appeal Reference: APP/E3335/L/24/3350528

[redacted]

- The application is made under regulation 121 of the Community Infrastructure Levy Regulations 2010 ("the CIL 2010").
- The application is made by [redacted] for a full award of costs against Somerset Council ("the CA").
- The appeal is in connection with a CIL Demand Notice issued in connection with planning permission [redacted] for "[redacted]."

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in appeals normally meet their own expenses. However, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The CA may not have responded to the applicant's repeated requests for details of what works had commenced the chargeable development. However, r7(2) of CIL 2010 states *"Development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land."* The relevant land in this case is the land the subject of planning application [redacted], which is also the relevant planning permission. R7(6) of the CIL 2010 confirms that *"material operation"* has the same meaning as in s56(4) of the Town and Country Planning Act 1990 (as amended) ("1990 Act").

4. Planning permission [redacted] relates to the [redacted]. This planning permission does not expressly provide for the development to be carried out in phases. The works to create the access and lay the shared drive are material operations that began the development in accordance with s56(4) of the 1990 Act. R6(1) states that *"The chargeable development is the development for which*

planning permission is granted." While the CA issued separate Liability Notices for each of the two detached dwellings, the access and drive works commenced both chargeable developments. The Liability Notices had confirmed that £0 was payable as Exemption Notices (EN) were in place. The applicant's EN would have stood had their plot not been sold, which I found constitutes a disqualifying event.

5. Correspondence between the applicant and the local planning authority in July 2021 confirms the development granted planning permission by virtue of application [redacted] had been commenced by the access and drive being partially constructed. The appellant was therefore aware of what material operation the CA considered had been commenced in respect of the chargeable development before the CIL Demand Notice was issued. A further exchange of email correspondence in August 2024 clarified the CA's position with regards to the commencement of the chargeable development.

6. The grant of planning permission under s73 of the 1990 Act (application reference [redacted]) has no effect in respect of the CIL regulations applicable to the previously commenced development under application reference [redacted].

7. Even if the CA had engaged further, their stance regarding the commencement of the chargeable development would have been unlikely to change. The appeal would, more likely than not, have still been made. I therefore conclude the applicant was not put to any unnecessary costs associated with making the appeal because the CA failed to engage further.

M Madge

INSPECTOR