



Costs Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 30 October 2024

Appeal ref: APP/R3650/L/24/3347907: Application for costs

[REDACTED]

- The costs application is made under Regulation 121 of the Community Infrastructure Levy Regulations 2010.
- The application is made by [REDACTED] against Waverley Borough Council.
- The appeal was made under section 218 of the Planning Act 2008 and under Regulation 117(1)(a) and (c) of the CIL Regulations.

Summary of decision: The application succeeds and a full 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. While the PPG gives examples of what type of behaviour may give rise to an award of costs, it also explains that the examples are not exhaustive.
2. The application for an award of costs is based on more than one claim of unreasonable behaviour. The first concerns the fact that the Demand Notice incorrectly imposed a surcharge for failure to assume liability. The appellants suggest that had this error been corrected earlier, the appeal may have been avoided altogether. The Council have acknowledged that this was an error and that the surcharge was in fact for late payment of the CIL after 6 months. As the main purpose of the appeal was to challenge the late payment surcharges in view of the instalment plan agreed by the Council, I consider it reasonable to conclude that the appellants were committed to appealing irrespective of the Council's description error.
3. The appellants also contend that the Council acted unreasonably by not contacting them since the Liability Notice was issued in order to reiterate the consequences of failing to follow the payment procedures. However, once a Liability Notice is served, the onus lies with the recipient to ensure they follow the correct procedures as explained in that notice. The Council are under no obligation to send out reminders. Therefore, I do not consider they acted unreasonably in this respect.

4. Where I do agree with the appellants is in relation to the Council's decision to effectively renege on the instalment plan to which they had agreed, and to serve a Demand Notice imposing late payment surcharges instead. I consider that this amounted to unreasonable behaviour, the result of which clearly caused the appellants to incur wasted expense in having to submit an unnecessary appeal. An award of costs will therefore be made.

Formal Decision

5. 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 full 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 Waverley Borough Council shall pay to [REDACTED], their 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.
7. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling her to award to a party the costs necessarily and reasonably incurred in relation to the appeal proceedings before her. She 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.
8. You are now invited to submit to [REDACTED], Infrastructure & Implementation Consultant at Waverley Borough Council, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

K McEntee