The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 17 July 2014

Appeal ref: APP/D1780/L/14/1200010

[redacted]

- The appeal is made under Regulation 117(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by Southampton City Council under Regulation 83.
- A liability Notice was issued on 3 March 2014.
- A Demand Notice was issued on 9 April 2014.
- The relevant planning permission for which the CIL surcharge relates is [redacted].
- The description of the development is "Redevelopment of the site. Erection of a 3-storey building to provide 9 flats (1x 3-bed, 5x 2-bed and 3x 1-bed flats) with associated parking and cycle/refuse storage".
- The outstanding surcharge payable for failure to assume liability is £50.
- The outstanding surcharge payable for failure to submit a Commencement Notice is £2,500.

Summary of decision: **The appeal is dismissed and the surcharge of £2,500 is upheld.**

Basis for the appeal

1. The appellant does not contest the Liability surcharge of £50 imposed under CIL Regulation 80. The appeal is made on the basis that the surcharge of £2,500 is excessive. The appellant contends that a surcharge exists so that a Council does not lose out financially and should be a direct representation of the work carried out by the Council. He asserts that in this case the only expense that the appellant's failure to submit a commencement notice caused the Council, was having to administer one single letter. The appellant also points out that his architect contacted the Council about commencing demolition and was told that it would be ok to start with no mention that demolition would constitute commencement of the planning permission.

2. The Council contend that they have correctly calculated the surcharge as per Regulation 83 and that there is no provision for a sliding scale. Therefore, they are satisfied they have imposed the correct surcharge. They also point out that they would have expected the appellant's architect to have contacted Jo Moorse (Planning Agreements Officer) on queries concerning CIL instead of the planning officer who would only have answered their question in the context of planning conditions.

Conclusions

3. Much of the appellant's arguments are more in mitigation as to why he did not submit a commencement notice before starting work on the chargeable development, as required by Regulation 67, and about the Council's handling of the matter. The appellant points to the fact that he was new to the planning process and was not aware that demolition of the existing building meant that development had commenced. Clearly there has been an unfortunate misunderstanding in this case. I note from an e-mail exchange submitted in evidence that the appellant's architect informed a planning officer at the Council that the appellant hoped to commence demolition the following week. The appellant argues that his architect could have been warned at that stage of the need to submit a commencement notice as demolition constituted commencement of the development. However, whilst I can appreciate the appellant's argument, I consider it significant that in the e-mail exchange there is no evidence that his architect asked a specific question concerning CIL obligations or concerning clarification as to whether demolition constituted commencement of the planning permission. It is not the case, for example, that a specific question was asked and incorrect or inadequate information was given in response.

4. I appreciate that it may have been the appellant's first foray into the planning process, but it is also a fact that he was professionally represented. Furthermore, as the Council point out, the Liability notice that was issued on 3 March 2014 clearly set out what was required and warned of the possibility of surcharges being imposed if the correct procedures were not followed.

5. The appellant also refers to other similar cases that he has become aware of as a result of a Freedom of Information request, where the developers were sent a reminder, rather than a surcharge, when they failed to submit a commencement notice at the right time. That being the case, I have some sympathy with the appellant as on the face of it this would appear to indicate a level of inconsistency in the Council's approach to dealing with individual cases. However, the procedures adopted by a planning authority for dealing with such cases are generally a matter for the authority within the context of local government accountability and not something for me to consider in the determination of this appeal.

6. While I have some sympathy with the appellant in this case, I can only determine the appeal on the ground made. The appeal is made under Regulation 117(c), which states that the surcharge has been calculated incorrectly. Regulation 83(1) states that *"Where a chargeable development (D) is commenced before the collecting authority has received a valid commencement notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2,500, whichever is the lower amount".* The Regulation does not make any provision for a sliding scale based on actual expense incurred by the Council due to the appellant's failure to submit a commencement notice. In this case, the CIL that the appellant is liable to pay, and is not disputed, amounts to [redacted]. 20% of this sum amounts to [redacted]. Therefore, £2,500 is the lower amount and consequently it is clear that the surcharge has been correctly calculated. This is a matter of fact and therefore the appeal cannot succeed on the ground made.

Formal decision

7. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the surcharge.

K McEntee