The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 20 August 2015

Appeal ref: APP/F5540/L/15/1200024

[redacted]

- The appeal is made under Regulation 117(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against surcharges imposed by the London Borough of Hounslow.
- The alleged breaches which led to the imposition of the surcharges are failure to assume liability and failure to submit a Commencement Notice.
- A Liability Notice was issued on 5 June 2014.
- A Demand Notice was issued on 27 April 2015.
- Details of the Demand Notice are; "Initial amount [redacted] Index: [redacted], Interest [redacted] Surcharge for not assuming liability [redacted] Surcharge for not sending in a commencement notice [redacted], Surcharge for non payment [redacted].
- The relevant planning permission for which the CIL surcharge relates is [redacted].
- The description of the development is "Erection of a two storey side extension to the existing house and subdivision to provide a new house".

Summary of decision: **The appeal is allowed and the surcharges are quashed.**

Basis for the appeal

1. The appeal is made on the basis that the claimed breach which led to the surcharge did not occur. The appellant contends that he did not receive a Liability Notice and consequently he was unaware that he needed to pay a CIL. Nevertheless, he is happy to pay the initial CIL but disputes that he should pay any surcharges. The Council contend that they sent a Liability Notice to the appellant by post.

Conclusions

2. Regulation 80 states that a collecting authority may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if (a) nobody has assumed liability to pay CIL in respect of the chargeable development and (b) the chargeable development has been commenced.

3. Regulation 83 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 of D or £2,500, whichever is the lower amount. An appeal under section 117(b) states that the collecting authority did not serve a liability notice in respect of the chargeable development to which the surcharge relates.

4. It is noted that the initial CIL is not in dispute, with the appellant conceding that he is happy to pay the required amount. However, he disputes the surcharges imposed as he insists he did not receive a liability notice. The Council state they sent the liability notice of 4 June 2014 to the appellant by post. In a situation such as this, it is very difficult to prove the matter on way or the other in the absence of any documentary evidence. However, the onus is very much on the Council to ensure a liability notice is correctly served. It is unfortunate that they did not serve the notice by registered post, which provides proof of postage and a signature of receipt, or by e-mail, where they could be confident of safe receipt if no delivery failure notice is received. In the absence of any proof of postage before me, I take the view that I have no option but to give the benefit of the doubt to the appellant's contention that he did not receive the liability notice. Consequently, I have to conclude that a notice was not served by the Council. As such, the appellant would not have been aware of the need to assume liability or to submit a commencement notice before starting work on the approved development. In these circumstances, I will allow the appeal and quash all surcharges that are as a consequence of the non-service of the liability notice.

Formal decision

5. For the reasons given above, and in exercise of the powers transferred to me under Regulation 117 (4) of the 2010 Regulation, I hereby allow the appeal and quash the surcharges imposed as a consequence of the non-service of the liability notice.

K McEntee