



Appeal Decision

by **Ken McEntee**

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

Decision date: 13 July 2016

Appeal ref: APP/X1735/L/16/1200038

- The appeal is made under Regulation 117(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by South Lakeland District Council.
- A Liability Notice was issued on 27 August 2015.
- A further Liability Notice was issued on 7 October 2015.
- A Demand Notice was issued on 7 October 2015.
- A further Demand Notice was issued on 24 February 2016.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is "Single dwelling (Revised scheme [REDACTED])".
- The outstanding surcharge payable for failure to pay the CIL within 30 days is [REDACTED].

Summary of decision: The appeal on ground (a) is dismissed. The appeal on ground (c) is allowed and the surcharge of [REDACTED] is amended to [REDACTED].

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 1 July 2016.

Procedural matters

1. Although the appeal is made on grounds (a)¹ and (c)² of CIL Regulation 117, it appears clear that the primary purpose of the appeal is to effectively buy some time while the appellant attempts to reach an amicable solution with the Council. For the avoidance of doubt, I can only consider the appeal on the grounds before me; there is no ground available on which it is possible to consider putting matters on hold as suggested by the appellant.
2. The appellant also appears to be questioning the amount of CIL liability. However, if the appellant disagreed with the calculation of the chargeable amount of CIL payable, it was open to him under Regulation 113 to request that the Council review it. If after receiving a decision on the review he was still aggrieved, he could have exercised his right of appeal under Regulation 114 to the Valuation Office Agency within 60 days from the date of the Liability Notice. As there is no evidence before me of any such review or subsequent appeal having

¹ That the claimed breach which led to the surcharge did not occur

² That the surcharge has been calculated incorrectly

been made, the CIL chargeable amount of [REDACTED] is taken to be correct. The only calculation before me to consider is that of the surcharge of [REDACTED].

Reasons for the Decision

3. With regards to the appeal on ground 117 (a), it is noted that this is an unusual situation where the development, the subject of the CIL, was granted planning permission retrospectively as it was not built in accordance with the original planning permission ([REDACTED]). At the time of the original permission there was no CIL schedule in place within South Lakeland District Council. However, CIL was in force by the time of the retrospective permission. The CIL guidance explains that where planning permission has been granted after commencement, the development may be deemed to be liable when permission is granted. Consequently, the Council correctly issued a Liability Notice and Demand Notice on 7 October 2015 for the CIL payment of [REDACTED] after agreeing a CIL liable area of [REDACTED]. The Demand Notice clearly explained that surcharges may be imposed if payment is not received within 30 days, which is in accordance with Regulation 85. As no payment was received within 30 days the Council issued a revised Demand Notice on 24 February 2016 to include a surcharge which now took the outstanding amount payable to [REDACTED].
4. As no payment was received by the Council within the required time period, which is not disputed by the appellant, I am satisfied that the claimed breach, which led to the surcharge, occurred as a matter of fact. The appeal on Regulation 117 (a) fails accordingly.
5. Turning to the appeal on ground 117 (c), I have to decide if the surcharge has been correctly calculated. Regulation 85 explains that where payment is not received in full after a period of 30 days the collecting authority may impose a surcharge of 5% of the unpaid amount or £200, whichever is the greater. 5% of [REDACTED] which is obviously greater than £200. Added to this however, Regulation 87 explains that if payment is not received in full within the due date, the person liable must pay interest at an annual rate of 2.5 percentage points above the Bank of England base rate (0.5%). Therefore, $2.5\% + 0.5\% = 3\%$. [REDACTED] divided by 3% = [REDACTED], which would be the annual sum due. However, when broken down to a daily rate it amounts to [REDACTED] per day ([REDACTED] divided by 365 days). The total for the 30 days outstanding = [REDACTED]. [REDACTED]. When [REDACTED] is added to the surcharge of [REDACTED] it totals [REDACTED]. Therefore, although the Council have followed the correct method of calculations, I find that their calculation of the overall total is incorrect by [REDACTED]. In view of this, the appeal on ground 117 (c) succeeds accordingly.

Formal decision

6. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal on ground (a) of CIL Regulation 117, but I allow the appeal on ground (c) of CIL Regulation 117 and correct the surcharge accordingly.

K McEntee