



Appeal Decision

by Ken McEntee

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

Decision date: 11 January 2017

Appeal ref: APP/A1910/L/16/1200056

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) and 117 (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] and [REDACTED].
- A Liability Notice was served on the appellants on 9 December 2015.
- A Demand Notice was served on the appellants on 2 September 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "Details of hard and soft landscaping works as required by condition 4 of planning permission [REDACTED] (construction of two storey detached dwelling with associated parking)".
- The alleged breach of planning control is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal under Regulations 117(a) and 117 (c) are dismissed and the surcharge of [REDACTED] is upheld.

The appeal under Regulation 117 (a)

1. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced.
2. In this case, the appellants do not deny that they failed to submit a Commencement Notice before starting works on the approved development. They concede that they received the relevant Liability Notice and were fully aware of the need to submit a Commencement Notice before beginning works. Therefore, their appeal is more one of mitigation, rather than refuting the alleged breach. The appellants contend that they could not find the relevant forms on the Council's website and had difficulty in trying to contact the CIL officer (Robert Freeman) in order to seek help in completing the forms. While I have some sympathy if the appellants experienced such difficulties, it is not clear why they did not try ringing the Council's main contact number to explain their predicament and to seek help in obtaining the relevant forms or in contacting Mr Freeman. Failing that, they could have visited the Council's offices in person.

3. The onus was on the appellants to ensure a Commencement Notice was submitted at least one day before works were due to commence. While the difficulties the appellants encountered in contacting the CIL officer at the Council and in obtaining the relevant forms were unfortunate, I consider that there were other options open to them and I am not satisfied on the evidence before me that every effort was made by the appellants to ensure they were in a position to submit a Commencement Notice before starting works. Therefore, I take the view that to press ahead with the works, given the potential surcharge they could be faced with, was a risky strategy for the appellants to take. The inescapable fact is that the appellants failed to submit a Commencement Notice before beginning works as required by Regulation 67. Therefore, the appeal under Regulation 117 (a) fails accordingly.

The appeal under Regulation 117 (c)

4. An appeal on this ground states that the surcharge has been calculated incorrectly. However, the appellants have not submitted any arguments or evidence to support this ground of appeal. 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 in respect of D or £2,500, whichever is the lower amount. The CIL payable in this case is [REDACTED]. 20% of [REDACTED], which is obviously lower than £2,500. Therefore, it is clear that the surcharge has been correctly calculated. In these circumstances, the appeal under Regulation 117 (c) fails accordingly.

Formal decision

5. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharge.

K McEntee