The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 03/03/2017

Appeal ref: APP/P2365/L/16/1200065
[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted].
- A Liability Notice was served on 30 June 2015.
- A Demand Notice was served on 10 October 2016.
- An amended Demand Notice was served on 25 October 2016.
- The relevant planning permission to which the CIL surcharge relates is [redacted].
- The description of the development is: [redacted].
- The alleged breaches of planning control are the failure to assume liability and the failure submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is [redacted].
- The outstanding surcharge for failure to submit a Commencement Notice is [redacted].

Summary of decision: **The appeal under Regulations 117(a) is dismissed and the surcharges of [redacted] and [redacted] are upheld.**

Procedural matters

1. The Demand Notice refers to the second surcharge as relating to the failure to submit a notice of chargeable development. However, in correspondence of 10 February 2017, which was copied to the appellant, the Council confirmed that this is an error and the surcharge is in fact in relation to the failure to submit a Commencement Notice. I am satisfied I can determine the appeal on this basis without causing any injustice to the appellant.

Reasons for the decision

2. As well as the failure to submit a Commencement Notice, as required by Regulation 67, the other alleged breach of planning control which led to the surcharges is the failure to submit an Assumption of Liability Notice, as required by Regulation 31. An appeal under Regulation 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. In this case, the appellant does not deny that he failed to submit either of these notices before commencing works on the chargeable development. His arguments are more in mitigation as he contends he was told by the Council that he would not have to pay CIL as he would be contributing to the local area as a resident. However, the

Council contend that they have no record of any such conversation. Unfortunately, as there is no documentary evidence before me to confirm the appellant's assertion, I can only give it limited weight.

3. The appellant also contends that he was unaware of the need to submit the relevant notices before commencing works on the development. However, a Liability Notice was served by the Council on 30 June 2015 which fully explains the CIL procedures and what is required to be done before works are commenced. Although the notice was served on the previous land owners, as the Council point out, it was registered as a local land charge at the time it was served, which the Council are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land and any purchaser or owner of the property is deemed to have full knowledge of any burden attached to the land by virtue of the registration. The wording of Regulation 117 (b) is not personalised for this reason.

4. As the Council also point out, the appellant confirms in the appeal form that he bought the land with planning permission [redacted]. Appendix 1 of the decision notice gives clear guidance on the CIL procedures and potential surcharges for any breaches of the process.

5. While I have some sympathy with the appellant if there has been a genuine misunderstanding of the situation, on the evidence available I can only conclude that the appellant should have been aware of the CIL procedures as explained in the Liability Notice. Therefore, I am satisfied that the breaches of planning control that led to the surcharges, occurred as a matter of fact. In these circumstances, the appeal cannot succeed.

Formal decision

6. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharges.

K McEntee