The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision 16 June 2017

Appeal ref: APP/X4725/L/17/1200099

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted].
- A Liability Notice was served on 4 July 2016.
- A Demand Notice was served on 17 February 2017.
- 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].
- The deemed commencement date given in the Demand Notice is 7 February 2017.

Summary of decision: **The appeal under Regulation 117(a) is dismissed and the surcharges of [redacted] and [redacted] are upheld. The appeal under Regulation 118 is dismissed.**

The appeal on Regulation 117 (a)

1. 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 that it was not clear from the Liability Notice that he was required to submit a Commencement Notice before beginning works. He assumed that as the notice required nil payment, the rest of the notice did not apply to him. However, while I appreciate this was an unfortunate misunderstanding by the appellant, the inescapable fact is that the Liability Notice clearly refers to the need to submit a Commencement Notice in two separate places, at the top and bottom of the third page, and highlighted in bold.

2. Nevertheless, I accept the appellant's point that it is reasonable to expect the Liability Notice to include a warning as to the consequences of failing to submit a

Commencement Notice, which is usually found in most Liability Notices. Having said that, I am unsure whether it would have helped the appellant in this case as he assumed the rest of the information in the notice did not apply to him in any event, once he had read the liability of £0.00 on the first page.

3. The overall conclusion reached therefore is that while I have some sympathy with the appellant if this was his first experience of the CIL process and he has made a genuine mistake, the inescapable fact is that he failed to submit a Commencement Notice and an Assumption of Liability Notice before commencing works on the chargeable development. 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 on Regulation 117 (a).

The appeal on Regulation 118

4. An appeal on this ground is that the collecting authority has issued a demand notice with an incorrectly determined commencement date. However, the appellant has not supported this ground of appeal with any supporting evidence. Therefore, I have no evidence before me that the Council issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on Regulation 118 fails accordingly.

Formal decision

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

K McEntee