The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 27/07/2017

Appeal ref: APP/G1250/L/17/1200105

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted]
- A Liability Notice was served on 19 December 2016.
- A Demand Notice was served on 24 March 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]

Summary of decision: **The appeal under Regulations 117(1) (a) and 118 is dismissed and the surcharges of [redacted] and [redacted] are upheld.**

Reasons for the decision

1. As well as the failure to submit a Commencement Notice (CN) as required by Regulation 67(1), 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(1)(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 explains that a CN must be submitted to the Council (Collecting Authority) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant submitted a CN dated 10 March 2017 (with a commencement date of the same day) and an Assumption of Liability Notice was submitted on 4 April 2017. The appellant does not dispute that an Assumption of Liability was not submitted before works began. However, with regards to the CN, he contends that development did not commence on the intended date given in the CN as it was delayed. He argues that the Council should have contacted him earlier to check on the situation. That way, he could have submitted an amended notice.

2. However, it is not the responsibility of the Council to chase up developers in such a situation. The onus was on the appellant to contact the Council if he found there

was going to be a problem starting works on the commencement date given in the CN. In any event, although the CN was dated 10 March 2017, it was not received by the Council until 17 March 2017. After visiting the site on the same day, it was clear to the Council that works had already begun and they obtained photographic evidence. That being the case, it is not unreasonable that they deemed the commencement date to be 10 March 2017 as that is the date given in the CN. It is noted that although the appellant contends that works began later, he does not stipulate an alternative date.

3. Although the CN is dated 10 March 2017, there is no documentary evidence before me, such as proof of postage, to demonstrate when it was actually submitted. As the Council insist that it was not received until 17 March 2017, and the evidence suggests that works began before this date, I can only conclude that the CN was not submitted before works began on the chargeable development. In any event, as the commencement date given in the notice is the same as the date of the notice, it follows that the CN was not submitted at least one day before commencement of the chargeable development as required by Regulation 67 (1).

4. For the reasons given above, and on the evidence available, I conclude that the breaches of planning control alleged which led to the surcharges occurred. I also conclude that the Council did not issue a Demand Notice with an incorrectly deemed commencement date. In these circumstances, the appeal fails on both the grounds made.

Formal decision

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

K McEntee