The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 7 September 2017

Appeal ref: APP/T5720/L/17/1200089

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- The appeal is made under Regulation 117(1)(a) and Regulation 117 (1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by ███████████████████████
- A Liability Notice was served on 19 December 2014.
- A Demand Notice was served on 19 December 2014.
- A revised Demand Notice was served on 25 January 2017.
- The relevant planning permission to which the CIL surcharge relates is ██████████████ ████████████████████████████
- The description of the development is as described in the annex to this letter.
- The outstanding surcharge for late payment of the CIL is ███████████ plus late payment interest of ███████████.

Summary of decision: The appeal under Regulation 117(1) (a) is dismissed, but the appeal under Regulation 117 (1)(c) is allowed and the late payment surcharge and interest are amended.

Procedural matters

1. An application for costs has been made by the London Borough of Merton against the appellants. This is the subject of a separate decision accompanying this letter.

Appeal on ground 117 (1)(a)[1]

2. The alleged breach which led to the surcharge is the failure to pay the CIL on time. In this case an instalment plan was agreed of 4 equal payments of ███████████. The first instalment was paid on time but the following three instalments were paid 46, 53 and 415 days late respectively. The appellants do not refute that these instalments were paid late but argues that he should only pay a surcharge on the final instalment as that was the only delay that can be described as significant. However, a delay does not have to be a significant one, which is something that is open to individual interpretation in any event, for a surcharge to be imposed as described in Regulation 85. Therefore, I am satisfied the claimed breach which led to the surcharge occurred as a matter of fact and the Council were entitled to impose surcharges accordingly. The appeal on Regulation 117 (1) (a) therefore fails.

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[1] The alleged breach which led to the surcharge did not occur

Appeal on Regulation 117 (1)(c)[2]

3. Regulation 85 explains that where a CIL amount is not received in full after the end of the period of 30 days beginning with the day on which payment is due the Collecting Authority may impose a surcharge equal to 5% of the amount or ████, whichever is the greater amount. However, as explained above, in this case the Council (Collecting Authority) agreed an instalment plan with the appellants of four equal payments of ███████ with the first instalment being paid on time, but the remaining three being paid after the agreed deadline. Regulation 85(2) explains that if any part of the amount is not received after the period of 6 months the Collecting Authority may impose a surcharge of 5% of the amount and Regulation 85(3) explains the same surcharge can be imposed again if any part of the amount is not received after 12 months. It appears clear that the Council have imposed the surcharges against the CIL amount of ████████. However, I take the view that as the first instalment of █████████ was paid on time it should not be included in the CIL amount to be surcharged in line with Regulation 85.

4. Therefore, I consider the correct amount liable for surcharges is ███████████ ████████████████████████████████████. In view of this, it also follows that the late payment interest of ███████ should also not be imposed on the timely first instalment. This leaves a total interest charge of ████████ on the remaining three late payments.

5. Therefore, I shall amend the late payment surcharge and late payment interest accordingly. To this extent, the appeal on ground 117 (1)(c) succeeds.

Formal decision

6. For the reasons given above, the appeal is dismissed under Regulation 117(1)(a), but the appeal is allowed under Regulation 117 (1)(c). The late payment surcharge is amended to █████████ and the late payment interest is amended to ████████ accordingly.

K McEntee

Annex to decision

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[2] The surcharge has been calculated incorrectly