The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 6 March 2018

Appeal ref: APP/D3315/L/17/1200138

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a), and 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted].
- A Liability Notice was served by Taunton Deane Borough Council on the original owner, [redacted] on 19 December 2014.
- A Liability Notice was served on the appellants on 29 August 2017.
- A Demand Notice was served on the appellants on 29 August 2017.
- The planning permission to which the CIL relates is [redacted].
- The description of planning permission is [redacted].
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge is [redacted].

Summary of decision: **The appeal is dismissed and the total surcharge of [redacted] is upheld.**

The appeal under Regulation 117(1)(a)[1]

1. Regulation 67(1) explains that where planning permission is granted for a chargeable development, a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has a received a valid Commencement Notice, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or £2,500, whichever is the lower amount. Unfortunately, in this case the appellants submitted only the front page of the CN (Form 6) as this is what the previous owner handed him. The form also did not state the Liability Notice (LN) reference. Consequently, in view of both these omissions, the Council would not accept the form as being valid.

2. Regulation 67(1)(8) explains that a CN is valid if it complies with the requirements of paragraph (2). Regulation 67(2)(a) states a CN must "identify the Liability Notice issued in respect of the chargeable development". The Council contend that the LN was not identified in the notice as the LN reference was not quoted.

[1] That the claimed breach which lead to the surcharge did not occur

The appellants make a valid point that nowhere in the Register of Local Land Charges does it state the LN reference. However, while from the evidence provided the appellants would appear to be correct, the Register does make clear that the development is CIL liable and advises to contact the CIL officer for further information. Had the appellants done so, it is reasonable to assume they would have been advised of their CIL obligations and been given the LN reference. However, I agree with the appellants that Regulation 67(2)(a) only requires the LN to be identified; it doesn't require its reference to be quoted. Therefore, as the planning application reference of the chargeable development has been quoted, I am satisfied this was enough to identify the corresponding LN. Consequently I consider the requirement of Regulation 67(2)(a) has been met.

3. Having said that, Regulation 67(2)(d) states that the CN must "include the other particulars specified or referred to in the form". The third box down for completion under "Details of Development" is "Liability Notice reference". As this box hasn't been completed it follows that not all particulars specified have been included. Added to this, page 2 of the CN includes a Declaration and requires a signature and date. As page 2 was not submitted, it again follows that not all particulars specified in the notice were included and consequently the requirements of Regulation 67(2)(d) have not been complied with.

4. While I have sympathy with the appellants as he was unfortunately handed an incomplete CN form by the previous property owner and accept they submitted the incomplete CN in good faith, the onus was on them to ensure that the form submitted met the CIL requirements. Although the appellants clearly have mitigation for not doing so, the inescapable fact is that a valid CN was not submitted before works commenced on the chargeable development. Therefore, I have no option but to conclude that the alleged breach occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(b)[2]

5. The appellants argue that they were not personally served with a LN. However, the original LN of 19 December 2014 to [redacted] 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. Any purchaser and owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. The wording of Regulation 117(1)(b) is not personalised for this reason. Therefore, I am satisfied that a LN was correctly served by the Council. The appeal on this ground also fails accordingly.

Formal decision

6. For the reasons given above, the appeal on the grounds made is dismissed and the CIL surcharge is upheld.

K McEntee

[2] The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates