The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 22 August 2018

Appeal ref: APP/F0114/L/18/1200172

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted]
- A Liability Notice was issued by the Bath & North East Somerset Council 13 June 2016.
- A Demand Notice was issued on 1 February 2018.
- A revised Liability was issued on 15 February 2018.
- A revised Demand Notice was issued on 15 February 2018.
- The relevant planning permission to which the CIL surcharge relates is [redacted]
- The description of the development is [redacted]
- Planning permission was granted on appeal on 22 October 2015.
- The alleged breach which led to the surcharge is the disqualifying event of letting out a whole dwelling or building that is self-build housing.
- The outstanding surcharge for failing to assume liability is [redacted]

Summary of decision: **The appeal is dismissed and the surcharge is upheld.**

Procedural matters

1. It is clear that one of the appellant's main purpose for submitting the appeal concerns the calculation of the chargeable amount of CIL as he feels it should not include the garage. For the avoidance of doubt, there is no ground of appeal available for this to be considered by the Planning Inspectorate. Any such appeal can only be considered by the Valuation Office Agency under Regulation 114. However, there is no right to appeal if development has commenced, which appears to be the case here. I can only consider the appeal before me on the grounds made - Regulation 117(1)(a)[1] and (c)[2].

The appeal under Regulation 117(1)(a)

2. Regulation 54D(1) as amended explains that this Regulation applies if an exemption for self-build housing is granted and a disqualifying event occurs before the end of the clawback period. One of the qualifying events listed is 54D(2)(c) - "The letting out of a whole dwelling or building that is self-build housing or self

[1] The claimed breach which led to the surcharge did not occur
[2] The surcharge has been calculated incorrectly

build communal development". The appellant confirmed in a letter to the Council of 6 February 2018 that the property was being let. Therefore, it is clear that a disqualifying event has taken place and consequently the alleged breach which led to the surcharge has occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(c)

3. The appellant wishes to appeal the surcharges in relation to both the original Demand Notice of 1 February 2018 and the revised Demand Notice of 15 February 2018. However, this is not possible as only the most recent notice has effect as it superseded the original notice in accordance with Regulation 65(5). The surcharge imposed is £[redacted] Regulation 84(2) explains that "*The relevant authority may impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of the chargeable development to which the disqualifying event relates, or £2500, whichever is the lower amount*". The chargeable amount in this case is £[redacted] per cent of this amount = [redacted] Therefore, I am satisfied the Council (Charging Authority) has calculated the surcharge correctly. The appeal on this ground also fails accordingly.

Formal decision

4. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharge of [redacted] is upheld.

K McEntee