The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 9 October 2018

Appeal ref: APP/X4725/L/18/1200188

[redacted]

- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by Wakefield Council.
- Planning permission was granted on 24 May 2017.
- A Liability Notice was issued on 10 July 2017.
- A Demand Notice was issued on 3 May 2018.
- A revised Demand Notice was issued on 10 May 2018.
- The relevant planning permission for which the CIL surcharge relates is [redacted]
- The description of the development is [redacted]
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [redacted]

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

Procedural matters

1. For the avoidance of doubt, I have no powers to restore any self-build exemption. I can only determine the appeal solely on the ground made – *the claimed breach which led to the surcharge did not occur.*

Reasons for the decision

2. Regulation 67(1) of the CIL regulations explains that 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. In this case, the appellant contends that he hand delivered a completed CN, along with an Assumption of Liability form and a Self-build exemption form, to the reception of the Council offices. However, the Council contend that they only have record of having received the Assumption of Liability form on 29 March 2017. The appellant has enclosed evidence to show that on the same day he e-mailed the officer responsible for CIL at the time, [redacted], to check that the forms had been received. [redacted] responded on 30 March 2017 "*Yes we've got all the information now and your application will be valid as of Tuesday*". Therefore, it was reasonable for the appellant to conclude that this included the CN if he submitted one.

3. However, as the Council point out, as planning permission was not granted until 24 May 2017 (some two months later), the CN would not have been valid. Regulation 67(1) explains that a CN is valid if it complies with the requirements in in Regulation 67(2). One of those requirements is that the CN must identify the Liability Notice issued in respect of the chargeable development. As a Liability Notice was not issued until 10 July 2017, it was clearly not possible for this requirement to have been met if the CN was submitted on 29 March 2017. In other words, if the appellant appears to have effectively 'jumped the gun' as there was not yet any valid chargeable planning permission in place. I note from an e-mail of 30 January 2017 in which [redacted] alerts the appellant to CIL, he only asks the appellant to complete a 'Planning Application – Additional Information Requirements Form'. He does not advise the appellant to submit a CN at that stage. The correct time to submit a CN is after planning permission has been granted and a Liability Notice issued. While I have sympathy with the appellant if he made a genuine mistake, the Council were entitled to impose a surcharge in accordance with Regulation 83 as a valid CN was not submitted before works commenced on the chargeable development.

4. In these circumstances, I can only conclude that the alleged breach that led to the surcharge occurred. The appeal fails accordingly.

Formal decision

5. For the reasons given above, the appeal is dismissed and the surcharge of [redacted] is upheld.

K McEntee