



Appeal Decision

by Ken McEntee

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

Decision date: 28 March 2019

Appeal ref: APP/W0340/L/18/1200222

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by West Berkshire District Council.
- Planning permission was granted on appeal on 23 March 2017.
- A Liability Notice was served on 5 May 2017 the previous land owners, [REDACTED].
- A revised Liability Notice was served on the appellant on 30 July 2018.
- A Demand Notice was served on 31 July 2018.
- A revised Demand Notice was served on 14 September 2018.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- 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. Although the Council have imposed surcharges of [REDACTED] for failure to assume liability and [REDACTED] for late payment, the appellant's appeal is solely in relation to the surcharge of [REDACTED] for failure to submit a Commencement Notice.
2. The Council (Collecting Authority) has made an application for costs against the appellant and the appellant has made a counter claim against the Council. These applications are the subject of separate decisions attached to this appeal decision.

The appeal under Regulation 117(1)(a)

3. An appeal under this Regulation is that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 (1) 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.

4. In this case, it appears that the appellant submitted a Commencement Notice on 15 March 2018, but unfortunately it was sent to the Building Control Department on the same day as that of the stated intended commencement and it did not identify the Liability Notice as required by Regulation 67(2)(b). Therefore, the notice was invalid. The Building Control Department is not part of the CIL Collecting Authority and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. The necessary forms needed to be submitted to the Collecting Authority for the requirements 67(1) to be met.
5. The appellant's agent contends that had the Council responded to certain e-mails, from June and July 2018, the CIL could have been settled earlier and the surcharge avoided. While it is not clear why the Council did not respond to such correspondence and can be criticised for failing to do so, I do not consider the appellant was prejudiced as a result as the breach of failing to submit a valid Commencement Notice before starting works on the chargeable development had already occurred some months previously. Therefore, the breach had already occurred.
6. In view of the above, I can only conclude that the breach which led to the surcharge occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(c)

7. An appeal under this Regulation is that the surcharge has been calculated incorrectly. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN, they may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. [REDACTED]
[REDACTED] Therefore, I am satisfied that the surcharge has been calculated correctly. The appeal on this ground also fails accordingly.

Formal decision

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

K McEntee