The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 18 April 2019

Appeal ref: APP/U5360/L/18/1200230

[redacted]

- The appeal is made under Regulation 117(1)(a), (b) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against surcharges imposed by the London Borough of Hackney.
- Planning permission was granted on appeal[1] on 1 June 2012.
- A Liability Notice was served on 22 October 2018.
- A Demand Notice was served on 22 October 2018.
- The relevant planning permission to which the surcharge relates is 2011/2108.
- The description of the development is [redacted]
- The alleged breaches that led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice.
- The surcharge for failure to assume liability is [redacted]
- The surcharge for failure to submit a Commencement Notice is [redacted]

Summary of decision: **The appeal is allowed and the surcharges are quashed.**

Procedural matters

1. The appellant refers to the fact that the Inspector in the planning appeal awarded costs against the Council for unreasonable behaviour. He therefore argues that it is reasonable to conclude from this that had the Council approved the planning application at the outset, it would not have been CIL liable as there was no CIL schedule in place at that time. However, while the Inspector concluded that the Council were unreasonable to refuse the application in relation to one of the reasons for refusal, she did not reach the same conclusion in relation to the other. Therefore, it is possible the application may still have been refused on that ground. Nevertheless, for the avoidance of doubt, I have no powers to quash the CIL and there is no ground of appeal available to enable me to do so. I can only determine the appeal on the grounds made in relation to the imposed surcharges.

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

2. Regulation 31 of the CIL Regulations states that a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an Assumption of Liability

[1] APP/U5360/A/11/2167504
[2] The claimed breach which led to the surcharge did not occur

Notice to the Collecting Authority (Council). Regulation 80 explains that a surcharge of £50 may be imposed on each person liable to pay CIL where the chargeable development has been commenced and no one has assumed liability. Regulation 67(1) states that a Commencement Notice (CN) must be submitted to the Collecting Authority 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 received a valid CN they may impose a surcharge equal to 20% of the chargeable amount or £2,500, whichever is the lower. It is a matter of fact that the appellant did not assume liability or submit a CN before starting works on the chargeable development. However, I consider there are extenuating circumstances for this as explained below.

3. At the time the planning application was refused and appealed there was no CIL charging Schedule in place for the London Borough of Hackney. However, a schedule was in place by the time the appeal decision was issued. Regulation 65(1) explains that the Collecting Authority must issue a Liability Notice (LN) as soon as practical after the day on which a planning permission first permits development. In this case, a LN was not served until 22 October 2018, some 6 years after planning permission was granted on appeal. I note that in an e-mail to the appellant's agent of 30 October 2018, the Council state that "*Unfortunately, as we did not receive an assumption of liability form for this site we were not able to issue a liability notice*…" However, there is no requirement in the Regulations for an Assumption of Liability Notice to be received before a LN can be served. Therefore, I take the view that there was no good reason why Council did not issue a LN soon after the appeal decision was issued. Consequently, the requirement of Regulation 65(1) has not been met.

4. The Council concede that the appellant would not have been aware the development had become CIL liable during the time the appeal process was running its course. Therefore, it follows they would not have been aware of the need to assume liability. The Council's failure to issue a LN more promptly effectively deprived the appellant of the opportunity to submit a valid CN as the LN acts as the trigger for this to happen and the CN requires the LN to be identified.

5. In these circumstances, I cannot conclude that the alleged breaches which led to the surcharges occurred. Therefore, I have no option but to allow the appeal on this ground and to quash the surcharges.

6. In view of my findings above, the appeal under Regulations 117(1)(b) and (c) do not fall to be considered.

The appeal under Regulation 118[3]

7. The Council have stated in the Demand Notice a deemed commencement date of 22 October 2018. However, the appellant contends, and have provided documentary and photographic evidence, that works actually began on 21 May 2015. In view of this, and the fact that the Council have not disputed it, I am satisfied the correct deemed commencement date is 21 May 2015. Therefore, I conclude that the Council have issued a Demand Notice with an incorrectly determined deemed commencement date.

8. In these circumstances, the appeal on this ground also succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. However, if the Council are to continue to pursue the CIL they will now have to issue a revised Demand Notice in accordance with Regulation 118(6).

[3] The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date

Formal decision

9. For the reasons given above, the appeal is allowed the surcharges of [redacted] are quashed.

K McEntee