The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 22 May 2019

Appeal ref: APP/W0340/L/18/1200241

[redacted]

- The appeal is made under Regulations 117(1)(a) and (b) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by West Berkshire Council.
- Planning permission was granted on 9 February 2016.
- A Liability Notice was issued on 10 February 2016.
- A revised Liability Notice was issued on 23 November 2018.
- A Demand Notice was issued on 27 November 2018.
- The description of the planning permission is: [redacted].
- The alleged breach is the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The surcharge for failure to submit a Commencement Notice is [redacted].
- The deemed commencement date stated in the Demand Notice is 22 November 2018.

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

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

1. CIL Regulation 67(1) of the CIL regulations states that a Commencement Notice (CN) must be submitted to the 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 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. In this case, it is clear that demolition works took place on the site. However, while the appellant's agent does not dispute that demolition constitutes development, he argues, and has provided a Statutory Declaration by the appellant, that demolition works took place as part of clearing/tidying up of the site and for health and safety reasons due to the buildings' decaying state. He contends that the appellant did not intend to start the implementation of the planning permission, and therefore it cannot be argued that commencement has taken place. In other words, it is not possible to conclude that a development has commenced if it was not commenced intentionally.

[1] The claimed breach which led to the surcharge did not occur

2. While I note these arguments, I would point out that the CIL regime is not concerned with whether or not a development has begun intentionally or with other purposes in mind, it is only concerned with whether it has commenced as a matter of fact. There is nothing in the CIL Regulations which requires the commencement to be intentional. The trigger for CIL is the carrying out of a material operation. It is not disputed that a material operation has taken place in this case, intentionally or otherwise, in the form of the demolition works. The carrying out of demolition for health and safety reasons does not detract from the fact that the result of such works is the commencing of development, particularly as demolition formed part of the permission. Therefore, I am satisfied that the alleged breach which led to the surcharge has occurred as a matter of fact. The appeal on this ground fails accordingly.

3. I note the agent's comments concerning 'unlawful development' in relation to CIL. However, Regulation 6 lists a set of exclusions that are not to be treated as development for the purposes of section 208 of the Planning Act 2008; 'unlawful development' is not listed as one of them. Development is defined in section 32 of the Planning Act 2008, as referenced by section 55 of the Town and Country Planning Act 1990. The definition is not limited to development carried out in accordance with a planning permission. In essence, planning permission is required for a material operation because it constitutes development, but a material operation does not have to be in accordance with a planning permission. It is still a material operation even if the works involved do not have planning permission.

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

4. Although an appeal has been made under this ground, it appears clear, and the appellant has submitted a copy, that he received the original Liability Notice of 10 February 2016. Therefore, he should have been aware of the CIL procedures explained within it. The Liability Notice of 23 November 2018 is identical, except that it reflected the fact that the CIL was now payable due to the withdrawal of the self-build exemption. Therefore, I am satisfied the Collecting Authority did not fail to serve a Liability Notice. The appeal on this ground fails accordingly.

The appeal under Regulation 118[3]

5. The appellant's case on this ground is not that the Council have determined an incorrect deemed commencement date, but that commencement did not take place at all. In view of my findings on the appeal under Regulation 117(1)(a) above, it follows that the appeal on this ground also fails.

Formal decision

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

K McEntee

[2] The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates
[3] The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date