The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 6 November 2019

Appeal ref: APP/P5870/L/19/1200278

[redacted]

- The appeal is made under Regulations 117(1)(a), (b) and (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against CIL surcharges imposed by the London Borough of Sutton.
- Planning permission was granted on 7 September 2015.
- A Liability Notice was issued on 7 September 2015.
- A Demand Notice was issued on 6 February 2017.
- A revised Liability Notice was issued on 26 March 2019.
- A revised Demand Notice was issued on 26 March 2019.
- The relevant planning permission to which the surcharges relate is [redacted].
- The description of the development is [redacted]
- The alleged breaches are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [redacted].
- The outstanding surcharge for failing to submit a Commencement Notice is [redacted].

Summary of decision: **The appeal is dismissed under Regulations 117(1)(a),(b) and (c) and the surcharges are upheld, but the appeal under Regulation 118 is allowed.**

Procedural matters

1. The appellant has provided a copy of an e-mail of 4 March 2017 in order to show that a CIL appeal was submitted to the Valuation Office Agency (VOA). However, he has not provided any evidence that the appeal was validated or even acknowledged by the VOA. Therefore, given the lack of such documentary evidence and the fact that more than two and a half years have elapsed since the submission, with no record of a decision being made, I consider it reasonable to conclude that on the balance of probabilities the appeal was not received by the VOA. In any event, an appeal cannot be submitted under Regulation 114, unless a review of the calculation of the chargeable amount has first been requested to the Collecting Authority (Council). The Council have stated they have no record of

such a request having been received. In these circumstances, I see no good reason not to determine the appeal before me on the grounds made.

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

2. Regulation 67(1) of the CIL regulations explains 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. CIL Regulation 31(1) explains that a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an Assumption of Liability Notice (AoLN) to the Council.

3. In this case, as the permission was granted retrospectively, it was simply not possible for a CN to be submitted in advance of starting works as they had already taken place, and thus it was not possible for the appellant to prevent the subsequent surcharges being imposed. It is envisaged by the CIL guidance that the issue of a Liability Notice (LN) will be followed by submission of a CN by the relevant person. However, by not carrying out the development in accordance with the conditions of the original planning permission [redacted], the appellant effectively prevented the normal sequence of events from taking place. As a result, the subsequent permission was retrospective and automatically became liable to CIL and CIL surcharges. In other words, this was effectively a situation of the appellant's own making. It is not clear why, but although the Council initially issued a Demand Notice (DN) of 6 February 2017, the notice did not include any surcharges. However, the Council eventually included surcharges in the revised DN of 26 March 2019

4. In the circumstances described, I have to conclude that the alleged breaches that led to the surcharges occurred. The appeal on this ground fails accordingly.

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

5. The appellant is not so much arguing that the Council failed to serve a LN but more that they did not do so as soon as practicable after the day on which planning permission first permits development, in accordance with Regulation 65(1), thus preventing the appellant from being able to submit a valid CN. The Council contend that they issued a LN, along with the retrospective planning permission, on 7 September 2015, but the appellant contends that he did not receive it. However, as the planning permission was retrospective it would not have made any difference as it simply was not possible for a valid CN to be submitted in any event, for the reasons explained above.

6. It appears that a LN was also sent to the appellant by recorded delivery on 18 June 2018 but was returned as not collected. However, it appears clear that the appellant did receive the revised LN of 26 March 2019 as a copy was included with his appeal documents.

7. In these circumstances, I am satisfied the Council did not fail to serve a LN. The appeal on this ground fails accordingly.

[1] The claimed breach which led to the surcharge did not occur
[2] The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates

The appeal under Regulation 117(1)(c)[3]

8. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. The chargeable amount in this case is [redacted] I am satisfied the surcharge has been calculated correctly. Regulation 80 explains that the Council may impose a surcharge of £50 where nobody has assumed liability and the chargeable development has commenced, which is the case here. Therefore, I am satisfied that this surcharge has also been calculated correctly. The appeal on this ground fails accordingly.

The appeal under Regulation 118[4]

9. The determined deemed commencement date given in the DN of 6 February 2017 is 7 September 2015. However, the date given in the revised DN of 26 March 2019 is 6 February 2017. It appears the Council settled on this date as that is when their monitoring officer visited the site and confirmed that work had started. However, CIL Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out and granted planning permission under section 73A of the Town & Country Planning Act. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as retrospective permission was granted in this case, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which in this case was 7 September 2015.

10. Consequently, the appeal on this ground succeeds and, in accordance with Regulation 118(4), the DN ceases to have effect. The Council must now issue a revised DN in accordance with Regulation 118(5).

11. For the avoidance of doubt, while the appeal under Regulation 118 succeeds, I see no justification to use my discretionary powers under Regulation 118(6) to quash the surcharges imposed, for the reasons explained in paragraph 3 above.

Formal decision

12. For the reasons given above, the appeal under Regulations 117(1)(a),(b) and (c) is dismissed and the surcharges [redacted] are upheld, but the appeal under Regulation 118 is allowed.

K McEntee

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