The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 19/12/2019

Appeal ref: APP/E1210/L/19/1200303

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against surcharges imposed by Christchurch Borough Council.
- Planning permission was granted on 14 March 2019.
- A Liability Notice served on the appellant's agent on 20 March 2019.
- A Demand Notice was served on the appellant on 11 July 2019.
  The relevant planning permission to which the CIL surcharge relates 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 and the surcharges are upheld.**

The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the alleged breach that led to the surcharge did not occur. 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 Council discovered from a site visit made on 10 July 2019 that works had commenced but no CN had been received. However, the appellant contends that he submitted a CN, along with an Assumption of Liability Notice, to the Council via e-mail on 19 June 2019. The appellant then began work on the development without having received an acknowledgement of receipt. Unfortunately, it appears the Council did not receive the appellant's e-mail. It would appear from the evidence that there may have been a problem with the Council's e-mail address. However, while the appellant received a delivery failure message from a subsequent email, he did not receive one from his e-mail of 19 June 2019.

2. However, it is not unreasonable to expect the appellant to have contacted the Council to check they had received the forms and that it was now ok to begin works. Had he done so before starting work, the situation could have been rectified by re-submitting the forms by other means. While I have sympathy with the appellant if

there were problems with the Council's e-mail address, I take the view that to press ahead with development without having received an acknowledgement was a risky strategy for him to take.

3. The appellant argues that the Council were aware he was about to start work in any event and he points to an acknowledgement e-mail from the Building Control Department. However, 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 CIL Collecting Authority for the requirements of 67(1) to be met and the onus was on the appellant to ensure the forms had been received by the Council. Unfortunately, that does not appear to have happened in this case. In these circumstances, I can only conclude that the allege breaches occurred and consequently the appeal under this ground must fail.

The appeal under Regulation 117(1)(b)

4. An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. In this case, the appellant contends that he did not receive a LN. Regulation 65(3)(a) makes clear that a LN must be served on the relevant person as defined in Regulation 65(12). Regulation 126 explains the options open to the Council for service of documents. Regulation 126(1)(e) states "*in a case where an address for service using electronic communications has been given by that person, by sending it to that person at that address…".* In this case, [redacted] is stated on the planning application form of 14 January 2019 as the appellant's agent and her e-mail address is given as [redacted] Therefore, the Council correctly submitted the LN to that address, and have provided a screenshot of the relevant e-mail. The appellant does not contend that his agent did not receive this correspondence.

5. The e-mail clearly states: "*Could you please advise the applicant that they still need to assume liability for this development, and they must ensure we receive a CIL commencement notice before work commences on site (this includes demolition), to avoid surcharges being added to the CIL liability*". If this was not acted upon by the appellant's agent, I can only suggest that he may wish to take the matter up with her.

6. In view the above, I have to conclude that a LN has been correctly served. In these circumstances, the appeal on this ground also fails

7. If the appellant is not happy with the Council's conduct in this matter or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

Formal decision

8. For the reasons given above, the appeal is dismissed and the surcharges [redacted] are upheld.

K McEntee