The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 20 October 2020

Appeal ref: APP/W4705/L/20/1200399
Land at [redacted]

- 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 the City of Bradford Metropolitan District Council.
- The relevant planning permission to which the surcharge relates is [redacted]
- Planning permission was granted on 31 May 2018.
- A Liability Notice was served on 22 June 2018.
- A Demand Notice was served on 9 April 2020.
- A revised Liability Notice was served on 11 September 2020.
- A revised Demand Notice was served on 11 September 2020.
- The description of the development is: "[redacted]".
- The alleged breaches of planning control are the failure to submit to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability [redacted]
- The outstanding surcharge for failure to submit a Commencement Notice is [redacted]

Summary of decision: **The appeal is dismissed on the grounds made and the surcharges are upheld.**

Procedural matters

1. I note that since the appeal was submitted, the Council have issued revised Liability and Demand Notices as they are entitled to do at any time in accordance with Regulations 65(5) and 69(3) respectively. They issued the revised notices as the Demand Notice did not correspond with the Liability Notice which stated a nil CIL charge. The appellants have voiced their concerns that the Council were given the opportunity to issue the revised notices and believe it will impact on their grounds of appeal as the crux of their argument is that as there was no CIL charge imposed by the original Liability Notice, no surcharges could be imposed. However, I can only echo what has already been explained to the appellants in procedural correspondence. It is not within my remit to establish whether the Council was correct to issue the subsequent CIL charge; I can only determine the appeal on the grounds made as addressed below. As the CIL charge has not been overturned by way of a successful appeal to the Valuation Office Agency (VOA), I have no reason

to believe it is not correct and have to take it at face value. I will nevertheless address the reasons behind the charge in my consideration of the appeal under Regulation 117(1)(a) below.

The appeal under Regulation 117(1)(a)

2. An appeal on 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 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 appellants do not dispute that works have begun on the development permitted and neither do they dispute that a Commencement Notice was not submitted. It appears from the evidence that the appellants were granted a self-build CIL exemption and that was the reason for the Liability Notice of 22 June 2018 stating a nil CIL charge. However, I note from the Declaration section of the self-build exemption application form of 30 March 2018, that the first declaration states "I understand: That my claim for exemption will lapse where a commencement notice is not submitted prior to commencement of the chargeable development to which this exemption applies". This box has been ticked and the declaration signed accordingly. As the Council did not receive a Commencement Notice, which the appellants do not dispute, the exemption appears to have lapsed and the development consequently became liable to a CIL charge.

3. I fully appreciate the appellants argument that as they received information that no further action was required and did not receive the Council's reminder of 7 February 2019, they did not believe they needed to submit any further documents. However, the signed self-build declaration appears to show that the appellants were aware of what action they needed to take in order to keep the exemption and the consequences of failing to do so. While I have sympathy with the situation the appellants find themselves in and believe they may have mitigation for not submitting a Commencement Notice, it is nevertheless a matter of fact that they failed to do so before works began on the chargeable development. There is also no evidence before me of an Assumption of Liability Notice having been submitted. In these circumstances, I have no option but to dismiss the appeal on this ground.

The appeal under Regulation 117(1)(c)

4. An appeal on this ground is that the surcharges have been calculated incorrectly. Regulation 80 explains that the Council may impose a surcharge of £50 on each person liable to pay CIL in respect of the chargeable development if nobody has assumed liability and the chargeable development has commenced. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN, the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. [redacted] Therefore, I am satisfied the surcharges have been calculated correctly. The appeal on this ground also fails accordingly.

Formal decision

[redacted] For the reasons given above, the appeal is dismissed and the surcharges of [redacted]

6. If the appellants are not happy with the Council's conduct in this matter or their adopted procedures, they may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

K McEntee