



Appeal Decision

by Ken McEntee

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

Decision date: 27 November 2020

Appeal ref: APP/H5390/L/20/1200416

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the London Borough of Hammersmith & Fulham.
- Planning permission was granted on 23 February 2017.
- A Liability Notice was served on the applicants, [REDACTED] on 9 May 2017.
- A Demand Notice was served on 19 June 2020.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is as described in the annex to this decision.
- The alleged breaches that led to the surcharges are failure to assume liability and failure to submit a Commencement Notice before starting works on the chargeable development, and late payment of the CIL for 30 days, 6 months and 12 months.
- The outstanding surcharge for failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]
- The late payment surcharge for 30 days is [REDACTED]
- The late payment surcharge for 6 months is [REDACTED]
- The late payment surcharge for 12 months is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharges are upheld.

Reasons for the decision

1. An appeal under Regulation 117(1)(b) 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 appellants do not actually dispute that a LN was served but contend that they were unaware of it. Regulation 65(3)(a) explains that a LN must be served on the "relevant person". The relevant person is the person who applied for planning permission. In this case that was [REDACTED] and the Council duly served a LN on them on 9 May 2017. Unfortunately, it appears the property has since fallen into receivership and the appellants were appointed receivers by the creditors, [REDACTED]. The appellants contend that they were totally unaware of the CIL liability as they were not informed by the borrower. Therefore, they feel it is unfair that the creditors should be liable to pay the added CIL surcharges.
2. While I can appreciate the receivers' position and have sympathy with the situation the creditors find themselves in through no fault of their own, I can only

determine the appeal on the ground made, namely; that the Council failed to serve a LN in respect of the development to which the surcharge relates. With that in mind, I am satisfied on the evidence before me that the Council correctly served a LN in accordance with the Regulations. That being the case, I have no powers to quash or amend the surcharges imposed. Therefore, I have no option but to dismiss the appeal. It is of course a matter for the appellants to decide whether they wish to pursue the matter with the borrower.

Formal decision

3. For the reasons given above, the appeal is dismissed and the surcharges totalling [REDACTED] are upheld.

K McEntee

Annex to the decision

Development description

Erection of a front roof extension; erection of a rear roof extension; erection of a rear extension at second floor level over part of the existing back addition; erection of a single storey rear extension, to the side and rear of the existing back addition; alterations to the roof of the single storey back addition; installation of a new window to replace the existing to the side of back addition at first floor level, installation of new doors and a Juliet balcony to replace the existing windows to the rear elevation at first floor level; excavation of the front and rear garden to form lightwells in connection with the creation of a new basement; erection of an external staircase from basement to ground floor level at the rear of the property (Amended Description).