



Appeal Decision

by Ken McEntee

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

Decision date: 21 December 2020

Appeal ref: APP/K3415/L/20/1200432

Land Adjacent to [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Lichfield District Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 7 February 2019.
- A Liability Notice was served on 12 February 2019.
- A further Liability Notice was served on 16 April 2019.
- A Demand Notice was served on 2 July 2020.
- The description of the development is: "Erection of 1 no four bedroom dwelling and associated works".
- The alleged breaches of planning control 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 failure to assume liability [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is £ [REDACTED]
- The deemed commencement date given in the Demand Notice is 2 July 2020.

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

Procedural matters

1. I note that as well as the imposition of the surcharges, the appellant is aggrieved by the withdrawal of his CIL self-build exemption. For the avoidance of doubt, I have no powers to reinstate a self-build exemption. I can only determine the appeal on the grounds made in relation to the surcharges.
2. Although the appellant ticked the box on the appeal form for an appeal under Regulation 117(1)(b) – *that the Collecting Authority (Council) failed to serve a Liability Notice to which the surcharges relates*, he has subsequently confirmed that the correct ground of appeal he wishes to be considered is Regulation 117(1)(a).

The appeal under Regulation 117(1)(a)

3. An appeal on this ground is that the alleged breaches that led to the surcharges did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority no later than the day

before the day on which the chargeable development is to be commenced. In this case, the appellant contends that an e-mail was sent to Building Control with all the required forms attached on 14 May 2019, but unfortunately due to what he describes as a clerical error, the CN was not attached. However, even if it had been attached, Building Control 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 rigid and formulaic process.

4. Much of the appellant's arguments focuses on the way the Council has conducted themselves in this matter and their failure to contact him more promptly. There is also dispute about whether or not the Council were in possession of the appellant's address. However, the onus was on the appellant to ensure the Council had received a CN before starting works on the chargeable development; it was not the Council's responsibility to chase the appellant. 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 accordance with local government accountability.
5. While I have sympathy with the appellant's situation and can understand his frustration that he feels he is being penalised for a genuine error, I can only determine the appeal on the facts and evidence before me. Unfortunately, there is no evidence to demonstrate that the Council received a CN and the appellant does not dispute that works have begun on the chargeable development. There is also no evidence of the submission of an Assumption of Liability. In these circumstances, I have no option but to dismiss the appeal under this ground.

The appeal under Regulation 118

6. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The determined deemed commencement date given in the Demand Notice is 2 July 2020. It would appear the Council settled on that date in the absence of an alternative one, but the appellant states that works actually commenced on 18 December 2019. However, this earlier date could potentially result in the appellant incurring further surcharges and interest as the purpose of the date is to establish a starting point for CIL liability. Therefore, as the later date favours the appellant and the Council are clearly content with it, I shall dismiss the appeal under this ground too.

Formal decision

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

K McEntee