Appeal Decision

by Ken McEntee

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

Decision 16 June 2017

Appeal ref: APP/G1250/L/16/1200088

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by
- A Liability Notice was served on 2 September 2016.
- A Demand Notice was served on 4 January 2017.
- The relevant planning permission to which the CIL surcharge relates is
- The description of the development is: "
- The alleged breaches of planning control are the failure to assume liability and the failure submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is
- The outstanding surcharge for failure to submit a Commencement Notice is

Summary of decision: The appeal under Regulation 117(a) is dismissed and the surcharges of and and are upheld.

Procedural matters

1. Although he has not appealed on Regulation 117 (b), the appellant contends that the Liability Notice, which was served on the previous owners, was not part of the conveyance paperwork during the purchasing process. However, the notice would have been registered as a local land charge at the time it was served, which the Council (Collecting Authority) are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land. Any purchaser and owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. The wording of Regulation 117 (b) is not personalised for this reason. Therefore, I am satisfied that a Liability Notice was correctly served and consequently the appellant should have been aware of the CIL procedures as explained in the notice.

Reasons for the decision

2. As well as the failure to submit a Commencement Notice, as required by Regulation 67, the other alleged breach of planning control which led to the surcharges is the failure to submit an Assumption of Liability Notice, as required

by Regulation 31. An appeal under Regulation 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 explains that a Commencement Notice must be submitted no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant submitted an Assumption of Liability Notice and a Commencement Notice on 16 December 2016 stating a commencement date also of 16 December 2016. It appears the appellant completed on the purchase of the land on that date and obtained permission from the previous owners (Barton Estates Ltd) to carry out demolition works in advance of completing the purchase. The Council have consequently taken this date to be the deemed date of commencement in the Demand Notice.

- 3. The appellant argues that he was not aware 'demolition' formed part of the development and contends that development did not actually begin until 16 January 2017. However, that being the case it is not clear why the date of commencement is given in the Commencement Notice is 16 December 2016. Nevertheless, notwithstanding this contradiction, Section 56 (2) of the Town and Country Planning Act 1990 explains that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56 (4) gives examples of what 'material operation' means and includes in section 56 (4) (aa) "any work of demolition of a building". Therefore, as the appellant carried out demolition works, it follows that he began work on the chargeable development before submitting a Commencement Notice or an Assumption of Liability Notice.
- 4. Therefore, while I have some sympathy with the appellant if he was not aware 'demolition' was a material operation that is construed to be development, the inescapable fact is that the alleged breaches of planning control occurred. In these circumstances, the appeal cannot succeed.

Formal decision

5. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharges.

K.McEntee