The Planning Inspectorate

Appeal Decision

Site visit made on 11 March 2024

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2024

Appeal Ref: APP/R3650/L/23/3336331

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a), (b) and 118 of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs').
- The appeal is brought by [redacted] against a Demand Notice (the 'DN') issued by the Collecting Authority, Waverley Borough Council ('the CA').
- The relevant planning permission to which the CIL relates is [redacted].
- The description of the development is described on the DN as follows: [redacted]
- A Liability Notice (the 'LN') was served on 1 December 2023.
- The DN was issued on 1 December 2023. The following surcharges were imposed: [redacted] for a failure to assume liability, [redacted] for a failure to submit a commencement notice (hereinafter 'CN'). The total amount payable is [redacted].

Decision

1. The appeal is dismissed.

Preliminary matters

2. As the outcome of CIL Regs 118 has a bearing on the 117(a) and (b) appeal, I shall evaluate the former first and the combine the latter.

CIL Regs 118 appeal

3. CIL is a tool for local authorities to help deliver infrastructure to support the development of the area. A charging schedule for new development requiring planning permission sets out the levy rates for a charging authority area. The Council, as the CA, adopted its charging schedule, which came effective on 1 March 2019. A planning permission for residential development of this kind is subject to the levy after the schedule came into force unless it is exempt.

4. Planning permission was granted by the local planning authority ("the LPA") for development described in the header above on 31 July 2023 ("the 2023 Permission"). This is subject to four conditions. Condition 4) required tree protection details before development commenced, which were subsequently submitted and agreed by the LPA.

5. The claim is that the CA has issued a DN with an incorrectly determined deemed commencement date. The appellants own evidence indicates that on around 6 or 7 November 2023 bathrooms and a kitchen were removed from the house, but two front garages, and a single-story rear structure were also demolished. This is broadly consistent with what I observed at the time of my site visit.

6. In my assessment, the nature and scale of the work undertaken in November falls within the definition of a "material operation" for CIL purposes. In correspondence with the CA, the appellants concede these operations had, in fact, commenced in November 2023. It is apparent to me that the operations commenced in November are pursuant to the implementation of the scheme approved by the 2023 Permission. However, contrary to the CIL Regs, a valid CN had not been submitted. This is problematic and a flagrant breach of the CIL Regs.

7. In accordance with CIL Regs 68(1)(a), the CA must determine the day on which a development was commenced if it has not received a CN but has reason to believe it has been commenced. Whilst I acknowledge the appellants concerns and sympathise with their predicament, the evidence points in the likelihood that the CA correctly determined the deemed commencement date as 6 November 2023. Therefore, CIL Regs 118 appeal must fail.

CIL Regs 117(a) and (b)

8. The argument is that the claimed breach which led to the imposition of the surcharge did not occur. Further, the ground of appeal is that the CA failed to serve a LN in respect of the development to which the surcharge relates.

9. Regulation 83 explains that where a chargeable development is commenced before a CN has been received by the CA, it may impose a surcharge equal to 20% of the chargeable amount payable or [redacted], whichever is the lower amount. In this case, it is clear, and not disputed, that works have commenced on the chargeable development without a CN having been submitted.

10. Regulation 80 explains that where nobody has assumed liability to pay CIL and the chargeable development has commenced, the CA may impose a surcharge of [redacted]. In a situation such as this where nobody assumed liability before works commenced, liability to pay CIL must be apportioned between each material interest in the relevant land in accordance with CIL Regs 33(4). There is nothing before me to suggest both appellants were not correctly served with the LN.

11. I conclude the appeal on these grounds must fail.

Other matters

12. It appears to me the appellants may not have been entirely clear about CIL procedures, and the parties' roles and responsibilities. The claim is that the CA delayed issuing guidance due to its own resourcing issues, but that is a matter between them and the Council. Nonetheless, had they been made aware of their liability, the appellants suggest they would have applied for a residential extension exemption. However, for exemptions to apply the developer must submit the right form to the CA in a timely manner and before any material operations are commenced. Unfortunately, for one reason or another, the appellants did not submit any application to the CA for an exemption. In a similar vein, any dispute about the chargeable amount must be taken up with the CA at first instance.

13. A further argument advanced is that CIL Regs 65(1) requires the CA to issue a LN as soon as practicable after the day on which the 2023 Permission was granted. The LN was issued on 1 December. My attention has also been drawn to relevant case law on this point[1].

[1] *R. (Trent) v Hertsmere BC [2021] EWHC 907 (Admin).*

14. In the context of CIL Regs 65(1), the High Court has examined what is meant by the words "…as soon as practicable…" *Trent* is a case where the LN was issued 2.5 years after planning permission was granted and the court held, amongst other things, that the late issuing of the LN after permission was granted did not fall within the scope of as soon as practicable. I recognise the appellants concerns about the time gap between issuing the LN after the 2023 Permission was granted. However, I consider all these arguments go to validity of the DN, which are beyond the scope of this appeal.

Overall conclusions

15. For the reasons given above, and having regard to all other matters, I conclude that the CIL Regs 117(a)(b) and 118 appeals should not succeed.

A U Ghafoor

Inspector