The Planning Inspectorate

Appeal Decision

Site visit made on the 25 April 2024

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Appeal Ref: APP/P5870/L/24/3339151

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) and (c), and 118 of the Community Infrastructure Levy Regulations 2010 as amended.
- The appeal is made by [redacted] against a Demand Notice (the 'DN') issued by the Collecting Authority, the Council of the London Borough of Sutton ('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 the 17 January 2024. The total amount of CIL payable is [redacted].
- The DN was issued on 17 January 2024. 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 under Regulation 117(1)(a) and (c) are allowed and the surcharges are quashed. No further action is taken on the s118 appeal.

Preliminary matters

2. As the outcome of Regulation 118 has a bearing on the 117(a) appeal, I shall evaluate the former first.

Reasons for the Recommendation

Appeal under Regulation 118

3. The appellant argues that the CA has issued a DN with an incorrectly determined deemed commencement date. However, it appears clear in this case that the basis of the appeal is that the chargeable development has not begun at all, rather than the deemed commencement date being incorrect. Nevertheless, it is clear, and not disputed by the appellant, that works to construct a side and rear extension have taken place on the

relevant land, but the appellant contends that such works took place solely under planning approval ref. [redacted].

4. Regulation 9 defines chargeable development as the development for which planning permission is granted. In relation to the LN and DN, the chargeable development forms that of planning approval ref. [redacted]. The Regulations are not concerned with whether or not a development has begun with other purposes in mind, it is only concerned with whether it has commenced as a matter of fact. There is nothing within the Regulations which requires the commencement to be intentional. The trigger is the carrying out of a material operation on the relevant land in accordance with Regulations 7(2) and 7(6). Material operation has the same meaning given in the Town and Country Planning Act 1990 s56(4).

5. The approved plans of planning approval ref. [redacted] constituting the chargeable development indicate that the rear extension is clad in render and there are two dormer windows within the rear roof slope. Nevertheless, the rear extension of planning approval ref. [redacted] is clad in brick and the rear roof slope is absent of dormers, both of which I observed during my site visit. I am therefore led to conclude that the appellant has commenced material operations of approval ref. [redacted].

6. On the evidence before me, I am satisfied that the chargeable development within the LN and DN is materially different to that of planning approval ref. [redacted] to which the material operations relate. Having regard to the provisions set out under Regulation 118 there is no power to allow the appeal on the basis that material operations in relation to the chargeable development have in fact not commenced. I must therefore decline to determine the appeal under Regulation 118.

Regulation 117(1)(a) and (c)

7. An appeal under Regulation 117(a) is that the alleged breach which led to the surcharge did not occur. Given my findings on the facts regarding the appeal under Regulation 118, I find that chargeable development has not occurred without notification of commencement nor acceptance of liability, and on this basis, the alleged breach which led to the surcharges did not occur.

8. An appeal under Regulation 117(c) is that the surcharge has been calculated incorrectly. Regulation 83(1) explains that where a chargeable development is commenced before the CA receive a valid CN, the CA may impose a surcharge equal to 20% of the chargeable amount or [redacted], whichever is the lower amount. 20% of the [redacted] CIL amount is [redacted]. [redacted] is the lower amount, however the chargeable development had not commenced and as such the surcharge has been incorrectly calculated.

Conclusion and Recommendation

9. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed, and the surcharges of [redacted] and [redacted] are quashed. No further action is taken on Regulation 118 appeal.

Signed

N Unwin

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed, and the surcharges quashed. I agree with the Regulation 118 recommendation.

A U Ghafoor

INSPECTOR