



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Levelling up, Housing and Communities

Decision date: 3 July 2024

Appeal ref: APP/D1590/L/24/3343631

[REDACTED]

[REDACTED]

- The appeal is made under Regulations 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Southend-on-Sea City Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 11 May 2022.
- A Liability Notice was served on 1 June 2022.
- A revised Liability Notice was served on 22 March 2024.
- A further revised Liability Notice was served on 5 April 2024.
- A Demand Notice was issued on 1 June 2022.
- A revised Demand Notice on was served on 5 April 2024.
- The alleged breaches are the failure to assume liability, to submit a Commencement Notice before starting works on the chargeable development, and to pay the CIL after 30 days, 6 months and 12 months of the due date.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding surcharges for failing to pay the CIL by the due date totals [REDACTED].

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

Procedural matters

1. For the avoidance of doubt, I have no powers to determine whether or not the calculation of the overall CIL charge is correct in the current Demand Notice or any previous Demand Notice. That is a matter for the Valuation Office Agency on receipt of an appeal in accordance with Regulation 114. I can only determine the appeal solely in relation to the surcharges. However, I cannot determine whether or not the alleged breaches to which the surcharges relate have occurred as an appeal under Regulation 117(1)(a) has not been made. Therefore, as the appeal has been made solely under Regulation 117(1)(c), all that is before me to determine is whether or not the surcharges imposed have been correctly calculated.

2. It appears clear that the appellant is not happy with the way the Collecting Authority (Council) has dealt with this matter. If the appellant has concerns about the Council's conduct or their adopted procedures, she may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

Reasons for the decision

3. The first surcharge is for the failure to assume liability. Regulation 80 explains a surcharge of [REDACTED] may be imposed in these circumstances so I am satisfied that the surcharge imposed has been correctly calculated. The second surcharge is for the failure to submit a Commencement Notice before starting works on the chargeable development. Regulation 83 explains that in these circumstances the Collecting Authority may impose a surcharge equal to 20% of the chargeable amount or [REDACTED], whichever is the lower amount. As 20% of the CIL amount ([REDACTED]) equals [REDACTED], I am satisfied that this surcharge has also been correctly calculated.
4. The remaining surcharges are for late payment of the CIL after 30 days, 6 months and 12 months of the due date. Regulation 85 explains that where the CIL amount is not paid in full after the end of the period of 30 days beginning on the day which payment is due, a surcharge of 5% the CIL amount or [REDACTED], whichever is the greater amount. As 5% of the CIL amount equals [REDACTED], it is clear that [REDACTED] is the greater amount. The same surcharge criteria applies if any part of the CIL is not paid after 6 or 12 months. Therefore, I am satisfied that the 3 late payment surcharges of [REDACTED] for each late payment breach has been correctly calculated.
5. On the evidence before me therefore, the appeal cannot succeed.

Formal decision

6. For the reasons given above, the appeal on the ground made is dismissed and the surcharges totalling [REDACTED] are upheld.

K McEntee