



Appeal Decision

by Ken McEntee

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

Decision date: 12 July 2024

Appeal ref: APP/D1590/L/24/3343659

Land at [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]
[REDACTED]
[REDACTED]
[REDACTED]".
- Planning permission was granted on 18 January 2023.
- A Liability Notice was served on 24 January 2023.
- A Demand Notice was issued on 15 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 within 30 days 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 surcharge for failing to pay the CIL within 30 days of the due date is totals £[REDACTED].

Summary of decision: The appeal is allowed in part.

Procedural matters

1. It appears clear that the appellants' main purpose for submitting this appeal is to request that the CIL exemption granted on a previous application ([REDACTED]) be transferred to the appeal application and consequently for the CIL charge to be quashed. However, I should be clear that I have no authority to do so. I can only determine the appeal in relation to the surcharges and solely on the ground made under the CIL Regulations, which in this case is Regulation 117(1), namely that the surcharges have been calculated incorrectly.

Reasons for the decision

2. The first surcharge is for the failure to assume liability. Regulation 80 explains a surcharge of £[REDACTED] on each person liable to pay CIL in respect of a chargeable development may be imposed if nobody has assumed liability. Therefore, I am satisfied that the surcharge of £[REDACTED] 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.

3. The third surcharge is for late payment of the CIL after 30 days 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% of the CIL amount or £[REDACTED], whichever is the greater amount, may be imposed. 5% of the CIL amount in this case equals £[REDACTED], not £[REDACTED]. Therefore, I conclude that the late payment surcharge has been incorrectly calculated.
4. Should the Collecting Authority wish to continue to pursue the CIL and surcharges they must now issue a revised Demand Notice in accordance with Regulation 69(4).

Formal decision

5. For the reasons given above, the appeal on the ground made is allowed in part, the surcharges of £[REDACTED] and £[REDACTED] are upheld, but the surcharge of £[REDACTED] is quashed.

K McEntee