



Appeal Decision

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/N1920/L/24/3341644

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1) (a), (b), and (c) 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 CA), Hertsmere Borough Council.
- 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 issued on 28 February 2024. The total amount of CIL payable is £[REDACTED].
- The DN was issued on 3 February 2022. The following surcharges were imposed: Failure to pay the CIL instalment within 30 days, 6 months, and 12 months totalling £[REDACTED].

Decision

1. The appeal is dismissed and the surcharges upheld.

Procedural Matters

2. As well as the surcharges, the appellant appeals against the late payment interest. However, there is no ground of appeal available against interest charges. The appellant additionally refers to Regulation 97(3) regarding the six-year period within which an application for a Liability Order must take place. Whether a valid application could be made is not for my recommendation. My consideration of the appeal is therefore solely related to the late payment surcharges.

Reasons for the Recommendation

Regulation 117(1)(a)

3. The appellant submitted a self-build exemption form with initial approval [REDACTED]. Upon completion, it was revealed that the development had not been constructed in accordance with the approved plans and a Section 73A of the Town and Country Planning Act 1990 (as amended) application was submitted. The Section 73A approval forms the relevant planning permission within the February 2018 LN, and the subsequent February 2024 LN and DN.
4. The chargeable development was commenced prior to the granting of the relevant planning permission. Regulation 7(5) confirms that development for which planning permission is granted under section 73A is to be treated as commencing on the day planning permission for that development is granted or modified. In this case, 22 January 2018 and the CA have used that date as the deemed commencement date in the DN. Regulation 71(2) confirms that the amount of CIL payable in respect of that chargeable development is due in full on the deemed commencement date.

5. Regulation 85 permits the CA to impose surcharges if the CIL liable is not received in full after the end of the period of 30 days, 6 months, and 12 months. The full CIL amount was not paid within 12 months of the deemed commencement date of 22 January 2018. Therefore, the claimed breach which led to the surcharges did occur and the appeal under Regulation 117(1)(a) fails.

Regulation 117(1)(b)

6. The appellant maintains the CA failed to properly serve a LN in respect of the development to which the surcharges relate, as they did not receive the notice. They do, however, confirm that their agent, acting on their behalf, was served with the February 2018 LN and that they were served with the February 2024 LN. The s73A permission was granted approval in January 2018 with the initial LN dated February 2018.
7. Regulation 65(3) explains to whom the CA must serve the LN and subs (a) requires the LN to be served on the relevant person. Regulation 65(12) clarifies that 'the relevant person' is the person who has applied for planning permission. The application for the s73A permission was submitted by the appellant's professional agent, acting on their behalf and as such, qualifies as 'the relevant person'. Given the agent was served with the February 2018 LN, Regulation 65(3)(a) is met.
8. Regulation 65(3)(b) requires the LN to be served on, if a person has assumed liability to pay CIL in respect of the chargeable development, that person. No evidence has been presented indicating that a person had assumed liability to pay the CIL in respect of the chargeable development. I therefore cannot be sure whether the CA should have served any individual with the LN under Regulation 65(3)(b). As such, on the information before me, Regulation 65(3)(b) is met.
9. Regulation 65(3)(c) requires the LN to be served on each person known to the CA as an owner of the relevant land. The appellant's agent signed the ownership certificate of the planning application form. Given the agent was served with the February 2018 LN, Regulation 65(3)(c) is met. Based on the above, the February 2018 LN was served in accordance with Regulation 65(3).
10. The February 2018 LN issued to the appellant's agent contains the information required by Regulation 65(2), thus complying with this element of the regulations. Whilst the February 2018 LN contains the phrase 'for information only', this does not prohibit its compliance with the Regulations.
11. Consequently, based on the information before me, the February 2018 LN was correctly served. I recognise the appellants concerns about the time gap between the CA issuing the initial February 2018 LN and the February 2024 LN. Nevertheless, Regulation 65(5) allows a CA to issue a revised liability notice in respect of a chargeable development at any time. In any event, the first LN was effective and it is down to the recipient to comply with the Regulations.
12. In conclusion, based on the information before me, the February 2018 LN and the February 2024 LN were served correctly and the appeal under Regulation 117(1)(b) fails.

Regulation 117(1)(c)

13. The surcharges relate to the failure to pay the full CIL amount after the end of the period of 30 days, 6 months, and 12 months. Regulation 85 permits the CA to impose a surcharge of five per cent of the CIL liable or £200, whichever is the greater amount if the CIL liable is not received in full after the end of the period of 30 days. Further surcharges of five per cent of the unpaid amount or £200, whichever is greater, can be imposed if the

CIL Liable is not paid in full after a period of six and twelve months. These surcharges are at the CA's discretion. The surcharges have been calculated based on the full CIL liable and are therefore correct. The appeal on ground 117(1)(c) fails.

Other matters

14. The appellant maintains that the relevant development comprises self-build housing and is occupied as their main residence. Regulation 54B requires a claim from the exemption for self-build housing to be received by the CA prior to the commencement of the chargeable development. In this case, as the permission was granted following the commencement of the chargeable development, it was simply not possible for an exemption for self-build housing claim to be submitted in advance of material operations commencing. As such, the relevant development does not benefit from the self-build housing exemption and is therefore liable for CIL.

Conclusion and Recommendation

15. On the particular facts and circumstances of this case and evidence before me, as well as for the reasons given above, the appeal should be dismissed and the surcharges are upheld.

Signed

N Unwin

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report. The appellants find themselves in a difficult situation. However, failure to comply with the CIL Regulations can have serious consequences. Having reviewed and assessed the evidence and recommendation, I too agree that the appeal is dismissed, and the surcharges upheld.

A U Ghafoor

INSPECTOR