The Planning Inspectorate

Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 22 October 2024

Appeal ref: APP/D1590/L/24/3348740
[redacted]

- The appeal is made under Regulation 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a CIL surcharge imposed by Southend-on-Sea City Council.
- The relevant planning permission to which the surcharge relates is [redacted].
- The description of the development is: "[redacted]".
- Planning permission was granted on 21 May 2024.
- A Liability Notice was served on 28 May 2024.
- A Demand Notice was served 28 May 2024.
- A revised Demand Notice was served on 17 July 2024.
- The alleged breach which led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The surcharge for failure to submit a Commencement Notice is £[redacted].

Summary of decision: **The appeal is allowed in part.**

The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the alleged breach which led to the surcharge did not occur. Planning permission was granted for application [redacted] on 6 October 2021 for the same development description that has been approved for the appeal application ([redacted]). The original permission was considered to be part retrospective as the bungalow had already been demolished. As no Commencement Notice (CN) had been submitted, it followed that the appellant was liable for a surcharge of £[redacted], which he duly paid. Therefore, the appellant contends that he should not be liable to pay another surcharge of £[redacted] in relation to the appeal application as this would amount to being penalised twice for the same breach. However, while I can appreciate the appellant's argument, as the Charging Authority (Council) point out, Regulation 9(1) explains the meaning of "chargeable development" as the development for which planning permission is granted. Therefore, although the descriptions of the two planning permissions are identical, they are separate permissions in their own right. That being the case, as with the original application, as no CN had been submitted in relation to permission [redacted], the Council were entitled to also impose the relevant surcharge in relation to that permission.

2. If perhaps the appellant felt that the inclusion of "Demolish existing bungalow" in the description of the permission was incorrect, then this is something that should have been raised with the Council at the time. I can only determine the appeal on the documentary evidence before me. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(c)

3. An appeal under this ground is that the surcharge has been calculated incorrectly. Regulation 83(1) explains that where a chargeable development is commenced before the Council has received a valid CN, the Council may impose a surcharge equal to 20% of the chargeable amount or £[redacted], whichever is the lower amount. The chargeable amount in this case is £[redacted] and 20% of this amount = £[redacted]. Therefore, it follows the surcharge has been calculated incorrectly. I note that the Council have acknowledged this error and have stated it will be corrected. This is something they must do by serving a revised Demand Notice in accordance with Regulation 69(4) if they are to continue to pursue a surcharge. In the meantime, in accordance with Regulation 69(5), any earlier Demand Notice served in respect of the same chargeable development ceases to have effect. The appeal on this ground succeeds accordingly.

4. I note that the appellant does not dispute the surcharge of £[redacted] for failure to assume liability.

Formal decision

5. For the reasons given above, the appeal is dismissed in relation to Regulation 117(1)(a), but the appeal in relation to Regulation 117(1)(c) is allowed and the surcharge of £[redacted] is quashed.

K McEntee