Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 23 October 2024

Appeal ref: APP/R3650/L/24/3347198

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- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by ████████████████████ against a surcharge imposed by Waverley Borough Council.
- The relevant planning permission to which the surcharge relates is ████████████.
- The description of the development is: "███████████████████████████████ ██".
- Planning permission was granted on 14 May 2024.
- A Liability Notice was served on both appellants 30 May 2024.
- A Demand Notice was served 5 June 2024.
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is £████.

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

Reasons for the decision

1. The appellants concede that they did not submit a Commencement Notice (CN) before they started works on the chargeable development but argue that the Collecting Authority (Council) did not issue a Liability Notice (LN) as soon as practicable after the day on which the planning permission was granted as required by CIL Regulation 65(1). An LN was served on 30 May 2024, 16 days (11 working days) after planning permission was granted, but the appellants claim that this was the first direct communication they had received from the Council in relation to CIL. Therefore, they argue they could not reasonably have been expected to have known of the need to submit a CN before starting works, which they consider qualified for self-builder exemption in any event.

2. With regards to Regulation 65(1), it is open to interpretation what can be considered as "as soon as practicable". However, while the Council have not explained why it took 16 days to issue a LN, I take the view that 16 days is not excessive and can reasonably be interpreted as "as soon as is practicable". It is unfortunate that in the meantime (the next day after permission was granted), the appellants pressed ahead with the development.

3. An LN provides the trigger for a CN to be submitted; without it, it is not possible for a valid CN to be submitted as it requires the LN to be identified in accordance with Regulation 67(2)(b). Therefore, normally in such circumstances I would conclude that the appellants were not at fault for failing to submit a CN. However,

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in this case I note that on 24 January 2024, the Council sent an e-mail to MCA Architects, who were the appellants' agents at the time, enclosing CIL information and requesting that it be sent on to the appellants. The evidence shows that the agents duly did so on 30 January 2024. The CIL information makes clear that if the approved scheme is considered to be CIL liable, a notice will then be issued setting out the initial liability. Moreover, it also makes clear that it is essential work on the site does not take place until the position regarding CIL has been confirmed and it warned of the potential penalties for doing so. Therefore, I take the view that the appellants decision to press ahead with the development before contacting the Council to clarify the situation on CIL was a risky strategy to take, which unfortunately has resulted in a surcharge being imposed and the possibility for self-builder exemption being lost.

4. On the evidence before me, I conclude that the alleged breach occurred as a matter of fact. The appeal fails accordingly.

5. It appears clear that the appellants are not happy with the way the Council has dealt with this matter. However, if the appellants have concerns about the Council's conduct or their adopted procedures, I can only suggest that they may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

Formal decision

6. For the reasons given above, the appeal is dismissed and the surcharge of £███ is upheld.

K McEntee