The Planning Inspectorate

Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 November 2024

Appeal ref: APP/M3645/L/24/3350566

- 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 CIL surcharge imposed by Tandridge District Council.
- The relevant planning permission to which the surcharge relates is .
- Planning permission was granted on 30 April 2024.
- The description of the development is "".
- A Demand Notice was served on 1 August 2024.
- The alleged breach 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 allowed and the surcharge is quashed.**

Procedural matters

1. The Collecting Authority (Council) has confirmed that a Liability Notice (LN) has not been served in this matter. That being the case, the Demand Notice (DN) is rendered invalid as it has not been issued in accordance with Regulation 69(2)(c), which requires the LN to which the DN relates to be identified. As no such LN was issued, it follows that one could not be identified and therefore the DN is not valid and has no effect. Nevertheless, I shall continue to determine the merits of the appeal as this could have a bearing on whether or not the Council decide to continue to pursue the CIL & CIL surcharge by issuing a LN and a revised DN.

Reasons for the decision

2. The appeal is made under Regulation 117(1)(a) - that the alleged breach which led to the surcharge did not occur. The Council imposed the surcharge as they believe that works have commenced on the chargeable development, in the form of demolition of the existing building, without a Commencement Notice having been submitted. I note the Council has chosen not to submit a statement of case and have instead provided photographs and a sequence of e-mail correspondence between themselves and the appellant's agent, as well as internal exchanges. In response, the appellant contends that the work that has been carried is not demolition but is simply remedial work that was carried out before the planning application was submitted. Like the Council, he has provided supporting photographs.

3. The appellant states that the remedial work carried out consisted of the removal of external timber cladding, windows and roof. I note that the Council's [redacted] [redacted] e-mail of 16 May 2024 states "… *unfortunately it looks like demolition has commenced*…", but while the Planning Area Team Leader, [redacted], acknowledges in his e-mail of 12 July 2024 that timber cladding has been removed, he does not go as far as to say that demolition works have begun. The Council therefore do not appear to be entirely sure that demolition works have actually been carried out, and it is open to interpretation from the photographs as to whether what has taken place constitutes commencement of demolition of the planning permission granted on 30 April 2024.

4. I take the view that the appellant's photographic evidence dated 27 November 2023 bears out his contention that the remedial work described above has taken place and confirms that it was carried out before the planning application was submitted. The building's fabric had not been lost or removed in whole or in part, and new cladding, windows and a roof are capable of being installed/built. Therefore, I do not consider that the works carried out constitute commencement of demolition of the existing building and consequently a Commencement Notice was not required to be submitted.

5. On the evidence before me, I conclude that the alleged breach which led to the surcharge did not occur. The appeal succeeds accordingly.

Formal Decision

6. For the reasons given above, the appeal is allowed and the surcharge of £[redacted] is quashed.

K McEntee