



## Appeal Decision

Site visit made on 30 October 2024

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

### Appeal Ref: APP/A1910/L/24/3347196

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) and (b) of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs').
- The appeal is brought by [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, Dacorum Borough Council ('the CA'), on 10 July 2024. The deemed commencement date is 19 October 2021.
- The relevant planning permission to which the CIL relates is [REDACTED].
- The description of the development is described on the DN as follows: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- A Liability Notice (the 'LN') was served on 9 April 2020. The total amount of CIL payable is £[REDACTED] including surcharge for a failure to assume liability, submit a commencement notice ('CN'), and surcharges for late payment.

### Decision

1. The appeal is dismissed.

### Reasons

2. The challenge is that the claimed breach which led to the imposition of the surcharge did not occur and that the CA did not serve an LN in respect of the chargeable development to which the surcharge relates.
3. Planning permission ref [REDACTED] qualifies for the levy. Effectively, the variation of condition 12) allowed the replacement of the approved drawings to include inverted roof terraces within the existing volume of two of the units. At the time of my site visit, the development appears substantially complete, and the dwellings are occupied.
4. CIL Regs 67(1) explains that where planning permission is granted for a chargeable development, a CN must be submitted to the CA no later than the day before the day on which the chargeable development is to be commenced. No valid CN had in fact been submitted prior to 19 October 2021. The deemed commencement date is based on building control records held by the Council and prior to the deemed commencement date, nobody assumed liability.
5. The issue of a LN is followed by the submission of a CN by the relevant person. However, by commencing the initial development and subsequently applying for a variation, the appellants effectively prevented the normal sequence of events from taking place. As a result, the subsequent permission automatically became liable to CIL and the CIL Regs 80(1) and 83(1) surcharge. So, it was not possible for the appellant

to prevent from being imposed the failure to assume liability and submit a CN surcharge. This was effectively a situation of their own making. The breach which led to the imposition of these surcharges did occur.

6. CIL Regs 65(3)(a) is explicit that a LN must be served on the relevant person as defined in 65(12). A 'relevant person' is clearly defined as the person who applied for planning permission. In this case, there is nothing to make less than credible the CA's evidence that [REDACTED], who was the person named in the planning application form as the contact or agent at the time, was sent a copy of the LN on 9 April 2020 via electronic mail. That method of service is consistent with CIL Regs 126(1)(e). There is no evidence before me to suggest the LN had not been received by e-mail.

### **Other matters and conclusions**

7. The appellant raises concerns about the CIL amount and invalidity of the DN. These matters are not for my determination. I am only reviewing CIL Regs 117(a) and (b) appeal.
8. At final comments stage<sup>1</sup> several decisions have been referenced. The claim is that I should also follow these decisions and allow the CIL Regs 117(1)(b) appeal. There is a need for consistency in planning decisions because like decisions should be determined in a like manner. However, facts and circumstances differ between appeals, especially CIL enforcement appeals. Unlike court judgments, previous appointed person decisions are not binding on me, and I can depart from the approach or analysis provided there are good reasons to do so. Against that context, 1200423, 1200358 and 1200305 are distinguishable. Unlike those appeals, a LN had been emailed to a relevant person and there is no firm evidence to show that a LN had not been received by the relevant person. In a similar vein, ref 1200373 is irrelevant. This is because in that case the CA prematurely imposed a surcharge for late payment.
9. Drawing all the above threads together, on the balance of probabilities, I conclude that the appeal should fail.

*A U Ghafoor*

Inspector

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<sup>1</sup> 7 August 2024.