The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 19 February 2025

Appeal ref: APP/D0840/L/24/3352143

[redacted]

- The appeal is made under Regulation 117(1)(a), (b) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by Cornwall Council.
- The relevant planning permission to which the CIL relates is [redacted].
- Planning permission was granted on 9 August 2024.
- The description of the development is: "[redacted]".
- A Liability Notice was served on 3 October 2024 (dated 22 August 2024).
- A Demand Notice was served on 22 August 2024.
- A Surcharge Notice was served on 22 August 2024.
- The alleged breach to which the surcharge relates 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 £[redacted].
- The determined deemed commencement date given in the Demand Notice is 9 August 2024.

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

Procedural matters

1. It appears clear the appellants believe that as the development is a single storey annexe it qualifies to be exempt from CIL. However, while annexes can be exempt in accordance with Regulation 42A, Regulation 42B explains that any claim for exemption must be made prior to commencement of development. As the approval in this case was retrospective, it follows that it cannot be exempt from CIL.

2. The appellants refer to an information note[1] on the application decision notice which appears to give contradictory information to the Demand Notice. However, the Collecting Authority (Council) have explained that this informative was included with the decision notice in error as it should only be used where planning permission is refused.

[1] ***"Please note that the proposed development set out in this application would have been liable for a charge under the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) if planning permission had been granted. Therefore, if an appeal is lodged and subsequently allowed, the CIL liability will be calculated and applied accordingly."***

3. It appears clear that the appellants are not happy with the way the Council has dealt with matters leading up to this point, particularly with regard to the issue of an Enforcement Notice. However, this is not a matter before me to consider in my determination of the CIL appeal. I can only determine the appeal in relation to the CIL surcharge. If the appellants have concerns about the Council's conduct or their adopted procedures, I can only suggest that they may wish to submit a complaint through the Council's established complaints process in the context of local government accountability.

The appeal under Regulation 117(1)(a)[2] and (b)[3]

4. The appellants contend that the Council failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. I note that a LN was in fact served on 3 October 2024 but dated to 22 August 2024. It is reasonable to conclude that a LN was generated on 22 August 2024 as the Demand Notice (DN) cites the LN's reference number, but it was not actually issued on that date. The Council accept that they erred in not serving a LN at the time of serving the Demand and Surcharge Notices. In normal circumstances, such an error would have adversely affected the appellants as a LN serves as the trigger for a Commencement Notice (CN) to be submitted before starting works on the chargeable development. However, in this case, as the permission was granted retrospectively it simply was not possible for a valid CN to be submitted. Therefore, if follows that the Council's failure to serve a LN at the correct time did not impact on the appellants' ability to submit a CN and to avoid the subsequent surcharge. In other words, even if the LN had been served before or at the same time as the DN, it would not have helped the appellants in this respect.

5. However, where the backdating of the LN could have potentially impacted on the appellants, would have been on their ability to submit an appeal against the calculation of the CIL chargeable amount. Such an appeal needed to have been made to the Valuation Office Agency within 60 days of the LN in accordance with Regulation 114. Plus, any such appeal can only be accepted after a request for a review has been made to the Council in accordance with Regulation 113 within 28 days of the LN. That being the case, I can only conclude that the LN is defective. I have no powers to correct, vary or quash a LN or DN but I do have powers to quash a surcharge.

6. As the Council have alluded to, if they wish to continue to pursue the CIL, they should now issue a revised LN, as they are entitled to do in accordance with Regulation 65(5), and then serve a revised DN in accordance with Regulation 69(4). The clock would begin again from the issue of the revised LN for the appellants to seek a review under Regulation 113 and appeal under Regulation 114 if they so wish. They would also be able to appeal against any revised DN. Therefore, in order to save any potential unnecessary time, expense and inconvenience for both parties, I consider the reasonable approach for me to take is to continue with the determination of this appeal. This would not affect the appellants' right to appeal any revised DN but may be helpful to them when deciding whether or not to do so.

7. With that in mind, I note that the appellants have submitted a back-dated CN with their final comments. However, Regulation 67(1) explains that a CN must be

[2] That the alleged breach which led to the surcharge did not occur.
[3] That the Council failed to serve a Liability Notice in respect of the development to which the surcharge relates.

submitted to the Council no later than the day before the day on which the chargeable development is to be commenced. Therefore, it cannot be submitted after the event for it to be valid.

8. Unfortunately, by pressing ahead with the development before obtaining the necessary planning permission, it meant the surcharge was unavoidable. This was effectively a situation of the appellants' own making. In conclusion, it follows that the alleged breach that led to the surcharge occurred as a matter of fact. Therefore, the appeal under Regulation 117(1)(a) and (b) fail accordingly.

The appeal under Regulation 117(1)(c)[4]

9. Although an appeal has been made on this ground, the appellants have not provided any supporting evidence as to why they consider the surcharge has been miscalculated, and it appears to be more a case that they believe the surcharge should not have been imposed at all. However, this issue has been addressed above, and I am satisfied the surcharge has been correctly calculated in accordance with Regulation 83(1). The appeal on this ground also fails accordingly.

The appeal under Regulation 118[5]

10. The determined deemed commencement date given in the Demand Notice is 9 August 2024. Although an appeal has been made on this ground, the appellants have not offered an alternative date. Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. However, Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out then granted planning permission under section 73A of the Town & Country Planning Act. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified.

11. Therefore, as retrospective permission was granted in this case, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which in this case was 9 August 2024. Consequently, I am satisfied the Council have not issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground also fails accordingly.

Formal decision

12. For the reasons given above, the appeal on all grounds made is dismissed and the surcharge of £[redacted] is upheld.

K McEntee

[4] That the surcharge has been miscalculated.
[5] That the Council has issued a demand Notice with an incorrectly determined deemed commencement date.