The Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 23 May 2025

Appeal ref: APP/Q1445/L/24/3355105

[redacted]

- The appeal is made under Regulations 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by Brighton and Hove City Council.
- The relevant planning permission to which the surcharge relates is [redacted].
- Planning permission was granted on 10 May 2024.
- The description of the development is "[redacted]".
- A Liability Notice was served on 24 October 2024.
- A Demand Notice was served on 24 October 2024.
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice (CN) before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is £[redacted].

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

Procedural matters

1. I note that much of the appeal relates to the calculation and imposition of the CIL charge, and I note that in procedural correspondence the case officer informed the appellant that this issue can only be determined by way of an appeal to the Valuation Office Agency in accordance with Regulation 114. Therefore, for the avoidance of doubt, I can only determine this appeal solely on the grounds made in relation to the CIL surcharge.

The appeal under Regulation 117(1)(a)

2. An appeal under this ground is that the alleged breach which led to the surcharge did not occur. The appellant explains that a CN was not required in relation to the original planning permission ([redacted]) as it was not CIL liable. However, he contends that demolition works had to be urgently carried out when it was realised upon commencing works on that permission that there were structural deficiencies that presented an immediate safety risk. This is corroborated by the Design and Access Statement provided with the appeal documents. However, while I appreciate the difficulties this now presented for the appellant, I consider it not unreasonable to expect him to have at least made a quick telephone call to the Council to explain the situation and his intentions. The Council could then have informed him of any procedures that needed to be followed before going ahead with demolition and advised of any possible consequences of carrying out

such works. In the circumstances, I take the appellant's decision to press ahead with demolition without taking the above step, to be a risky strategy to take.

3. As a result of the demolition works, the appellant had to apply for part-retrospective permission ([redacted]), the subject of this appeal. The new application also included an amended proposed development, which was now deemed to be CIL liable. As this application was part-retrospective, it was simply not possible for a valid CN to be submitted. However, the carrying out of the demolition works made this situation unavoidable as the resultant application was now destined to be part-retrospective. As a CN was obviously not submitted before works began, I have no option but to conclude that the alleged breach which led to the surcharge occurred as a matter of fact. The appeal on this ground fails accordingly.

4. The appellant contends that there is a gap in legislation in relation to the scenario presented in this appeal. I can only suggest that he may wish to take this matter up with his local MP.

The appeal under Regulation 117(1)(c)

5. An appeal under this ground is that the surcharge has been calculated incorrectly. However, the appellant has not offered any evidence as to why he believes this to be the case, and it appears clear it is more a case that he believes the surcharge should not have been imposed at all, which is an issue I have addressed above. Nevertheless, Regulation 83 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 CIL amount in this case is £[redacted] and 20% of this amount equals £[redacted]. Therefore, it is clear that £[redacted] is the lower amount and consequently I am satisfied that the Council has not incorrectly calculated the surcharge. The appeal on this ground also fails accordingly.

Formal Decision

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

K McEntee