



Appeal Decision

by Ken McEntee

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

Decision date: 5 June 2015

Appeal ref: APP/B1225/L/15/1200022

- The appeal is made under Regulation 117(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Purbeck District Council under Regulation 83.
- The alleged breach which led to the imposition of the surcharge is failure to submit a Commencement Notice.
- A Liability Notice was issued on 16 February 2015.
- A Demand Notice was issued on 10 March 2015.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is "Demolish existing detached house and garage and erect replacement detached house and garage".
- The outstanding surcharge payable for failure to submit a Commencement Notice is [REDACTED].

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

Basis for the appeal

1. The appeal is made on the basis that the claimed breach which led to the surcharge did not occur. The appellants contend they contacted the Council on 16 February 2015 and notified them they had commenced work on the planning permission, but the CIL Liability notice was not received until 18 February 2015. Therefore, they assert that they were not aware of the CIL guidelines until after work had commenced. The appellants also query the amount of the surcharge demanded.
2. The Council contend that they have no record of any contact with the appellants on 16 February 2015, but both the decision and CIL Liability notice were published on their website on that date. They state that a copy of the planning permission and Liability notice with guidelines was also sent by recorded delivery on that day and signed for on 18 February 2015. A Commencement Notice was not received until 3 March 2015. Therefore, the Council contend that the claimed breach of the CIL regulations did occur in that the development had begun before a valid Commencement Notice was served.

Conclusions

3. Regulation 67 (2) (a) of the CIL regulations explains that a Commencement Notice must be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect). Regulation 83 states that where a chargeable development (D) is commenced before the collecting authority has received a valid Commencement Notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable of D or £2,500, whichever is the lower amount. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur.
4. It is clear that there is a dispute about whether or not the appellants contacted the Council on 16 February 2015 and informed them that they had commenced works on the planning permission, which was only granted that day. In the absence of any documentary evidence before me I cannot conclude whether or not such a conversation took place. Nevertheless, irrespective of whether or not one did, I take the view that for the appellants to decide to begin the works without having received a written formal planning permission was a risky strategy to take. Had they waited for receipt of the formal planning permission with the accompanying CIL Liability Notice and guidelines, they would have been fully aware of the need to submit a Commencement Notice (Form 6) before works could begin. In any event, regulation 67 (1) states that "*a commencement notice must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced*". That being the case, as the appellants had begun works on 16 February 2015, notifying the Council on the same day clearly did not meet the requirements of the regulations. The Commencement Notice that was eventually submitted (dated 18 February 2015) states that the works commenced on 16 February 2015. Therefore, the required Commencement Notice was evidently submitted after works had begun.
5. While I have some sympathy with the appellants in that this was the first time they have been involved in a development that involved a CIL charge, the inescapable fact is that they did not submit a valid Commencement Notice before starting works as required by the CIL regulations. Therefore, I can reach no other conclusion than the breach which led to the surcharge, occurred as a matter of fact and degree. Consequently it follows that the appeal cannot succeed on the ground made.
6. Although I note the appellants have not actually appealed under Regulation 117 (c)¹, they have queried the amount of surcharge demanded. For the avoidance of doubt, I am satisfied that the surcharge has been correctly calculated as per Regulation 83 as explained in paragraph 3 above.

Formal decision

7. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the CIL surcharge.

K McEntee

¹ The surcharge has been calculated incorrectly