
Appeal Decision

Site visit made on 17 March 2015

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 September 2015

Appeal Ref: APP/F5540/L/14/1200013

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117 and 118 of the Community Infrastructure Levy Regulations 2010 as amended.
 - The appeal is made by [REDACTED] against a Liability Notice and Demand Notice issued by the Council of the London Borough of Hounslow under Regulations 65 and 69.
 - The Council's reference is [REDACTED]
 - The reference of the relevant planning permission to which the notice relates is [REDACTED], dated 7 March 2013.
 - The liability notice was issued on 27 June 2014, and the demand notice on 26 August 2014.
 - The reason for issuing the liability notice is to give notice of CIL liability, and any surcharges. The reason for issuing the demand notice is that development was deemed to have commenced.
 - The deemed date of commencement of development is 13 March 2013.
 - Description of development: demolition of an existing garage, erection of a two-storey side and rear extension, a single storey rear extension, a front porch extension and erection of an outbuilding to the rear garden of the existing dwelling.
 - The outstanding amount of CIL payable that the liability and demand notices relate to is [REDACTED]
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Decisions

1. The appeal under Regulation 117 is turned away.
2. The appeal under Regulation 118 is dismissed and the notice issued by the Council on 26 August 2014 is upheld.

Background matters

3. Planning permission for the development was granted on 7 March 2013, and I understand the works started on 12 March 2013. Under Regulation 7(2), 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.
4. Under Regulation 65(1) a collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development. In this case planning permission was granted on 12 March 2013, and the Council's liability notice was issued on 27 June 2014.

5. Under the provisions of section 214(1) of the Planning Act 2008 - a charging schedule approved under section 213 (Charging Schedule: approval) may not take effect before it is published by the charging authority. In this case the Council stated that they act as collecting authority for the Mayor of London - the charging authority.

Main issues

6. I consider the main issues to be as follows:
 - In the Regulation 117 appeal - whether the collecting authority failed to serve a liability notice in respect of the development to which the surcharge relates.
 - In the Regulation 118 appeal - whether the collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.

Reasons

7. The appellants argue that the Council did not notify them of their liability to pay the CIL at the time planning permission was granted. Construction had started on 12 March 2013, and the final inspection by the Council's Building Control Department had been on 26 November 2013. However, the Council's first notification of CIL liability was on 27 June 2014.
8. In this case the Council have served a liability notice and have confirmed that - despite what is said in the notice - the CIL charge is made in their capacity as the collecting authority on behalf of the Mayor of London. The sum of [REDACTED] stated in the notice is calculated on the basis of a net liable development area of 123 square metres, at a rate of £35 per square metre. I am satisfied that this is in line with the Mayor of London's charging schedule for London boroughs including Hounslow - which came into effect on 1 April 2012.

The Regulation 117 appeal

9. An appeal under Regulation 117 is against the application of a surcharge. Under Regulation 117(1) such an appeal may be made in various circumstances including 117(1)(b) - that the collecting authority did not serve a liability notice in respect of the chargeable development to which the surcharge relates. It is on this ground that the appellants have appealed.
10. However, it is apparent from the liability notice that no surcharge has been applied, and that the liability is solely for CIL. Given that the Council have served a liability notice without any application of a surcharge, and since Regulation 117 relates only to appeals against the application of surcharges, there can be no valid appeal on this ground. I therefore have no jurisdiction in this matter, and must turn the appeal away.

The Regulation 118 appeal

11. An appeal under Regulation 118 is on the grounds that the collecting authority has incorrectly determined the deemed commencement date stated in a CIL demand notice.
12. The Council did not receive a commencement notice from the appellants, as is required under Regulation 67. At 67(1) this states that:

'Where planning permission is granted for a chargeable development, 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'.

In circumstances where the Council do not receive a commencement notice, but have reason to believe it has commenced, then under Regulation 68(a) they - as collecting authority - must determine the day on which it was deemed to have commenced.

13. In this case no commencement notice was submitted by the appellants. The Council therefore relied on their Building Control records, which showed a start date for the works of 13 March 2013 – the date supplied to Building Control by [REDACTED]. The appellants say this is incorrect, and the start date was 12 March 2013.
14. It appears to me that the Council determined the deemed commencement date on the best information available to them. The date in the demand notice is in any case only marginally later than that now given by the appellants. Since the effect of the deemed commencement date is to fix the starting point for CIL liability, it is very slightly to the appellants advantage that it was fixed marginally later.
15. In the circumstances I conclude that the Council did not issue a demand notice with an incorrectly determined deemed commencement date. The appeal under Regulation 118 therefore fails.

Other matters

16. The appellant says that as a result of the late issue of the liability notice, and of problems with the original building contractor, the building costs have overrun and no funds are available to meet the CIL liability. Had the Council made their notification before construction started it would have been possible to make a judgement about the overall costs, or to reduce the size of the extension to below 100 square metres, so that there would have been no liability for CIL under the provisions for exemption of minor development.
17. The Council say that they received a request for determination as to liability for CIL from the appellants' agent, and that they sent a liability form to [REDACTED] at the agent's address. The appellants corroborate this, saying that their agent submitted a CIL questionnaire on their behalf at about the time the planning application was made in early March 2013.
18. I appreciate that the appellants are aggrieved that they received the liability and demand notices at such a late date, and that they may now have difficulty in settling the charge - to some extent as a result of their building contractor's default. While this is unfortunate, given their prior knowledge of the likelihood of CIL liability before works began, it would have been possible for them to take timely action to reduce the size of the extensions, or take other measures to deal with the cost arising from CIL. Although the issue of the liability notice may have been delayed as a result of staff shortages, the appellants must have been aware of their liability through their agent, and I do not consider the appellants can avoid CIL liability as a result of the delay in issue of the notice.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I consider the appeal under Regulation 117 should be turned away, and the appeal under Regulation 118 should be dismissed.

Stephen Brown

INSPECTOR