



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 29 September 2023

Appeal ref: APP/V2635/L/23/3325274

Land to the [REDACTED]
[REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against the Borough Council of Kings Lynn & West Norfolk.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- Planning permission was granted on 24 August 2022.
- The description of the development is: "[REDACTED]".
- A Liability Notice was served on 24 October 2022.
- A Demand Notice was served on 8 June 2023.
- The alleged breach to which the surcharge relates is the failure to submit a valid Commencement Notice 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.

Reasons for the decision

1. An appeal under CIL Regulation 117(1)(c) is that the surcharge has been calculated incorrectly. However, it appears clear from the appellant's supporting arguments is that he is challenging the calculation of the overall CIL charge of [REDACTED], which he believes should be either [REDACTED] or [REDACTED] (if garages included). For the avoidance of doubt, the Planning Inspectorate has no authority to consider the accuracy of the CIL amount. This can only be considered by way of an appeal to the Valuation Office Agency (VOA) in accordance with CIL Regulation 114, after first submitting a request to the Collecting Authority (Council) for a review in accordance with Regulation 113. There is no evidence before me of a successful appeal having been made to the VOA. Therefore, I have no option but to take the CIL amount to be correct.
2. The appellant contends that as the CIL charge is incorrect then it follows that the surcharge is also incorrect. However, Regulation 83(1) explains that where a chargeable a chargeable development is commenced before the Council receive a valid Commencement Notice, the Council may impose a surcharge equal to 20% of the chargeable amount or [REDACTED], whichever is the lower amount. Therefore, even if it is accepted that [REDACTED] should be the correct CIL amount, 20% of this sum = [REDACTED]. As [REDACTED] is clearly lower than this amount as well as

20% of [REDACTED] or [REDACTED], then it is clear that the Council have not calculated the surcharge incorrectly.

3. Although the appellant did submit a Commencement Notice, unfortunately it was invalid as it failed to state an intended commencement date. However, the appellant contends that the notice was not completed correctly due to suffering from dyslexia and the stress he was experiencing at that time with a toddler, a pregnant wife and trying to sell his house. However, while I have sympathy with the appellant if he simply made an error and I in no way wish to appear dismissive of the stressful personal circumstances he was experiencing at the time, I am afraid I have no authority to consider mitigation and can only determine the appeal on its facts. With that in mind, irrespective of the reason for not doing so, it is a matter of fact that a valid Commencement Notice was not submitted as required by Regulation 67(1).
4. In these circumstances and on the evidence before me, I have no option but to dismiss the appeal.

Formal decision

5. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee