



Appeal Decision

by Ken McEntee

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

Decision date: 23 November 2023

Appeal ref: APP/D0121/L/23/3326195

- The appeal is made under Regulations 117(1)(a), (b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by North Somerset Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- Planning permission was granted on 16 July 2021.
- The description of the development is "[REDACTED]".
- Liability Notices were served on 8 September 2021 on the applicants for planning permission [REDACTED].
- A Demand Notice was served on the appellant on 6 July 2023.
- The alleged breaches that led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal is allowed in part.

Procedural matters

1. For the avoidance of doubt, I have no authority to determine the person or persons liable for the CIL or CIL surcharges. This is a matter the appellant may wish to take up with the Collecting Authority (Council) and/or the previous land-owners. I can only determine whether it was correct for the surcharges to be imposed in principle.
2. The appellant contends that it was the previous owners' responsibility to complete a Transfer of Assumed Liability Notice (Form 4). However, it was also the appellant's responsibility as Form 4 is required to be completed jointly by the transferer and transferee.

The appeal under Regulation 117(1)(a)¹ & (b)²

3. Regulation 67(1) explains that a Commencement Notice (CN) must be submitted to the Council no later than the day before the chargeable development is to be commenced. In this case, the appellant does not refute that works began on the chargeable development without a CN having been submitted. However, he contends

¹ The alleged breach which led to the surcharge did not occur.

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates.

that he was not aware of the CIL liability as it was not mentioned in the planning permission, and neither was he informed by the Council until receipt of the Demand Notice of 6 July 2023. However, a Liability Notice was correctly served on [REDACTED] [REDACTED] as the applicants for planning permission on 8 September 2021. This notice was registered as a local land charge at the time it was served, which the Council are obliged to do under the local land charges Act 1975. Such a charge binds the land, and any purchaser or owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. Therefore, the appellant should have been aware when he purchased the land of the CIL responsibilities and procedures as explained in the notice, such as the need to submit a CN before starting works on the chargeable development.

4. The appellant points out that he informed the Building Control Dept of the intended commencement date. However, the Building Control Dept is not part of the CIL Collecting Authority, and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. A CN (Form 6) was required to be submitted to the Collecting Authority in order for the requirements of Regulation 67(1) to be met. Therefore, I am satisfied that the alleged breach of failing to submit a CN before starting works on the chargeable development occurred as a matter of fact.
5. With regards to the alleged breach of failing to assume liability, Regulation 80 explains that a surcharge of [REDACTED] may be imposed on each person liable to pay CIL if nobody has assumed liability. However, I note that the previous land-owners assumed liability on 6 September 2021, and it has not been formally withdrawn. That being the case, it follows that a surcharge for failing to assume liability should not have been imposed and will therefore be quashed. In these circumstances, the appeal under Regulation 117(1)(a) partly succeeds but the appeal under Regulation 117(1)(b) fails.

The appeal under Regulation 117(1)(c)³

6. Although an appeal has been made on this ground, the appellant has not explained why they consider the surcharges have been miscalculated, and it would appear to be more a case that they should not have been imposed in principle. Nevertheless, Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, a surcharge of 20% of the chargeable amount may be imposed or [REDACTED], whichever is the lowest amount. The CIL amount in this case is [REDACTED]. As 20% of this sum = [REDACTED], it follows that this is clearly the lower amount. Therefore, I am satisfied the Council have not miscalculated this surcharge. The appeal under this ground fails accordingly.

Formal Decision

7. For the reasons given above, the appeal on under Regulation 117(1)(a) is allowed in part, but the appeal under Regulations 117(1)(b) and (c) is dismissed. The surcharge of [REDACTED] is quashed, but the surcharge of [REDACTED] is upheld.

K McEntee

³ The surcharge has been calculated incorrectly.