



Appeal Decision

by **A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/P2745/L/23/3332505

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) and (c) of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs').
- The appeal is brought by [REDACTED] on behalf of [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, North Yorkshire Council ('the CA').
- The relevant planning permission to which the CIL relates is [REDACTED].
- The description of the development is described on the DN as follows: [REDACTED]
[REDACTED]
[REDACTED]
- A Liability Notice (the 'LN') was served on 15 May 2023. The total amount of CIL payable is [REDACTED].
- The DN was issued on 6 October 2023. The DN states the deemed commencement date as 30 March 2023. The following surcharges were imposed: [REDACTED] for a failure to submit a commencement notice (hereinafter 'CN'). The total amount payable is [REDACTED]

Decision

1. The appeal is dismissed.

Preliminary matter

2. On 8 February 2024, The Planning Inspectorate requested additional information from the appeal parties. I am grateful for the replies and will proceed to my decision having regard to the additional information.

CIL Regs 117(1)(a)

3. The CA exercised discretionary powers under the CIL Regs and imposed surcharges for failure to submit a CN. CIL Regs 67(1) explains that a CN must be submitted to the CA no later than the day before the day on which the chargeable development is to be commenced. The ground of appeal is that the claimed breach which led to the surcharge did not occur, because a CN was not necessary for the chargeable development.
4. Planning application ref [REDACTED] [REDACTED]
[REDACTED] was granted permission by the local planning authority (LPA) on 22 January 2020 ("the 2020 Permission"). Chargeable development was first permitted by this permission and, following an assumption of liability, the CA issued a zero-rated LN for that chargeable development. This is because the gross internal floorspace in lawful use was deemed to be more than the proposed floorspace. During early 2022 the

site had been cleared, existing building demolished and some preparatory investigations undertaken. It seems to me these works fall within the scope of material operations.

5. Contrary to the CA's approach, there is no requirement to submit a CN for this zero-rated development due to the effect of CIL Regs 67(1A)(b). The CA rightly concede that a CN was not required, and the issued LN incorrectly required the submission of a valid CN. However, that is not the end of the matter.
6. The evidence shows that the appellant did not wish to comply with condition 22) of the 2020 Permission. The condition was deemed too onerous and excessive because it required the developer to install a whole house mechanical ventilation system equal to Passivhaus Certified Standard in each new dwelling. The stipulation also required each dwelling to be subjected to a test for air tightness to prove that the air leakage is less than 3 mcub/(h.msq) at 50 Pa.
7. The appellant argues that the 2020 Permission has been fully implemented but no specific details have been submitted. For instance, a building regulation completion certificate could have assisted in determining when the dwellings were completed. Furthermore, the appellant concedes that "...obviously, we don't need to use the Passivhaus system now". On the balance of probabilities, I consider that the evidence presented does not clearly show condition 22) has been satisfied and that the development, as built, fully complies with the approved scheme. For example, the disputed condition requires test results for each dwelling, but this detail has not been submitted. I attach limited weight to the argument that the scheme permitted by the 2020 Permission has, in fact, been fully implemented.
8. On the contrary, a different revised scheme was submitted to the LPA for approval. There was a delay in determining this application because of the pandemic. Nonetheless, on 1 March 2023, planning permission for the following description of development was granted: [REDACTED]
[REDACTED]
[REDACTED] I refer to this as the "2023 Permission". It is subject to 14 conditions.
9. To my mind, the meaning and effect of the 2023 Permission is clear as water: it grants full permission for residential development. The development permitted is identical to the initial scheme but the requirement for a Passivhaus standard ventilation system has been deleted. It is arguable whether this later permission was in-whole-or-in-part retrospective because existing buildings had been demolished and material operations commenced.
10. Be that as it may, the scheme permitted by the 2023 Permission is significantly different given the absence of the need to install a Passivhaus standard ventilation system. The initial development was zero-rated but the 2023 Permission is for CIL chargeable development and no floorspace could be considered when calculating CIL liability. Consequently, I consider the CA correctly issued a LN and DN in connection with this chargeable development.
11. I acknowledge the sequence of events mean that it will be too late to give a CN but this is something brought on by the appellant. In the context of this appeal, chargeable development had commenced before the CA received a valid commencement notice. As the breach had in fact occurred, the authority used its discretionary power to impose the surcharge.
12. For all the above reasons, I conclude that this ground of challenge must fail.

CIL Regs 117(1)(c)

13. CIL Regs 83 explains that where a chargeable development is commenced before the CA has received a valid CN, the CA may impose a surcharge equal to 20% of the chargeable amount payable or [REDACTED], whichever is the lower amount. On the circumstances of this case, and for reasons I have explained above, I find that the surcharge has not been calculated incorrectly.

Overall conclusions

14. For the reasons given above, I conclude the CIL Regs 117(a) and (c) grounds of challenge fail. The appeal is dismissed.

A U Ghafoor

Inspector