



Appeal Decision

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2024

Appeal Ref: APP/C3810/L/23/3336319

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1) (a) and 118 of the Community Infrastructure Levy Regulations 2010 as amended.
- The appeal is made by [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority (the CA), Arun District Council.
- 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]
- A Liability Notice (the 'LN') was issued on 13 November 2023. The total amount of CIL payable is [REDACTED].
- The DN was issued on 13 November 2023. The following surcharge was imposed: [REDACTED] for failure to assume liability and [REDACTED] for a failure to submit a commencement notice (hereinafter 'CN'). The total amount payable is [REDACTED].

Decision

1. The appeal is dismissed, and the CA's deemed commencement date and the surcharge upheld.

Preliminary Matters

2. As the outcome of CIL Regs 118 has a bearing on the 117(a) appeal, I shall evaluate the former first.

Reasons for the Recommendation

Appeal under Regulation 118

3. An appeal under Regulation 118 is that the CA has issued a DN with an incorrectly determined deemed commencement date.
4. Regulation 7(5) states that development for which planning permission is granted under section 73A of the Act (planning permission for development already carried out), is to be treated as commencing on the day planning permission for that development is granted. Planning permission [REDACTED] relates to a retrospective application, which is clear from the wording of the description of development. As such, the CA have provided a deemed commencement date of 9 November 2023 within the DN, the same date permission was granted for the development. Therefore, in accordance with the Regulations, the determined deemed commencement date within the DN is correct.
5. For the reasons set out above, the appeal under Regulation 118 fails.

Appeal under Regulation 117(a)

6. Regulation 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. Regulation 31(1) explains that a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an assumption of liability to the CA. In this case, as the permission was granted retrospectively, it was simply not possible for a CN to be submitted in advance of material operations commencing. The latter had already taken place. So, it was not possible for the appellant to prevent the subsequent surcharges being imposed.
7. The issue of a LN is followed by the submission of a CN by the relevant person. However, by commencing the relevant development and subsequently applying for planning permission retrospectively, the appellant effectively prevented the normal sequence of events from taking place. As a result, the subsequent permission automatically became liable to CIL and CIL surcharges. This was effectively a situation of the appellant's own making.
8. For the reasons set out above, the appeal under Regulation 117(a) fails.

Conclusion and Recommendation

9. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed, and the CA's deemed commencement date and the surcharge upheld.

Signed

N Unwin

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed, and the CA's deemed commencement date and the surcharge upheld.

A U Ghafoor

INSPECTOR