



Appeal Decision

Site visit made on 25 March 2024

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

an Inspector appointed by the Secretary of State

Decision date: 18 April 2024

Appeal Ref: APP/G5750/L/23/3336211

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a), (b), (c) and 118 of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs').
- The appeal is brought by [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, the Council of the London Borough of Newham ('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]
[REDACTED]
[REDACTED]
[REDACTED]
- A Default Liability Notice (the 'LN') was served on 1 November 2023.
- The DN was issued on 1 November 2023 and the deemed commencement date stated is 5 January 2020.
- The DN imposes the following surcharges: [REDACTED] for a failure to assume liability, [REDACTED] for a failure to submit a commencement notice (hereinafter 'CN'), and late payment surcharges (30 days [REDACTED], 6 months [REDACTED] and 12 months [REDACTED]). The total amount payable, including late payment interest, is [REDACTED].

Summary of Decision: The appeal on CIL Regs 117(1)(a)(b) and (c) is allowed in relation to the failure to submit a CN and late payment surcharges only but is otherwise dismissed. The appeal on CIL Regs 118 is dismissed.

Reasons – CIL Regs 118 appeal

1. This appeal has a bearing on the outcome of the CIL Regs 117 appeal, and I will determine it first.
2. For background information, the Council, as the CA, adopted its charging schedule and it became effective on 1 January 2014. A planning permission for residential development of this kind is subject to the levy unless it is exempt. The site is located to the [REDACTED] and is accessed via a shared driveway. It adjoins a railway track to the rear. Planning permission was granted by the local planning authority ('the LPA') for development described in the header above on 5 July 2016 ('the 2016 Permission'). This is subject to eight conditions. The description of the development permitted by the 2016 Permission is clear as water to me: there is no ambiguity. Effectively, demolition of existing structures on the site is part of the development authorised and the scheme illustrated in the approved plans.
3. CIL Regs 7(2) explains that 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. CIL

Regs 67(1) states that where planning permission is granted for a chargeable development, 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 appellant's own evidence is instructive because this shows that in about January 2020 an existing building had been demolished and the site cleared for construction works. Whilst operations ceased because of an issue relating to Network Rail's consent, the work undertaken in January falls within the definition of material operation for the purposes of CIL Regs. A valid CN had not been submitted before material operations commenced in January 2020.

4. In accordance with CIL Regs 68(1)(a), the CA must determine the day on which a development was commenced if it has not received a valid CN but has reason to believe it has been commenced. This is the situation in this case. To me, the quantum of evidence points in the probability that the CA correctly determined the deemed commencement date as 5 January 2020. For the above reasons, CIL Regs 118 appeal must fail.

CIL Regs 117(a), (b) and (c) appeal¹

5. The appellant maintains the CA failed to properly serve a LN in respect of the development to which the surcharges relate. The claim is that they became aware of the CIL liability once the default LN and DN notices were issued on 1 November 2023, some six years after the grant of the 2016 Permission: they frantically contacted the CA to resolve matters. Essentially, there are two threads to this argument: first, the Default LN issued in November 2023 fails to comply with CIL Regs 65(1), because the CA failed to issue the notice as soon as practicable after the day on which a planning permission first permits development. Whilst an attractive argument, having regard to relevant case law², my jurisdiction is limited to the surcharge appeals and there is no power to find the LN or DN invalid on this basis.
6. The second argument is that the initial LN, issued on 8 June 2017, had not been properly served. The issue and service of a LN is the sole responsibility of the CA and CIL Regs 126(1) explain the mechanics of service. A notice or other document required or authorised to be served, given, submitted, or sent may be served, given, submitted, or sent in any of the ways in sub (a) to (f). The CA can decide which method of service it wishes to select, but it must be mindful of keeping an accurate record.
7. The CA's argument is that the initial LN was posted on 8 June 2017. It refers to its internal procedure and process for example the use of software such as Exacom. The latter generates the LN and a printed version is then served. The claim is that the initial LN was posted via standard postal service. However, there is no proof of posting nor is there any detailed evidence from the CA's officers showing how it was posted. For instance, an official receipt or acknowledgement of posting from the Post Office would have substantiated the CA's assertion. The use of the regular postal service carries an element of risk as it cannot be guaranteed that the intended recipient will receive the document. In these circumstances, I give the appellant the benefit of the doubt because there is no evidence to make less than credible his statement that the June 2017 LN had not in fact been received. On the balance of probabilities and particular circumstances presented, I am not satisfied that the initial LN was correctly served.
8. Having regard to CIL Regs 31, the service of a valid LN is not dependent on the submission of a form assuming liability. In a similar vein, assumption of liability is not conditional on service of a LN. The evidence presented clearly shows material operations

¹ As these grounds of challenge are interlinked, I will determine them together.

² *R. (Trent) v Hertsmere BC* [2021] EWHC 907 (Admin).

had in fact commenced in January 2020 and the appellant did not assume liability in breach of CIL Regs. So, the failure to correctly serve the initial LN has no bearing on the imposition of this surcharge.

9. The submission of a CN is, however, closely linked to the service of a valid LN. The first LN would have acted as a trigger because it clearly explains the need to submit a CN the day before material operations on the chargeable development commence. The CA argues the appellant would have been aware of the need to submit a CN through other means. For example, the agent submitted a CIL additional information form and claimed self-build exemption. However, I consider that knowledge by other means does not act as a substitute for proper service and receipt of the LN. Whilst the CA issued a Default LN and DN on 1 November 2023, the quantum of the evidence presented indicates to me that the CA failed to serve the initial LN. Without that LN, it simply was not possible for a valid CN to be submitted as required by CIL Regs 67(2)(b): the relevant LN must be identified. So, in my judgment, the breach which led to the imposition of this surcharge did not occur as the initial LN was not properly served.
10. I find that the CA has correctly imposed a surcharge of [REDACTED] for the failure to assume liability and, in accordance with CIL Regs 80, the surcharge calculation is correct. However, it has incorrectly calculated and imposed the surcharge for a failure to submit a CN as it could not be imposed pursuant to CIL Regs 83.
11. CIL Regs 85 explains when and how late payment surcharges can be imposed, but this is also incorrectly calculated, because the surcharge for a failure to submit a CN [REDACTED] is incorrect. The total amount of CIL payable is [REDACTED] and any late payment surcharge must be calculated using this amount.

Overall Conclusions

12. On the particular facts and circumstances of this case, and for the reasons given above, my conclusions are as follows: the CA correctly determined the deemed commencement date, the imposition of surcharges relating to the failure to assume liability is correct, but the appeal in relation to the failure to submit a CN and late payment surcharges is allowed pursuant to 117(1)(a)(b)(c).

Formal Decision

13. I direct that the appeal on CIL Regs 118 is dismissed, and the CA correctly determined the deemed commencement date.
14. I further direct that the CIL Regs 117(1)(a)(c) is dismissed insofar as it relates to the surcharge for the failure to assume liability.
15. I further conclude that, the appeal is allowed on CIL Regs 117(1)(a)(b)(c) insofar as it relates to the failure to submit a CN and late payment surcharges, and these are quashed.

A U Ghafoor

Inspector