

Appeal Decision

by Ken McEntee

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

Decision date: 30 October 2024

Appeal ref: APP/R3650/L/24/3347907

- The appeal is made under Regulation 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Waverley Borough Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 3 August 2020.
- A Liability Notice was served on the applicants for planning permission ([REDACTED]) on 12 August 2020.
- A revised Liability Notice was served on the appellants 11 January 2022.
- A Demand Notice was served 11 October 2023.
- A revised Demand Notice was served on 12 June 2024.
- The alleged breaches which led to the surcharges are the failure to submit a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL instalments on time after 30 days and 6 months of the due dates.
- The surcharge for failure to submit a Commencement Notice is £[REDACTED].
- The late payment surcharge for 30 days is £[REDACTED].
- The late payment surcharge for 6 months is £[REDACTED].

Summary of decision: The appeal is allowed and the late payment surcharges are quashed.

Procedural matters

1. Although the relevant box for an appeal under Regulation 117(1)(a) has not been marked, it is clear from the supporting arguments that the main purpose of the appeal is to challenge the alleged breach that led to the late payment surcharges. As the Collecting Authority (Council) have responded to these arguments, I consider it reasonable to determine the appeal under Regulation 117(1)(a) as well as 117(1)(c), without it causing prejudice to either party. I note that the surcharge for failing to submit a Commencement Notice (CN) before starting works on the chargeable development is not being challenged.
2. Much of the appeal is in relation to the late payment interest that has been imposed. However, I should make clear that there is no ground of appeal available to contest late payment interest, so I have no powers to consider this issue. However, in view of my findings on the late payment surcharges, it would

be reasonable to expect the Council to review their position on the matter of interest.

3. A costs application has been made by the appellants against the Council. This is the subject of a separate decision that accompanies this one.

The appeal under Regulation 117(1)(a)¹

4. The Liability Notice of 11 January 2022 set out an instalment plan for paying the CIL charge of £[REDACTED]. The notice also explained the possible consequences of failing to adhere to the payment procedure and warned that if a valid CN is not submitted before development commences, payment of the CIL will be due in full on the day that development has commenced. The appellants submitted a CN on 9 October 2023, but this was some 7 months after works had begun on the development on 13 March 2023. Therefore, they immediately became liable to pay the outstanding CIL in accordance with Regulation 71(2), and the Council confirmed this to the appellants by e-mail on 11 October 2023.
5. However, the appellants responded by requesting if it was possible to pay the outstanding amount by two instalments. This request was agreed by the Council on 13 October 2023, with the first payment being due immediately and the second due by 13 April 2024. This e-mail exchange has been submitted with the appellants' evidence. Full payment was duly made within the agreed deadline, but the Council issued a Demand Notice some 8 months later, on 12 June 2024, which included surcharges for failing to submit a CN and for late payment of the CIL. The second late payment surcharge was incorrectly referred to as being imposed for the failure to assume liability. I note that the Council have acknowledged this error and say they are content to correct it by serving a revised Demand Notice.
6. It appears clear that the Council feel they were correct to serve the Demand Notice of 12 June 2024 because they consider the agreement to pay by two instalments was an "informal payment plan" that was agreed in error by a temporary and inexperienced member of staff. However, I find this difficult to accept. While CIL is a rigid and formulaic process, which was not followed by the appellants in the first instance, the fact remains that the Council subsequently agreed, informally or otherwise, to the appellants' request to pay the CIL by two instalments. As the appellants point out, nowhere within that agreement does it warn that the plan is informal and therefore could not be relied upon. The Council has a corporate responsibility to ensure correct information is given to its customers, and while it is unfortunate if the Council officer concerned was temporary and inexperienced, the appellants should not be penalised for that fact. They had a reasonable expectation to believe the information they were given to be correct and reliable.
7. In any event, I note that the Demand Notice of 13 October 2023 confirms the agreed instalment plan under "**When will this amount be due for payment**"; thus, effectively formalising the agreed plan.
8. On the evidence before me therefore, I conclude that the alleged breach that led to the late payment surcharges did not occur as the CIL was paid on time in accordance with the agreed instalment plan of 13 October 2023. The appeal under this ground succeeds accordingly.

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

The appeal under Regulation 117(1)(c)²

9. In view of my findings above, it follows that the appeal under this ground does not fall to be considered.

Formal decision

10. For the reasons given above, the appeal is allowed and the late payment surcharges of £[REDACTED] and £[REDACTED] are quashed.

K McEntee

² The surcharge has been calculated incorrectly.