



Appeal Decision

Site visit made on 30 October 2024

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

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/A1910/L/24/3349318

- 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] against a Demand Notice (the 'DN') initially issued by the Collecting Authority, Dacorum Borough Council ('the CA'), on 10 July 2024 and revised on 22 July 2024.
- 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'), ref LN00001859, was served on 26 February 2021. The total amount of CIL payable on the revised DN is £[REDACTED] including surcharges.

Decision

1. The appeal is dismissed.

Reasons

2. The first DN lists surcharges in a schedule but there is a typographical error. It twice refers to a failure to assume liability, pursuant to CIL Regs 80(1). However, written representations clearly refer to surcharge for failure to submit a commencement notice ('CN'), which is pursuant to CIL Regs 82(1), and surcharges for late payment.
3. In September 2024 and at final comments stage, the appellant confirms payment has been made and CIL liabilities settled. The dispute is the surcharge for late payment and interest. However, this appeal relates only to surcharges, the latter is not before me. The challenge is that the claimed breach which led to the imposition of the surcharge did not occur and that the penalty has been calculated incorrectly.
4. Planning permission ref [REDACTED] includes partial demolition of existing flat roof to a building that has been converted into residential use. The latter is subject to the levy. CIL Regs 67(1) explains 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. No valid CN had in fact been submitted prior to 19 October 2021, which is a flagrant breach of the CIL Regs. Having examined the Council's building control records, the CA determined the deemed commencement date. Furthermore, nobody had assumed liability.
5. Where a person is liable to pay an amount and the latter is not received in full after the end of the period of 30 days beginning with the day on which payment of CIL is due,

the CA may impose a surcharge equal to five per cent of the outstanding amount or £■■■■, whichever is the greater amount. Similarly, surcharge can be imposed after 6 and 12 months from the due date¹. CIL Regs 71(1) and (2) explain when payment in full is due. Where nobody assumes liability and the CA determines a deemed commencement date, the amount of CIL payable in respect of that chargeable development is due in full on the deemed commencement date. While there is nothing before me to indicate that the LN had not been received, the scenario here is that the amount due remained unpaid at the date of the first DN.

6. Following some discussion via electronic mail, a CN was submitted on 17 July 2024. However, such an approach is outside of the CIL Regs and at odds with the meaning and effect of 67(1). A CN cannot be submitted retrospectively. Be that as it may, a revised DN was issued to the company on 22 July 2024. In such circumstances, the initial DN ceases to have effect. The second DN states the deemed commencement date as 23 March 2023. However, the quantum of evidence shows that at time when the revised DN was issued, the total amount due was unpaid. As I have already said elsewhere, in circumstances where a deemed commencement date is determined, the CIL amount is due on that date.
7. It appears to me that the CIL amount outstanding had not been paid until September 2024, which is after the due date. That being so, the CA exercised its discretion and imposed surcharges for late payment. The evidence before me clearly shows the surcharges for late payment 30 days, 6 and 12 months have not been calculated incorrectly.

Other matters and conclusions

8. Matters concerning validity of the DN or how the CIL amount has been calculated are not for my determination.
9. Pulling all the above points together, the breach which led to the imposition of the surcharges did occur. Whilst there is a typographical error in the schedule attached to the DN, the surcharge for a failure to assume liability and submit a valid CN, and surcharges for late payment, have been correctly calculated.
10. For all the above reasons, I conclude that the appeal on CIL Regs 117(a) and (c) should be dismissed.

A U Ghafoor

Inspector

¹ the 30 days, 6 and 12-month surcharge pursuant to CIL Regs 85 sub-section (1) to (3)