



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 November 2024

Appeal ref: APP/H1705/L/24/3350522

- The appeal is made under Regulation 117(1)(a) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Basingstoke & Deane Borough Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 10 June 2022.
- The description of the development is "[REDACTED]".
- A Liability Notice was served on 14 June 2022.
- A Demand Notice was served on 24 July 2024.
- The alleged breaches that led to the surcharges are: the failure to assume liability and to submit a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL amount within 30 days of the due date.
- The outstanding surcharge for failing to assume liability is £[REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].
- The outstanding surcharge for late payment of the CIL is £[REDACTED].

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

Procedural matters

1. For the avoidance of doubt, I have no powers to determine whether or not the CIL charge of £[REDACTED] is correct. This can only be done by way of an appeal to the Valuation Office Agency in accordance with Regulation 114, after first requesting a review through the Collecting Authority (Council) in accordance with Regulation 113. I can only determine the appeal solely in relation to the CIL surcharges. However, given that the charge is only due to be paid after commencement of development, it is reasonable to expect my findings below to have a bearing on its imposition.

Reasons for the decision

2. The appeal is made under Regulation 117(1)(a) - that the alleged breaches which led to the surcharges did not occur. The Council imposed the surcharges as they believed from a site visit made in relation to a new application ([REDACTED]) that works had commenced on the chargeable development in the form of an erected timber frame for the approved porch. The Council also refer to the presence of scaffolding in order to add weight to their assertion that works have begun.

3. However, the appellant contends that the frame was simply a temporary canopy that was stood up against the front door to see how it would look. In the event, it was decided that it was too small and narrow to be suitable and was taken down. To support this contention, the appellant points out that the frame was stood up against the door in its current position, as opposed to its proposed position as per the approved plans. He also asserts that the scaffolding was erected in order to fix roofing leaks around the dormer windows. He insists that no works have commenced on the chargeable development, and he has decided to implement approval [REDACTED] instead.
4. I have considered all the evidence submitted and I take the approved plan of the front elevation (13.420.P.200D) to be of significance in my determination of the appeal. This plan shows the proposed positioning of the front door and porch to be in the centre of the frontage of the building, with two windows either side. However, the photographs show the front door is currently positioned to the left of the building (when facing), with only one window to its left and three to the right. Therefore, had the porch gone on to be completed where the timber frame was erected, it would not have been in accordance with what was applied for and approved. It would effectively have amounted to a separate development, not [REDACTED].
5. I consider the appellant's explanation that he merely erected the timber frame to see what it would look like against the front door before going ahead with development, to be a reasonable and compelling one. That would not have been the case had the frame been placed in the position that accorded with plan 13.420.P.200D. On the evidence before me therefore, I am not satisfied that the erection of the timber frame amounted to commencement of the chargeable development.
6. Similarly, with regard to the presence of scaffolding that the Council also observed at the site visit, there is no evidence put forward that any works in relation to the approved development has been carried out as a result. Therefore, there is no reason before me not to accept the appellant's explanation that the scaffolding was erected to facilitate replacing the roof due to continual leaks.
7. In conclusion, it would appear that the Council's belief that works had begun on the chargeable development was effectively based on circumstantial evidence. There is no conclusive evidence available that supports the Council's assertions. I conclude therefore that the alleged breaches which led to the surcharges did not occur. The appeal succeeds accordingly.
8. In view of my conclusions, it follows that the appeal under Regulation 118 does not fall to be considered.

Formal Decision

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

K McEntee