

Case Name: *London Borough of Lambeth v Secretary of State for Housing Communities and Local Government* [2021] EWHC 1459 (Admin) (28 May 2021)

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Commentary: This was a successful challenge by the London Borough of Lambeth (the "Council") to an inspector's decision to allow an appeal against the imposition of late payment surcharges under regulation 85 of the Community Infrastructure Levy Regulations 2010 (the "CIL Regulations").

The claim relates to a planning permission for development in respect of which Thornton Park (London) Limited (the "Developer") had assumed responsibility for the payment of CIL and the Council had duly served a CIL liability notice. In November 2018, the Council served a demand notice stating the amount payable by the Developer which was payable in two instalments. Those instalments were not paid. In September 2019, the Council approved the Developer's application for a non-material amendment to the planning permission resulting in a change of the chargeable amount. Revised liability and demand notices were served to reflect the changes. In October 2019, the Council issued a revised demand notice to include late payment surcharges for the instalments which had not been paid.

The Developer appealed against the late payment surcharges on the basis that, under regulation 69, a valid demand notice ceases to have effect upon the subsequent issue of a further valid notice, and so the Council should not have imposed a surcharge for late payment in respect of an obsolete demand notice. The inspector agreed and allowed the appeal.

The Council made an application for judicial review of this decision on the grounds that the inspector had misinterpreted the CIL Regulations. It argued that liability to pay CIL arose on the commencement of development, and that regulation 85 made provision for surcharges to be imposed if payment had not been received for a period of 30 days after the payment became due. The Council also contended that neither liability to pay CIL nor the power to impose a late payment surcharge was contingent on the issue of a liability or demand notice: these notices simply existed to record and inform a party of liability for CIL and the amount payable.

Accepting these submissions and allowing the claim, the judge held that the revised notice was not capable of 'wiping the slate clean' by extinguishing liability to pay the CIL amount, surcharges or interest which had already accrued. The judge confirmed that the modern approach to the construction of revenue statutes is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in the way which best gives effect to that purpose (rather than taking a literal approach) - "it cannot be the intention of the [CIL] Regulations that past failures to pay CIL liability, which accrued upon commencement under regulation 31(3), should be capable of being expunged merely because some event has occurred requiring service of a revised Demand Notice. This would provide developers with a perverse method of avoiding late payment surcharges".

Case summary prepared by Safiyah Islam