

Case Name: *Braithwaite & Anor, R (On the Application Of) v East Suffolk Council* [2022] EWHC 691 (Admin) (28 March 2022)

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Commentary: This was a claim for judicial review of a community infrastructure levy (CIL) liability notice issued by East Suffolk Council.

The claimants had been granted planning permission by East Suffolk for a mixed use development in November 2017 and a CIL liability notice was served shortly after. The claimants subsequently applied to vary the permission under s.73 Town and Country Planning Act 1990 and East Suffolk consented to the variations, an updated permission was issued in February 2019 but no updated CIL liability notice was issued at this point. In fact, East Suffolk did not issue an updated CIL liability notice until June 2020. At this point, the Council offered the claimants a bespoke instalment plan for the payment of the CIL charges, with the first payment due in September 2020. The claimants accepted the payment plan but failed to make the first instalment and East Suffolk therefore imposed a late payment surcharge.

The claimants paid the overdue first instalment but subsequently brought a claim for judicial review on the basis that East Suffolk could not lawfully have served the June 2021 liability notice as regulation 65(1) of the CIL Regulations required them to issue a liability notice "as soon as practicable after the day on which a planning permission first permits development" and the Council had considerably delayed in issuing the updated liability notice.

In dismissing the claim, the court held that the claimants' challenge was lodged nearly 18 months after the liability notice was issued and was therefore well outside the 3 month time allowed for judicial review. Lang J held that there was no good reason to extend this time frame as the claimants had taken no steps to initially challenge the June 2020 liability notice and had agreed to an instalment plan for payment, therefore waiving any claim they had in relation to the delay.

Case summary prepared by Emma McDonald