

**Case Name:** *Heronslea (Bushey 4) Ltd, R (On the Application Of) v Secretary of State for Housing, Communities And Local Government* [2022] EWHC 96 (Admin) (20 January 2022)

**Full case:** [Click Here](#)

**Commentary:**

This was a claim for judicial review of a planning inspector's decision to dismiss an appeal against late payment surcharges imposed by Hertsmere Borough Council ("HBC") pursuant to the Community Infrastructure Levy Regulations 2010.

The claimant had been granted planning permission by HBC for a residential development, with a corresponding s106 agreement to provide 21 affordable housing units at the site. The claimant submitted an assumption of liability notice to the Council pursuant to regulation 31(2) of the CIL Regulations in which it assumed liability to pay CIL in respect of the development.

The claimant applied for social housing relief from CIL as 21 affordable housing units were being provided onsite. The Council then issued a liability notice with social housing relief applied.

Under regulation 67(1) of the CIL Regulation, in order to benefit from social housing relief, developers must submit a commencement notice before commencing chargeable development. Under regulation 51(7)(a), a development ceases to be eligible for social housing relief if such a notice was not submitted before development work began.

On 19 June 2019, the Council discovered that the claimant had begun development work on the site without having submitted the required commencement notice. The Council consequently issued a revised liability notice for the full amount of CIL. On 11 February 2020 the Council then issued a demand notice which imposed late payment surcharges and in accordance with regulation 68, deemed that the commencement date of the development was 19 June 2019. A revised demand notice was subsequently issued by the Council on 11 February 2020 however this still confirmed the commencement date of the development as 19 June 2019.

The claimant then issued an appeal against the imposition of the surcharges which was subsequently dismissed by the planning inspector.

An application for judicial review was then submitted by the claimant citing the following grounds:

- 1) Whether the Inspector erred in law in concluding that, on a proper interpretation of regulation 51(7)(a) of the CIL Regulations, the Council was entitled to withdraw social housing relief on the basis that the claimant failed to comply with the requirement in

regulation 67(1) to submit a commencement notice before the chargeable development commenced;

2) Whether the Inspector erred in law in concluding that, on a proper interpretation of regulations 31(3) and 71(2) that the date on which payment of the CIL was due, for the purpose of triggering the late payment surcharges in regulations 85(1) and (2) was 19 June 2019 (the deemed commencement date), rather than 11 February 2020 (the date on which the Council issued the second demand notice).

In dismissing the claim, the court held that where a claimant had failed to submit a commencement notice before commencing development, the relevant Council was entitled to withdraw social housing relief. The court also held that late payment surcharges were triggered on the commencement date and not the date on which a demand notice is issued.

*Case summary prepared by Cobi Bonani*