

Case Name: *R (Luck) v Bracknell Forest Borough Council* [2025] EWHC 2984 (Admin)

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Commentary: Mrs Justice Lieven dismissed an application for judicial review of Bracknell Forest Borough Council's ('the Council') refusal to withdraw liability and demand notices issued to Mr Luck ('the Claimant') in respect of his liability to pay Community Infrastructure Levy ('CIL') referable to land a Pine Acres, Birch Lane, Ascot ('the Site').

The Claimant challenged the decisions on two grounds. First, the Claimant submitted that the Council was wrong to conclude that a disqualifying event had occurred which deprived Mr Luck of relief from CIL under the self-build exemption, because no disqualifying event had occurred *during* the clawback period. However, Lieven J held that for the self-build exemption to be lawfully withdrawn, it is only necessary for a disqualifying event to occur *before the end* of the clawback period (which includes the period before the beginning of that period). Ground 1 was thus rejected.

Second, the Claimant submitted that the Council was wrong to consider that it had no discretion to waive the liability to CIL; alternatively, to the degree that it did exercise a discretion, it did so unlawfully, since the discretion was exercised contrary to the statutory purpose, sought double recovery without statutory authority, and had been fettered. Lieven J also dismissed this ground of challenge. On a proper interpretation of the CIL Regulations, there is no broad and unfettered discretion for collecting authorities to withdraw liability to CIL. The Council was accordingly not wrong to refuse to withdraw the CIL notices issued to Mr Luck. The potential for double recovery did not prevent Lieven J from reaching this conclusion.

Background Facts

In January 2017, Mr Luck obtained planning permission on the Site for a 5-bedroom dwelling and the extension of an outbuilding to form a residential annex ('the 2016 Permission'). The Council subsequently served Mr Luck with a nil CIL Liability Notice, reflecting the grant of 100% self-build relief worth £334,478.27.

In August 2017, work commenced on the outbuilding, which Mr Luck proceeded to occupy. Beyond a trench, no further work was ever completed under the 2016 Permission. In January 2024, a company controlled by Mr Luck obtained planning permission for a different scheme on the Site ('the 2024 Permission'). In October 2024, Mr Luck sold the Site to a developer. Mr Luck transferred his liability to pay CIL in respect of the 2024 Permission (which he had acquired as the landowner) to that developer, although he took no steps to transfer his CIL liability under the 2016 Permission.

Mr Luck then moved from the outbuilding to an adjacent site, where he obtained another permission to construct a self-build house. Meanwhile, the developer implemented the 2024 Permission. The outbuilding was demolished, rendering it physically impossible to build out the 2016 Permission.

In December 2024, Mr Luck applied for self-build exemption from CIL in respect of his development on the adjacent site. The Council refused on the basis that Mr Luck already had a self-build exemption. When Mr Luck informed the Council that he would not now be building out the 2016 Permission, the Council conceded that the exemption applied to the adjacent development, but it also issued demand notices to Mr Luck for £334,478.27 in respect of the 2016 Permission.

Mr Luck requested that the Council withdraw all liability and demand notices in respect of the 2016 Permission. The Council refused, citing the fact that it had no discretion not to issue the notices, alternatively setting out why it would have refused to do so. Mr Luck applied for judicial review of the Council's refusal to withdraw the liability and demand notices.

Legal Framework

This judicial review primarily concerned the interpretation of the following provisions of the Community Infrastructure Levy Regulations 2010 ('the CIL Regulations').

Regulation 54A creates an exemption for self-build housing, defined as "*a dwelling built by P (including where built following a commission by P) and occupied by P as P's sole or main residence*". Regulation 54D provides that if a "*disqualifying event occurs before the end of the clawback period*", then this exemption is withdrawn. The clawback period runs for three years from the date of the compliance certificate issued under the Building Regulations 2010. This period therefore does not begin until after building work is completed.

Collecting authorities "*must issue a liability notice as soon as practicable after the day on which a planning permission first permits development*" (reg. 65(1)). Subsequently, a collecting authority "*may withdraw a liability notice issued by it by giving notice to that effect in writing to the persons on whom it was served*" (reg. 65(7)). Additionally, collecting authorities "*must serve a demand notice*" on each person liable to pay CIL, stating the date(s) on which payment is due (reg. 69). There is no power in reg. 69 to withdraw a demand notice. The enforcement of any liability to pay CIL by the collecting authority and the Court is discretionary.

Because CIL is akin to a tax, the principles of interpreting tax legislation apply. In particular, "*statutory provisions for taxation ought, in general, to be strictly construed and effect given to the clear terms in which the Parliament may be expected to enact such provisions*" (*R (Gardiner) v Hertsmere Borough Council* [2022] EWCA Civ 1162 at [49]).

Grounds of Review

The Claimant submitted that the Council should have agreed to withdraw the CIL liability notices because:

1. There had been no disqualifying event under reg. 54D in respect of the 2016 Permission, because the sale to the developer had occurred before the beginning of the clawback period.

2. The Council was wrong to consider that it had no discretion to waive the liability to CIL; alternatively, to the degree that it did exercise a discretion, it did so unlawfully, since the discretion was exercised contrary to the statutory purpose, sought double recovery without statutory authority, and had been fettered.

Ground 1

The Claimant submitted that the disqualifying event must take place *during* the clawback period. Since no compliance certificate was ever issued, as the development was never completed, it was uncontroversial that this period had not begun.

The Claimant conceded that the words '*a disqualifying event before the end of the clawback period*' (reg. 54D) must be wide enough in some instances to embrace events occurring before the beginning of the clawback period, for example because of the nature of charitable relief in reg. 48. Nevertheless, the Claimant maintained that these words had multiple meanings in respect of different exemptions with different purposes.

Because no 'self-build housing' would ever be in existence prior to the beginning of the clawback period, it was submitted that in the context of the self-build exemption, the clawback period must have begun for a disqualifying event to occur.

Lieven J rejected this argument. Because reg. 54D uses the phrase 'before the end' of the clawback period, which includes time before the beginning of that period, the actual words of the regulation were held to weigh strongly in the Council's favour. Moreover, she held that the Court must be slow to adopt an interpretation which gives a different meaning to the same words within a statute. The more obvious and logical interpretation was held to be that as soon as a disqualifying event occurs before the end of the clawback period, the exemption ceases to apply and the full CIL becomes payable.

Lieven J further held that the sale of the Site was clear evidence that the intention that the development meet the criteria for self-build housing no longer existed, and so the relevant disqualifying event had indeed occurred. Ground 1 was therefore dismissed.

Ground 2

The Claimant's submission that there is a discretion to withdraw a liability notice and waive CIL rests on the word "may" in regulation 65(7), quoted above. In relation to both the argument that there must be a discretion, and that that discretion has been unlawfully exercised, the Claimant submitted that the Council effectively sought to double recover CIL. Double recovery was said to be contrary the overall purpose of the CIL Regulations, which is to cover costs incurred by reason of development (as defined by section 205PA of the Planning Act 2008). Recovering twice in respect of the same land, where only one of the developments can be constructed, was thought not to contribute to this purpose. The Claimant also relied on the purpose of the specific exemption, which is to support self-builders. Finally, the fact that the Council cited the consistent application of CIL as a reason in its refusal letter was alleged to indicate an unlawful fettering of discretion.

For two reasons, Lieven J rejected the notion that there is a broad discretion to waive CIL liability. First, one would not normally expect a tax collecting authority to have an unfettered discretion to waive a tax that Parliament has set (citing *R (Clamp) v HMRC* [2022] 1 WLR 1067). Second, this position would be inconsistent with the rest of the CIL Regulations. There is no express power to withdraw demand notices. If there is a discretion to withdraw liability notices, then in order to avoid inconsistency, the Court would be forced to imply a parallel power to withdraw demand notices.

Furthermore, the suggestion that liability was capable of being waived automatically if a liability notice was withdrawn was held to be inconsistent with authority. In *R (Braithwaite) v East Suffolk DC* [2022] EWCA Civ 1716, the Court of Appeal held that liability notices only record the existence of CIL liability. Lieven J additionally noted that regulation 55 gives a discretion to grant relief from CIL liability in “exceptional” and highly specific circumstances. This strongly indicates against a very broad discretion in Regulation 65(7).

Lieven J also held that even if she was wrong about the non-existence of a discretion, the Council’s discretion would not have been exercised unlawfully. She considered that some degree of double recovery was contemplated by the CIL Regulations. The mere fact that double recovery may occur was not thought to lead to the conclusion that the CIL Regulations must be read in a different way.

In relation to fettering of discretion, Lieven J held that the Council’s letter had taken into account a range of relevant factors besides the need to ensure a consistent approach to enforcing the CIL Regulations; for instance, the fact that alternative options had been available to Mr Luck to reduce his CIL liability. This submission was therefore rejected. Accordingly, Ground 2 was also dismissed.

Case summary prepared by Archie Hunter