



Neutral Citation Number: [2022] EWHC 96 (Admin)

Case No: CO/883/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2022

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN

Claimant

on the application of

HERONSLEA (BUSHEY 4) LIMITED

- and -

**SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**

Defendant

Christiaan Zwart (instructed by Howard Kennedy LLP) for the Claimant
Richard Honey QC and Ben Du Feu (instructed by the Government Legal Department) for
the Defendant

Hearing dates: 14 & 15 December 2021

Approved Judgment

Mrs Justice Lang :

1. The Claimant seeks judicial review of the decision, dated 31 December 2020, of an Inspector appointed by the Defendant¹, which was made under regulation 117 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”), dismissing the Claimant’s appeal against late payment surcharges, pursuant to regulation 85(1) and (2) of the CIL Regulations.
2. The Claimant is the owner and developer of land at Lincolnsfield, Off Bushey Hall Drive, Bushey, Hertfordshire WD23 2ES (“the Site”). Hertsmere Borough Council (“the Council”) is the local planning authority and the charging and collecting authority under the CIL Regulations for the area in which the Site is situated, and made the decisions which were the subject of the Claimant’s appeal. The Council applied to be removed as an Interested Party from these proceedings and has played no part in them.
3. The issues in the claim may be summarised as follows:
 - i) **Ground 1:** whether the Inspector erred in law in concluding in his Decision Letter (“DL”) that, on a proper interpretation of regulation 51(7)(a) of the CIL Regulations, the Council was entitled to withdraw social housing relief, in the sum of £320,034.73, by reason of the Claimant’s failure to comply with the requirement, in regulation 67(1), to submit a commencement notice before the chargeable development commenced;
 - ii) **Ground 2:** whether the Inspector erred in law in concluding that, on a proper interpretation of regulations 31(3) and 71(2) (which he wrongly identified as regulation 70), 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), and not 11 February 2020 (the date on which the Council issued the second demand notice).
4. Permission was granted by Waksman J., on the papers, on 14 June 2021.

Facts

Planning permission

5. On 28 February 2019, the Council granted the Claimant full planning permission for development at the Site comprising “demolition of buildings to south of Lincolnsfield Centre and redevelopment to provide 55 residential dwellings including alterations and improvements to the existing internal roads, associated vehicular parking, watercourse enhancement, refuse and amenity provision and landscaped areas”.
6. On 27 February 2019, the Claimant entered into an agreement with the Council under section 106 of the Town and Country Planning Act 1990, under which it entered into planning obligations to provide 21 affordable housing units at the Site, comprising 13

¹ By regulation 112(1) of the CIL Regulations, the appeal is made to an “appointed person” which means a person appointed by the Secretary of State in the case of an appeal under regulations 117 or 118.

affordable housing rented units, 6 shared ownership units and 2 equity share units, at the Site.

CIL

7. On 21 March 2019, 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.
8. On 1 April 2019, the Council sent an Acknowledgment Notice, confirming receipt and stating that it had recorded the Claimant as the liable person under the CIL Regulations. Under the heading “Next Steps”, it stated, among other matters:

“.....

Claims for relief from CIL must be made by submitting a Relief Claim form to be received and decided by the Council prior to commencement.

.....

One of the development parties must notify the Council of the intended commencement date of the chargeable development by submitting a Commencement Notice to the Council no later than the day before the day on which the chargeable development is to be commenced.The submission of a Commencement Notice to the Council will be formally acknowledged by the Council in writing, and this written acknowledgment will represent confirmation that the commencement notice has been submitted to the Council as required. If a Commencement Notice has not been submitted to the Council in accordance with these requirements, this will affect the CIL amount payable and may affect entitlement to any relief previously applied for.”

The Notice referred the Claimant to online sources of further information, and invited the Claimant to contact the Council if it required further information or had any queries.

9. On 8 May 2019, the Claimant submitted a claim for social housing relief from the CIL, dated 8 May 2019. Although the claim was not included in the bundle of evidence, I was shown a copy of the template “Form 2: Claimant exemption or relief” which was in use at the relevant time. It stated:

“This form should be used to claim charitable relief, social housing relief and/or exceptional circumstances relief prior to the commencement of development. Otherwise the full levy charge will be payable.”

10. The form required the Claimant to sign a declaration which stated, *inter alia*:

“I understand:

.....

- That my claim for relief will lapse where:
- development commences on this chargeable development prior to the collecting authority informing me of its decision
- a commencement notice is not submitted prior to commencement of development of the chargeable development to which this relief applies

.....”

11. On 14 May 2019, the Council issued a “Relief Claim Decision Notice” to the Claimant which granted “mandatory social housing relief for the chargeable development” because the 21 affordable housing units which the Claimant agreed to provide were “classed as qualifying dwellings as defined by Regulation 49” of the CIL Regulations. The qualifying amount of social housing relief was calculated as £320,034.73.

12. The Decision Notice then stated:

“Changes in social housing relief eligibility

Under Regulation 51 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) the chargeable development ceases to be eligible for social housing relief if, before that chargeable development is commenced –

- a commencement notice is not submitted to the collecting authority;

.....

Next steps

.....

One of the development parties must notify the Council of the intended commencement date of the chargeable development by submitting a Commencement Notice to the Council no later than the day before the day on which the chargeable development is to be commenced.

Please email the completed Commencement Notice to cil@hertsmere.gov.uk

Alternatively, you can post the Commencement Notice to

This development will cease to be eligible for social housing relief if a Commencement Notice is not submitted to the Council before the development is commenced.

Payment of the CIL chargeable amount will be due in full on the day that development commences. If a valid commencement notice has not been submitted to the collecting authority and you have not received a valid acknowledgment of commencement notice from the collecting authority before development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced. This will mean loss of any reliefs granted, and interest and surcharges may also be applied.

.....

Consequence of non payment

If you fail to follow the payment procedure described above, the collecting authority may impose surcharges on this liability.

.....”

13. Also on 14 May 2019, the Council issued a Liability Notice (No. LN00000836) to the Claimant, pursuant to regulation 65 of the CIL Regulations, in respect of the chargeable development. The chargeable amount was £1,451,899.58. However, the total liability was reduced to £1,131,864.85 because a deduction was made for social housing relief in the sum of £320,034.73.

14. The Liability Notice stated:

“When will this CIL amount be due for payment?”

If the payment procedure is followed correctly, this CIL amount will be payable 60 days after commencement.

You must notify Hertsmere Borough Council of the date on which you intend to commence development by submitting a valid Commencement Notice.

Payment of the CIL chargeable amount will be due in full on the day that development commences. If a valid commencement notice has not been submitted to the collecting authority and you have not received a valid acknowledgment of commencement notice from the collecting authority before the development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced. This will mean loss of any reliefs granted, and interest and surcharges may also be applied....”

15. The Liability Notice then set out in more detail the procedure which the Claimant had to follow:

“Next Steps

One of the development parties must notify the Council of the intended commencement date of the chargeable development by submitting a Commencement Notice to the Council no later than the day before the day on which the chargeable development is to be commenced....

Please email the completed Commencement Notice to cil@hertsmere.gov.uk

Alternatively, you can post the Commencement Notice to

.....

The submission of a Commencement Notice to the Council will be formally acknowledged by the Council in writing, and this written acknowledgment will represent confirmation that the Commencement Notice has been submitted to the Council as required. If a Commencement Notice has not been submitted to the Council in accordance with these requirements, this will affect the CIL amount payable and may affect entitlement to any relief previously applied for. On receipt of the Commencement Notice the Council will issue a Demand Notice to the liable person(s) setting out the total CIL chargeable amount payable on commencement of the development and precise details of payment arrangements.”

16. Finally, the Liability Notice referred the Claimant to online sources of further information, and invited the Claimant to contact the Council if it required further information or had any queries.
17. On 19 June 2019, the Council carried out a CIL site monitoring visit and discovered that the Claimant had commenced work at the Site. The Inspector found that buildings had been demolished, and trenches dug, thus changing the physical appearance of the Site (DL6). Applying the test in regulation 7 of the CIL Regulations, the works amounted to material operations sufficient to commence the chargeable development. In breach of the requirements of regulation 67(1), no Commencement Notice had been submitted by the Claimant before the works commenced. The Council therefore deemed 19 June 2019 to be the commencement date, pursuant to regulation 68.
18. The Claimant did not appeal the Council’s determination of the deemed commencement date as 19 June 2019, under regulation 118 of the CIL Regulations. At DL6 and DL18, the Inspector agreed with the Council’s decisions under regulations 7 and 68, and there is no challenge to his conclusions on these issues in this claim.
19. On 5 August 2019, the Council issued a revised Liability Notice (LN00000877) to the Claimant, which stated that the amount of relief awarded was nil, and that the Claimant was now liable to pay an increased charge, assessed at £1,451,899.58. It gave revised information to the Claimant, confirming that “[r]elief is not offered” and the payment date was reduced from 60 days to zero days:

“When will this CIL amount be due for payment?”

If the payment procedure is followed correctly, this CIL amount will be payable 0 days after commencement.”

20. The effect of issuing the revised Liability Notice was that the earlier Liability Notice ceased to have effect: see regulation 65(8) of the CIL Regulations.
21. On 5 August 2019, the Council also issued a Demand Notice (LN00000877), pursuant to regulation 69 of the CIL Regulations. It identified the date of deemed commencement of development as 19 June 2019. It stated that the outstanding amount of CIL payable (£1,451.899.58) was “due for payment immediately (except if there is an appeal) and is subject to interest being added” and surcharges being applied. Reasons were set out as follows:

“Reason for issuing demand notice:

Development is deemed to have commenced.

A surcharge has been imposed.

A disqualifying event for relief purposes has occurred.”

It was common ground before the Inspector that the reference to a “disqualifying event” wrongly implied that relief had been withdrawn under regulation 53. The Council’s case was that the Claimant had ceased to be eligible for relief, by virtue of regulation 51(7)(a).

22. A schedule at the end of the notice stated that a surcharge in the sum of £2,500 had been applied, for failure to submit a commencement notice. It also stated that no late interest had been applied. The notice set out the possible consequences of failing to follow the CIL payment procedure and late or non-payment. In addition to the surcharge for failure to submit a Commencement Notice, late payment surcharges could be imposed as follows:

- “- Five percent of the outstanding amount where payment is still overdue after 30 day, subject to a £200 minimum.
- Five percent of the outstanding amount where payment is still overdue after six months, subject to a £200 minimum.
- Five percent of the outstanding amount where payment is still overdue after 12 months, subject to a £200 minimum.”

23. In an email dated 9 August 2019, the Council informed the Claimant that a revised Liability Notice and the Demand Notice had been issued because the Claimant had commenced development on Site, without prior submission of a Commencement Notice. It reminded the Claimant that the application form for relief (Form 2) had stated that a Commencement Notice must be sent prior to the commencement of development, otherwise the full levy charge would become payable, and it referred the Claimant to regulation 51 of the CIL Regulations.
24. The Claimant did not lodge an appeal against the Liability Notice and Demand Notice, dated 5 August 2019, despite the loss of the social housing relief and the erroneous reason given in the Demand Notice, namely, that a “disqualifying event for relief

purposes has occurred”. Nor did the Claimant seek to challenge the lawfulness of the Demand Notice by way of a claim for judicial review.

25. There followed email communications between the parties, including an email from the Council dated 27 January 2020 which stated:

“The total outstanding CIL monies payable regarding this development (Lincolnsfield) are now £1,542,766.30. This is broken down as follows:

- £1,131,864.58: original CIL liability that was due within 60 days of commencement.
- £320,034.73: the amount originally granted by way of social housing relief but is no longer applicable due to failure to comply with the regulations in terms of completing and submitting the relevant forms to the Council at the times specified within the regulations. It is worth noting the Council does not have any local policy to apply any discretion over this.
- £2,500: surcharge payable for failure to submit a commencement notice
- £72,594.98: surcharge for 30 days late payment from 5 August when the Demand Notice was sent.
- £15,772.01: late payment interest from 5 August when the Demand Notice was sent until 6 December 2019.

Total amount (as at 6 December 2019): £1,542,766.30”.

26. On 11 February 2020, the Council issued a revised Demand Notice (LN00000877). It identified the date of deemed commencement of development as 19 June 2019. It demanded a total payment of £1,627,652.97 including:

- i) a chargeable amount of £1,451,889.58;
- ii) a surcharge of £2,500 pursuant to regulation 83 of the CIL Regulations, imposed for failure to submit a commencement notice;
- iii) two surcharges totalling £148,819.71 for late payment pursuant to regulation 85(1) and (2);
- iv) interest in the sum of £24,433.68 pursuant to regulation 87.

27. The Demand Notice gave the reasons for issuing the notice as follows:

“Development is deemed to have commenced

A surcharge has been imposed”.

28. The effect of serving the revised Demand Notice was that the earlier Demand Notice ceased to have effect: see regulation 69(5) of the CIL Regulations.

The appeal

29. On 10 March 2020, the Claimant appealed against the imposition of the surcharges, pursuant to regulation 117(1) of the CIL Regulations, on grounds (a), (b) and (c).
30. On 30 March 2020, the Claimant made a part payment of its CIL liability, in the sum of £1,131,864.85.
31. The Inspector (Mr A.U. Ghafoor BSc (Hons) MA MRTPI) dismissed the appeal in a DL dated 31 December 2020, for the following reasons (all references below are to the CIL Regulations):

Appeal under regulation 117(b)

- i) The first liability notice issued on 14 May 2019 satisfied regulation 65(2) (DL4).
- ii) In breach of regulations 7 and 67(1), the Claimant failed to submit a commencement notice before chargeable development commenced (DL5, DL6, DL18). This was a “flagrant breach of the regulations” and “marked a significant turning point in the site’s history” (DL11).
- iii) By regulation 68, the Council had to determine a deemed commencement date, which was to be included in a demand notice under regulation 69(2) (DL5).
- iv) The Council was required to issue a second liability notice on 5 August 2019, as the loss of the social housing relief was a material change to the first liability notice, which ceased to have effect when the second notice was issued (DL7).
- v) The second liability notice was not invalid; it was not required to include reasons for withdrawing relief (DL10, DL11).
- vi) The Council issued a demand notice on 5 August 2019, stating a deemed commencement date of 19 June 2019, and gave the following reasons (1) development is deemed to have commenced; (2) a surcharge has been imposed; (3) a disqualifying event for relief purposes has occurred. At DL8, the Inspector said:

“Counsel submits that the DN is invalid because it refers to a “disqualifying event”. In the context of social housing relief, a disqualifying event has a specific meaning. The CA [Collecting Authority] acknowledge that it misapplied CIL Regs 53 subs (1) to (10), because the DN erroneously referred to a disqualifying event: I have no reason to disagree.”

- vii) The Council did not act beyond its powers in issuing a second demand notice on 11 February 2020, which omitted the reference to a disqualifying event, and

imposed surcharges. It was entitled to issue the second demand notice under regulation 69(3), and the first demand notice then ceased to have effect (DL9).

- viii) The amendments to the CIL Regulations which came into force on 1 September 2019, and omitted sub-paragraph (a) of regulation 51(7), did not apply retrospectively in relation to a liability notice issued before 1 September 2019, as in this case (DL13).

Appeal under regulation 117(a) and (c)

- ix) At DL16 - DL20, the Inspector held:

“16. CIL Regs 85(1) states that where: (a) a person (P) is liable to pay an amount (A) under these [CIL] Regulations; and (b) A is not received in full after the end of the period of 30 days beginning with the day on which payment of A is due, the CA may impose a surcharge on P equal to five per cent of A or £200, whichever is the greater amount. If any part of payment is not received after the end of the period of six months beginning with the day on which payment is due, the CA may impose a surcharge equal to five per cent of the unpaid amount or £200, whichever is the greater amount. CIL Regs 87 permits the charging of interest on late payments.

17. Contrary to the appellant’s submissions, the day on which the payment is due should be calculated by reference to CIL Regs 31(2) and 70. The former provides that a person who assumes liability is liable on commencement of the chargeable development. The latter makes provision as to how a payment date is to be identified. If the CA has received a CN, the levy is payable in accordance with any instalment policy or otherwise after 60 days. If the CA has determined a deemed commencement date and a CN has not been submitted, the full CIL amount is due on the deemed commencement date. In such circumstances the right to pay in instalments is lost. To me, the question of liability to pay, the quantum and date of payment are not determined by service of a LN or DN. It is CIL Regs 70 that determines the payment date and regulation 31(2) that determines the liability.

18. At risk of repetition, the evidence presented clearly shows that the appellant failed to submit a valid CN. The CA determined the deemed commencement date as 19 June 2019. The total levy for the chargeable development was therefore due immediately. The CA issued the first DN in August 2019 demanding payment straightaway and then a revised DN was issued in February 2020 demanding payment to be made immediately. The revised LN records that CIL amount will be payable in “0” days after commencement. The appellant says

a payment of £1,131,865.85 was paid in March 2020, which is well after the day on which the payment was due.

19. Turning to CIL Regs 117 c) appeal, the amount due, including the social housing relief element, became due immediately. Payment was not made the day on which the payment was due, and surcharges were imposed. The evidence presented shows surcharges were correctly calculated.

20. Pulling all the above points together, I find that the claimed breach, which led to the imposition of the surcharges, did occur and the late payment surcharges, as stated on the DN, have been calculated correctly. CIL Regs 117 a) and c) appeals therefore fail.”

Statutory framework

32. CIL is a levy provided for by section 205 of the Planning Act 2008 (“PA 2008”). Subsection 205(2) identifies the purpose of the levy as seeking to ensure that the costs incurred by public authorities in supporting the development of an area can be funded wholly or in part by the owners or developers of land, but without rendering development of the area unviable. Some provision relating to the detail of the levy is made in Part 11 PA 2008. Section 221 PA 2008 empowers the Defendant to give guidance on any matter connected with CIL, and regard must be had to such guidance.
33. The CIL Regulations were made pursuant to the provisions set out in section 205 PA 2008. The CIL Regulations were amended in 2019 by the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations SI 2019/1103 (“the Amendment Regulations”). Sub-paragraph (a) of regulation 51(7) of the CIL Regulations, which is central to this case, was revoked, but, as the Inspector held, the amendment only applies in cases where the liability notice was issued by a collecting authority on or after 1 September 2019. The liability notice in this case was issued before 1 September 2019. The Claimant did not challenge the Inspector’s conclusion on this point before me.

Interpretation and definition of key terms

34. Interpretation provisions are set out in regulation 2 and include the following:
 - ““commencement notice” means a notice submitted under regulation 67;”
 - ““deemed commencement date” has the meaning given in regulation 68;”
 - ““demand notice” means a notice submitted under regulation 69;”
 - ““liability notice” means a notice submitted under regulation 65;”

““relief” means an exemption for residential annexes or exemptions, an exemption for self-build housing, charitable relief, social housing relief or relief for exceptional circumstances;”

““social housing relief” means relief under regulation 49 or 49A;”

35. CIL is payable in respect of “chargeable developments”. By regulation 9, a chargeable development is one for which planning permission has been granted.

36. Regulation 7(2) provides:

“(2) Development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land.”

Assumption of liability

37. Section 208(1) PA 2008 provides that, where liability to CIL would arise in respect of proposed development, a person may assume liability to pay the levy. Section 208(3) PA 2008 provides:

“A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission”.

38. By regulation 31 of the CIL Regulations, a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an assumption of liability notice to the collecting authority.

39. Regulation 31(3) sets out the point at which liability arises:

“A person who assumes liability in accordance with this regulation is liable on commencement of the chargeable development to pay an amount of CIL equal to the chargeable amount, less than the amount of any relief granted in respect of the chargeable development.”

Payment is due

40. Regulations 70 and 71 of the CIL Regulations prescribe when a CIL payment is due.

41. Regulation 70(1) and (2) provide:

“70. Payment periods

(1) This regulation applies where

(a) a person has assumed liability to pay CIL in respect of a chargeable development (D);

(b) the collecting authority has received a commencement notice in respect of D;

(c) the collecting authority has not determined a deemed commencement date for D.”

“(2) The amount of CIL payable (A) to all charging authorities in respect of D is payable in accordance with the following paragraphs.”

42. Paragraphs (3) to (6) of Regulation 70 make provision for payment in accordance with instalment policies. Paragraph (7) and (8) provide:

“(7) In all other cases, A is payable in full at the end of the period of 60 days beginning with the intended commencement date [...].

(8) Where an amount payable in accordance with this regulation is not received in full on or before the day on which it is due –

(a) the unpaid balance of A becomes payable in full immediately; and

(b) the collecting authority must send a copy of any demand notice which it serves as a result of the non-payment to each person known to the authority as an owner of the relevant land.”

43. Regulation 71 sets out the circumstances in which the amount of CIL is payable in full on the commencement date (only paragraph (2) is relevant to this claim):

“71. Payment in full

(1) The amount of CIL payable in respect of a chargeable development (D) is due in full on the intended commencement date if:

(a) nobody has assumed liability to pay CIL in respect of D;

(b) the collecting authority has received a commencement notice in respect of D; and

(c) the collecting authority has not determined a deemed commencement date for D.

(2) Where the collecting authority determines a deemed commencement for a chargeable development, the amount of CIL payable in respect of that chargeable development is due in full on the deemed commencement date.”

Exemptions and relief

44. Part 6 of the CIL Regulations sets out exemptions and relief from liability to pay CIL. They include *inter alia* exemptions for minor development (regulation 42); residential annexes or extensions (regulations 42A, 42B and 42C); charities (regulations 43 to 48); and self-build housing (regulations 54A and 54B).
45. Provision is made for social housing relief in regulations 49 to 54. Regulation 49 provides that chargeable development which comprises in whole or in part of qualifying dwellings (as defined by regulation 49) is eligible for relief from liability to CIL. In this case the proposed dwellings qualified under Condition 5.
46. The amount of social housing relief is calculated in accordance with regulation 50 and is referred to as the qualifying amount. Social housing relief is given by deducting the qualifying amount from what would otherwise be the amount of liability to pay CIL that would arise in respect of the chargeable development (regulation 49(10)).
47. Regulation 51 sets out the procedure for claiming social housing relief, as follows:

“51. Social housing relief: procedure

- (1) A person wishing to benefit from social housing relief must submit a claim in accordance with this regulation.
- (2) The claimant must—
 - (a) assume liability to pay CIL in respect of the chargeable development for which relief is claimed; and
 - (b) be an owner of the relevant land.
- (3) The claim must—
 - (a) be submitted to the collecting authority in writing on a form published by the Secretary of State (or a form to substantially the same effect);
 - (b) subject to paragraph (4A), be received by the collecting authority before commencement of the chargeable development;
 - (c) include the particulars specified or referred to in the form; and
 - (d) be accompanied by—
 - (i) a relief assessment, and
 - (ii) evidence that the chargeable development qualifies for social housing relief (by reference to the conditions mentioned in regulation 49, the criteria mentioned in regulation 49A(2) or regulation 49C).

(4) Subject to paragraph (4A), a claim for social housing relief will lapse where the chargeable development to which the claim relates is commenced before the collecting authority has notified the claimant of its decision on the claim.

(4A) Paragraphs (3)(b) and (4) do not apply where the provision of qualifying dwellings or qualifying communal development in respect of a chargeable development changes after the commencement of that development.

(5) As soon as practicable after receiving a valid claim for social housing relief, the collecting authority must notify the claimant in writing of—

- (a) its decision on the claim and the reasons for the decision; and
- (b) if relief is granted, the qualifying amount.

(6) If social housing relief is granted in respect of the chargeable development the claimant is deemed to benefit from an amount of relief equal to the qualifying amount.

(7) A chargeable development ceases to be eligible for social housing relief if, before that chargeable development is commenced—

- (a) a commencement notice is not submitted to the collecting authority;
- (b) the claimant's assumption of liability is withdrawn or otherwise ceases to have effect; or
- (c) the claimant transfers liability to another person in accordance with regulation 32.

(8) In this regulation "*relief assessment*" means an assessment of the extent to which the chargeable development is eligible for social housing relief which—

- (a) identifies the qualifying dwellings and the gross internal area of those dwellings;
 - (aa) identifies the qualifying communal development (if any) and the gross internal area of that development; and
- (b) includes a calculation of the qualifying amount.

(9) Paragraph (10) applies where a charging authority issues a statement (in accordance with regulation 49B(3)(a)) giving notice that discretionary social housing relief will no longer be available in its area.

(10) Any claim for discretionary social housing relief received by the collecting authority on or before the day mentioned in regulation 49B(3)(a) in respect of a chargeable development situated in the charging authority’s area must be considered by the collecting authority.”

48. Regulation 53 provides for the withdrawal of social housing relief where a dwelling or development ceases to qualify. It states:

“53. Withdrawal of social housing relief

(1) This regulation applies whenever a disqualifying event occurs before the end of the clawback period in respect of a chargeable development for which social housing relief has been granted.

(2) A disqualifying event is any change in relation to a qualifying dwelling or qualifying communal development such that it ceases to be a qualifying dwelling or qualifying communal development.

(3) The material disposal of a qualifying dwelling or qualifying communal development does not cause it to cease being a qualifying dwelling or qualifying communal development if—

- (a) the proceeds of sale are spent on a qualifying dwelling;
- (b) the proceeds of sale are transferred to the Secretary of State, the Welsh Ministers, a local housing authority, the Greater London Authority or the Homes and Communities Agency;
- (c) the disposal is made to the Welsh Ministers under paragraph 15 or 27 of Schedule 1 to the Housing Act 1996;
- (d) the disposal is made to the Regulator of Social Housing under section 167 or 253 of the Housing and Regeneration Act 2008; or
- (e) discretionary social housing relief has been granted in relation to the dwelling or qualifying communal development, and the dwelling or development (as the case may be) is disposed of in accordance with regulation 49A(2).

(4) The relevant person is liable to pay an amount of CIL (“the withdrawn amount”) equal to the difference between the qualifying amount immediately before the disqualifying event and the qualifying amount immediately after the disqualifying event.

(4A) Where—

(a) the relevant person is liable to pay the withdrawn amount; and

(b) the dwelling in respect of which the relevant person is benefitting from social housing relief was (immediately before it ceased to be a qualifying dwelling) a qualifying dwelling which satisfied condition 5 of regulation 49,

for the purposes of regulation 87 (late payment interest), payment of the withdrawn amount is to be treated as being due on commencement of the chargeable development.

(5) The qualifying amounts mentioned in paragraph (4) must be calculated in accordance with regulation 50, and for the purposes of that calculation the value of E is the value of E as calculated at the time social housing relief was granted in respect of the chargeable development.

(6) The relevant person must notify the collecting authority in writing of a disqualifying event before the end of the period of 14 days beginning with the day on which it occurs.

(7) The notification must—

(a) state the gross internal area of the dwelling which has ceased to be a qualifying dwelling (if any);

(aa) state the gross internal area of the development which has ceased to be qualifying communal development (if any);
and

(b) be accompanied by a map or plan which identifies the location of the dwelling mentioned in sub-paragraph (a) or the development mentioned in sub-paragraph (aa).

(8) As soon as practicable after receiving notice of the disqualifying event, the collecting authority must notify the relevant person in writing of the withdrawn amount.

(9) The notification must be accompanied by an explanation of how the withdrawn amount was calculated.

(10) In this regulation “*relevant person*” means the person benefitting from social housing relief in respect of the dwelling which has ceased to be a qualifying dwelling, or the development which has ceased to be qualifying communal development.”

Administration

49. Part 8 makes provision for the administration of CIL.

50. Regulation 65 requires the collecting authority to issue and serve a liability notice in respect of each chargeable development, as soon as practicable after the first day on which planning permission permits development. It provides as follows:

“65. Liability Notice

- (1) The collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development.
- (2) A liability notice must—
 - (a) be issued on a form published by the Secretary of State (or a form to substantially the same effect);
 - (b) include a description of the chargeable development;
 - (c) state the date on which it was issued;
 - (d) state the chargeable amount;
 - (da) where the chargeable amount may be paid by way of instalment, include a copy of the charging authority's current instalment policy (if any);
 - (e) state the amount of any exemption for residential annexes or extensions, charitable relief or relief for exceptional circumstances granted in respect of the chargeable development;
 - (f) where social housing relief or an exemption for self-build housing has been granted in respect of the chargeable development, state -
 - (i) the particulars of each person benefiting from the relief or exemption, and
 - (ii) for each of those persons, the amount of relief or exemption from which the person benefits; and
 - (g) contain the other information specified in the form.
- (3) The collecting authority must serve the liability notice on –
 - (a) the relevant person;
 - (b) if a person has assumed liability to pay CIL in respect of the chargeable development, that person; and
 - (c) each person known to the authority as an owner of the relevant land.

(4) The collecting authority must issue a revised liability notice in respect of a chargeable development if—

(a) the chargeable amount or any of the particulars mentioned in paragraph 2(e) or (f) change (whether on appeal or otherwise); or

(b) the charging authority issue a new instalment policy which changes the instalment arrangements which relate to the chargeable development.

(5) A collecting authority may at any time issue a revised liability notice in respect of a chargeable development.

(6) A liability notice issued in accordance with paragraph (4) or (5) must be served in accordance with paragraph (3).

(7) 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.

(8) Where a collecting authority issues a liability notice any earlier liability notice issued by it in respect of the same chargeable development ceases to have effect.

....”

51. Once the liability notice has been issued, any person intending to commence work on a chargeable development must submit a commencement notice to the charging authority before development commences. Regulation 67 provides as follows:

“67. Commencement notice

(1) Where planning permission is granted for a chargeable development, a commencement notice must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced.

...

(2) A commencement notice must—

(a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect);

(b) identify the liability notice issued in respect of the chargeable development;

(c) state the intended commencement date of the chargeable development; and

(d) include the other particulars specified or referred to in the form.

(3) A person submitting a commencement notice must serve a copy of it on each person known to that person as an owner of the relevant land.

(4) On receiving a valid commencement notice the collecting authority must send an acknowledgment of its receipt to the person who submitted it.

(5) Where charitable or social housing relief has been granted in respect of the chargeable development, the acknowledgement must state the date on which the clawback period ends (on the assumption that the chargeable development is commenced on the intended commencement date).

(6) Subject to paragraphs (6A) and (6B), where a collecting authority receives a valid commencement notice any earlier commencement notice received by it in respect of the same chargeable development ceases to have effect.

...

(7) A person who has submitted a commencement notice may withdraw it at any time before the commencement of the chargeable development to which it relates by giving notice in writing to the collecting authority.

(8) A commencement notice is valid if it complies with the requirements of paragraph (2).”

52. By regulation 68, if a collecting authority has not received a commencement notice, it must determine a deemed commencement date:

“68. Deemed commencement of chargeable development

A collecting authority must determine the day on which a chargeable development was commenced (“the deemed commencement date”) if it –

(a) has not received a commencement notice in respect of the chargeable development but has reason to believe it has been commenced; or

(b) has received a commencement notice in respect of the chargeable development but has reason to believe that it was commenced earlier than the intended commencement date.”

53. Following receipt of a commencement notice, or a decision to determine a deemed commencement date, the collecting authority must serve a demand notice on each

person liable to pay an amount of CIL in respect of a chargeable development, requiring payment by the specified date. Regulation 69 provides as follows:

“69. Demand notice

- (1) The collecting authority must serve a demand notice on each person liable to pay an amount of CIL in respect of a chargeable development.
- (2) A demand notice must -
 - (a) be issued on a form published by the Secretary of State (or a form to substantially the same effect);
 - (b) state the date on which it was issued;
 - (c) identify the liability notice to which it relates;
 - (d) state the intended commencement date or, where the collecting authority has determined a deemed commencement date, the deemed commencement date;
 - (e) state the amount payable by the person on whom the notice is served (including any surcharges imposed in respect of or interest applied to the amount) and the day on which payment of the amount is due;
 - (f) where the amount payable is to be paid by way of instalments state the amount of each instalment and the day on which payment of the instalment is due; and
 - (g) include the other information specified in the form.
- (3) The collecting authority may at any time serve a revised demand notice on a person liable to pay an amount of CIL.
- (4) The collecting authority must serve a revised demand notice on a person on whom it has served a demand notice if any of the particulars mentioned in paragraph (2)(d), (e) or (f) change (whether on appeal or otherwise).
- (5) Where a collecting authority serves a demand notice on a person, any earlier demand notice served on that person in respect of the same chargeable development ceases to have effect.”

Surcharges and interest

54. Part 9 of the CIL Regulations makes provision for enforcement.

55. By regulation 83, where a chargeable development is commenced before the collecting authority has received a valid commencement notice in respect of the chargeable development, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2500, whichever is the lower amount.
56. Pursuant to regulation 85(1), where a person is liable to pay an amount under the CIL Regulations and payment is not received in full after the end of the period of 30 days beginning with the day on which payment of the amount is due, the collecting authority may impose a surcharge for late payment equal to five per cent of the amount or £200, whichever is the greater amount.
57. Pursuant to regulation 85(2), if any part of the amount is not received after the end of the period of six months beginning with the day on which payment is due, the collecting authority may impose a further surcharge for late payment equal to five per cent of the unpaid amount or £200, whichever is the greater amount.
58. Under regulation 87, interest is payable if payment is not made on the day it is due.
59. Regulation 88 provides that where surcharge or interest is imposed on a person, it must be collected by treating it as part of the CIL which that person is liable to pay.

Appeals

60. The Claimant appealed to the Defendant under section 218 PA 2008 and regulation 117(a), (b) and (c). Regulation 117 provides:

“117 Surcharge: appeal

(1) A person who is aggrieved at a decision of a collecting authority to impose a surcharge may appeal to the appointed person on any of the following grounds—

(a) that the claimed breach which led to the imposition of the surcharge did not occur;

(b) that the collecting authority did not serve a liability notice in respect of the chargeable development to which the surcharge relates; or

(c) that the surcharge has been calculated incorrectly.

(2) Where the imposition of a surcharge is subject to an appeal under this regulation, no amount is payable in respect of that surcharge while the appeal is outstanding.

(3) An appeal under this regulation must be made before the end of the period of 28 days beginning with the day on which the surcharge is imposed.

(4) Where an appeal under this regulation is allowed the appointed person may quash or recalculate the surcharge which is the subject of the appeal.”

61. The Claimant did not appeal under regulation 118, which provides a right of appeal against a deemed commencement date on the ground that it has been incorrectly determined.

Statutory interpretation

62. I have carefully considered all the authorities on statutory interpretation relied upon by the parties.
63. It was common ground between the parties that: “a citizen cannot be taxed unless he is designated in clear terms by a taxing Act as a taxpayer and the amount of this liability is clearly defined” and that “when Parliament imposes a tax, it is the duty of the commissioners to assess and levy it upon and from those who are liable by law”, not by “self-asserted administrative discretion” (*Vestey v IRC* [1980] AC 1148, per Lord Wilberforce at 1172E, 1173A-C, applied to the CIL Regulations in *R(Orbital) v Swindon BC* [2016] PTSR 736, per Patterson J. at [69]).
64. The Claimant referred to the case of *Commissioners for Her Majesty’s Revenue and Customs v IDT Card Services Limited* [2006] EWCA Civ 29, which concerned the implementation of the EU VAT Directive (77/338/EC) into domestic law. Arden LJ said, at [110], “I accept that under the principle of legal certainty, the person affected by legislation must be able to foresee the manner in which it is to be applied and I would also accept that must particularly be so where the legislation has financial consequences for him.....”.
65. A purposive construction is to be applied to taxing legislation. In *Rosendale BC v Hurstwood Properties (A) Ltd* [2021] 2 WLR 1125, Lord Briggs and Lord Leggatt summarised the approach to be taken, as follows:

“9. The first way in which the local authorities advance their claim that the defendants are liable for the unpaid rates relies on the approach to statutory interpretation associated in the field of tax legislation with the case of *WT Ramsay Ltd v Inland Revenue Comrs* [1982] AC 300. What has often been referred to as the *Ramsay* principle or doctrine may be said now to have reached a state of well-settled maturity, not least because of its restatement at the highest level in two 21st century authorities: *Barclays Mercantile Business Finance Ltd v Mawson* [2005] 1 AC 684 and *UBS AG v Revenue and Customs Comrs* [2016] 1 WLR 1005. Although usually deployed in relation to tax avoidance schemes, it is not in its essentials particular to tax, being based upon the modern purposive approach to the interpretation of all legislation, one which penetrated the field of tax legislation only at a relatively late stage: see *Barclays Mercantile* at paras 28–29; and *UBS* at paras 61–63.

10. There are numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose. Two examples will suffice. In *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, para 8, Lord Bingham of Cornhill said:

“Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

In *Bloomsbury International Ltd v Department for Environment, Food and Rural Affairs (Sea Fish Industry Authority intervening)* [2011] 1 WLR 1546, para 10, Lord Mance JSC stated:

“In matters of statutory construction, the statutory purpose and the general scheme by which it is to be put into effect are of central importance ... In this area, as in the area of contractual construction, ‘the notion of words having a natural meaning’ is not always very helpful (*Charter Reinsurance Co Ltd v Fagan* [1997] AC 313, 391 c, per Lord Hoffmann), and certainly not as a starting point, before identifying the legislative purpose and scheme.”

See further Lowe and Potter, *Understanding Legislation* (2018), paras 3.45–3.48 (and cases there cited).

...

13. The decision of the House of Lords in the *Barclays Mercantile case* [2005] 1 AC 684 made it clear beyond dispute that the approach for which the *Ramsay* line of cases is authority is an application of general principles of statutory interpretation. Lord Nicholls of Birkenhead, delivering the joint opinion of the Appellate Committee (which also comprised Lord Steyn, Lord Hoffmann, Lord Hope of Craighead and Lord Walker of Gestingthorpe), identified the “essence” of the approach (at para 32) as being:

“to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might

involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description.”

Lord Nicholls also quoted with approval (at para 36) the statement of Ribeiro PJ in *Arrowtown*, para 35, that:

“the driving principle in the *Ramsay* line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.”

14. Almost all statements of principle, however broadly framed, tend to be responsive to the particular facts under review. The above statements refer to “the transaction” and most of the leading expositions of the *Ramsay* doctrine do the same. This is because most of the provisions being considered taxed, or as the case may be exempted, transactions. But not all do. Some involve a tax (such as stamp duty) on instruments. Others impose charges by reference to the status of a person, or their rights in relation to specified property, such as the owner of unoccupied non-domestic property in the present case. The *Ramsay* doctrine is no less applicable in such cases. In *MacNiven v Westmoreland Investments Ltd* [2003] 1 AC 311, 320, para 8, Lord Nicholls said: “The paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case.” No statement of the principle could be more general than that.

...

16. Both interpretation and application share the need to avoid tunnel vision. The particular charging or exempting provision must be construed in the context of the whole statutory scheme within which it is contained. The identification of its purpose may require an even wider review, extending to the history of the statutory provision or scheme and its political or social objective, to the extent that this can reliably be ascertained from admissible material.”

66. In *R (Fylde Coast Farms Ltd) v Fylde Borough Council* [2021] 1 WLR 2794; [2021] UKSC 18 Lords Briggs and Sales summarised the proper approach to statutory interpretation at [6]. This requires the particular provision to be set in its context as part of the relevant statutory framework, to have due regard to the historical context in which the relevant enactment came to be made, and to arrive at an interpretation which serves, rather than frustrates, the purpose of the particular provision.
67. These principles have been applied in the CIL sphere. See:

i) *LB Lambeth v Secretary of State for Housing, Communities and Local Government & Anor* [2021] PTSR 1606; [2021] EWHC 1459 (Admin), per Thornton J. at [62] and [70];

ii) In *Orbital*, Patterson J. said, at [75]:

“The cases relied upon by the defendant underline the importance of a close and clear analysis of what the statute actually requires.”

iii) In *R (Hourhope Ltd) v Shropshire Council* [2015] EWHC 518 (Admin), Judge David Cooke, sitting as a High Court Judge, summarised the test to be applied as follows:

“17 In these circumstances, the question is a normal one of statutory interpretation, starting with the ordinary meaning of the language used, considered in the context of the other provisions of the legislation itself, and the legislative purpose as shown by the terms of the legislation and such external material as it may be permissible for the court to have regard to.”

68. In arriving at the correct interpretation, the format and layout of the text forms part of the legislation and may be used in construing any provision: see *Bennion, Bailey and Norbury on Statutory Interpretation* at [16.6]; Lowe and Potter, *Understanding Legislation: A Practical Guide to Statutory Interpretation* (2018) at [6.13] where it is said that it is relevant to “consider legislation’s structure, format and punctuation as internal aids to construction”.

69. There are two main categories of extrinsic material relied on in this case: guidance and explanatory memoranda.

70. Official statements by government departments administering legislation may be taken into account as persuasive authority on the legal meaning of its provisions. In *Chief Constable of Cumbria v Wright* [2007] 1 WLR 1407, Lloyd Jones J said, at [17]:

“17. It is, of course, for the courts and not the executive to interpret legislation. However, in general, official statements by government departments administering an Act, or by any other authority concerned with an Act, may be taken into account as persuasive authority on the legal meaning of its provisions. That is the principle stated by Bennion on *Statutory Interpretation*, 4th Ed, section 232. In the present case we are concerned with Guidance published by the Home Office, which is the government department which had responsibility for the enactment and operation of the legislation in question. In any given case, it may be helpful for a court to refer to the Guidance in the interpretation of the legislation. It may be of some persuasive authority. However, to my mind that is the limit of its influence. It does not differ in that regard from a statement by an academic author in a text book or an article. It does not enjoy any

particular legal status. There seems to me to be no satisfactory basis for the submission that it gives rise to a presumption that the views it contains are correct and should be rejected only for good reason.”

71. The Defendant submitted that background material could be a useful tool in assisting to identify the purpose of a provision and as an admissible aid to construction, particularly to understand the general context of a provision and the mischief at which it is aimed.
72. Both parties cited the judgment of Lord Steyn in *R (Westminster City Council) v National Asylum Service* [2002] 1 WLR 2956, at [5]-[6]:

“5. The question is whether in aid of the interpretation of a statute the court may take into account the Explanatory Notes and, if so, to what extent. The starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that the context must always be identified and considered before the process of construction or during it. It is therefore wrong to say that the court may only resort to evidence of the contextual scene when an ambiguity has arisen

In so far as the Explanatory Notes cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed, such materials are therefore always admissible aids to construction. They may be admitted for what logical value they have...

6. If exceptionally there is found in Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court. ... What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted.”

Grounds of challenge

Ground 1

Submissions

73. The Claimant submitted that the Inspector erred in concluding that the Claimant lost the benefit of social housing relief by operation of regulation 51(7)(a) of the CIL

Regulations, which provides that a chargeable development ceases to be eligible for social housing relief if a commencement notice is not sent to the collecting authority before the development commences.

74. The Claimant accepted that it did not send a commencement notice before the development commenced, in breach of regulation 67(1). However, on a proper interpretation, regulation 51(7)(a) only applied prior to the making of the Council's decision on the Claimant's application for relief, under regulation 51(5). Once the Council decided to grant the Claimant social housing relief, by operation of regulation 51(6), the Claimant was deemed to benefit from an amount of relief equal to the qualifying amount. Thereafter, social housing relief could only be withdrawn by the Council if a disqualifying event occurred, pursuant to regulation 53.
75. In response, the Defendant submitted that the Inspector's understanding of regulation 51(7)(a) of the CIL Regulations was correct. Its operation is not confined to the period before a decision is made on the claim for social housing relief, as it expressly states that it applies "before chargeable development commences". The purpose of the deeming provision in regulation 51(6) is merely to ensure that the amount of relief is equal to the qualifying amount, as defined in regulation 50, and to ascribe the benefit of that relief to the applicant. The disqualification provisions in regulation 53 have a different purpose, namely, to remove the benefit of social housing relief where the properties no longer meet the requirements for relief, and to require repayment (by way of further charges), at any time before the end of the clawback period of 7 years.

Conclusions

76. Section 205(2) PA 2008 identifies the purpose of the CIL as seeking to ensure that the costs incurred by public authorities in supporting the development of an area can be funded wholly or in part by the owners or developers of land, but without rendering development of the area unviable. Sections 205 to 223 PA 2008 set out a broad framework for the CIL scheme, which is implemented in detail by the CIL Regulations.
77. According to Patterson J. in *Orbital*, the purpose of the CIL Regulations is "to give certainty to developers and the local planning authority as to when and how the liability for CIL will arise" (at [62]). The general purpose behind the requirement to submit a commencement notice is a need for clarity for the collecting authority as to when chargeable development has commenced and liability to pay CIL is triggered. From the relevant background materials, it is evident that regulation 51(7)(a) was included to further this purpose, and also so that the collecting authority could accurately calculate the 'clawback' under regulation 53.
78. Regulation 51(7) of the CIL Regulations specifies the circumstances in which "a chargeable development ceases to be eligible for social housing relief". They are:
- a) a commencement notice is not submitted to the collecting authority;
 - b) the claimant's assumption of liability is withdrawn or otherwise ceases to have effect; or

- c) the claimant transfers liability to another person in accordance with regulation 32.

79. Regulation 49(1) of the CIL Regulations provides:

“A chargeable development which comprises or is to comprise qualifying dwellings or qualifying communal development (in whole or in part) is eligible for relief from liability to CIL.”

A qualifying dwelling is a dwelling which satisfies at least one of the five conditions in regulation 49, which all relate to the type of occupancy.

- 80. The term “eligible” is not defined in the CIL Regulations. The Claimant referred me to a definition of “eligible” in the Shorter Oxford English Dictionary as meaning “fit or entitled to be chosen for a position”. The Defendant referred me to the definition of “eligible”, adopted in the case law summarised in *‘Words & Phrases Legally Defined’*, as meaning “qualified”. In my view, the precise meaning of “eligible” will depend upon the context in which it is used. In regulation 49, I consider that its meaning is that the chargeable development fulfils the conditions for relief from liability to CIL.
- 81. Applying the same meaning of “eligible” to regulation 51(7)(a), I consider its meaning is that the chargeable development ceases to fulfil the conditions for relief from liability to CIL, where a commencement notice is not submitted to the collecting authority.
- 82. If the development is eligible for social housing relief under regulation 49, that relief can be claimed and granted, subject to meeting the requirements in regulation 51.
- 83. To claim social housing relief, the claimant must (a) assume liability to pay CIL in respect of the chargeable development for which relief is claimed; and (b) be an owner of the relevant land: see regulation 51(2).
- 84. Regulation 51(4) provides that “a claim for social housing relief will lapse where the chargeable development to which the claim relates is commenced before the collecting authority has notified the claimant of its decision on the claim”.
- 85. Regulation 51(5) makes provision for the collecting authority to notify the claimant in writing of its decision on the claim “as soon as practicable” after receiving a claim.
- 86. Regulation 51(6) provides:

“If social housing relief is granted in respect of the chargeable development the claimant is deemed to benefit from an amount of relief equal to the qualifying amount.”
- 87. The Claimant submits that, once the deeming provision in regulation 51(6) is triggered, the relief granted cannot be removed other than by withdrawal of relief, following a disqualifying event, pursuant to regulation 53. On a proper interpretation, regulation 51(7) can only operate prior to the grant of social housing relief.
- 88. In my judgment, the Claimant’s interpretation is mistaken. There is nothing in the wording of regulation 51(7)(a) which limits its operation to the period prior to the grant of social housing relief. It expressly includes the period before chargeable development

commences. Submission of a commencement notice may take place at any time up to the day before the commencement of development (regulation 67(1)). In practice, it is likely to occur after the grant of social housing relief. Similarly, the circumstances set out in sub-paragraphs 51(b) and (c) are not expressly limited to the period prior to the grant of relief, and by their nature, they may well occur after the grant of relief, but before the commencement of chargeable development.

89. The Claimant's interpretation renders regulation 51(7)(a) otiose. The period prior to grant is already addressed by regulation 51(4), which provides that a claim for social housing relief will lapse (whether or not a commencement notice is submitted) where the chargeable development to which the claim relates is commenced before the collecting authority has notified the claimant of its decision on the claim. The Claimant's interpretation of regulation 51(7)(a) would add nothing to this and would render the provision superfluous.
90. The Claimant's interpretation is also contrary to the logical structure of regulation 51 which begins with the making of the claim, then provides for the grant of relief by the collecting authority (regulation 51(5)), and the deeming provision after the grant (regulation 51(6)). If regulation 51(7) had the limited function for which the Claimant contends, it would have been placed alongside regulation 51(4) and before regulations 51(5) and (6). Thus, the structure of the regulation supports the interpretation of regulation 51(7) as applying after the grant of relief to a claimant.
91. I consider that the Claimant has misunderstood the purpose and effect of regulation 51(6). By regulation 49, the chargeable development, not the claimant, is eligible for relief. Regulation 50(1) provides that "the amount of social housing relief for which a chargeable development is eligible ("the qualifying amount") must be calculated in accordance with this regulation". The purpose of regulation 51(6) is merely to enable the individual claimant to benefit from the relief which has been granted to the chargeable development under regulations 49 and 50. To interpret the deeming provision as creating a personal benefit for a claimant which cannot be lost under any of the circumstances set out in regulation 51(7) is to stretch it far beyond its purpose. Generally, the intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further (see *Bennion* at [17.8], in a section which has been judicially approved).
92. The purpose and mode of operation of regulation 53 is very different from the purpose and mode of operation of regulation 51(7). Regulation 53 effectively removes the benefit of social housing relief for parts of the development which no longer meet the requirements to qualify as social housing. This can happen at any time before the end of the clawback period of seven years from the commencement of development or, for qualifying dwellings, from the date on which the qualifying dwelling is first let. Regulation 53 operates by creating a new additional liability to pay an amount of CIL known as the "withdrawn amount", related to the particular portion of the development which no longer qualifies for social housing relief. Regulation 53 does not retrospectively withdraw or alter social housing relief which had previously been granted or included within a liability or demand notice. It creates an additional liability to pay the "withdrawn amount".
93. It cannot sensibly be said that regulation 53 fulfils the function of regulation 51(7) or occupies the whole ground in terms of when social housing relief could be lost. The

cessation of eligibility under regulation 51(7) is a one-off event applying to the entire chargeable development which has the effect of entirely removing a development's eligibility for social housing relief and rendering lost any such relief previously granted.

Other exemptions and reliefs

94. Moreover, the Defendant's interpretation of regulation 51(7) is broadly consistent with the statutory scheme for other exemptions and reliefs in the CIL Regulations, whereas the Claimant's interpretation is not.
95. Part 6 of the CIL Regulations, is headed "Exemptions and Relief", and it makes provision for each type of exemption or relief in turn. Regulation 2 defines "relief" widely so as to include exemptions for residential annexes or extensions and self-build housing, as well as charitable relief, social housing relief and relief for exceptional circumstances, and so the difference in wording between "exemption" and "relief" does not appear to be significant.
96. Regulation 42A provides an exemption from CIL liability for residential annexes or extensions. Regulation 42B sets out the procedure to be followed, and paragraph (6) provides for loss of the exemption if a commencement notice is not submitted before chargeable development commences:

"A person who is granted an exemption for residential annexes or residential annexes ceases to be eligible for that exemption if a commencement notice is not submitted to the collecting authority before the day the chargeable development is commenced."
97. Regulation 42C provides for withdrawal of the exemption if a disqualifying event occurs.
98. Regulation 43 provides an exemption from CIL liability for charities. Regulation 47 sets out the procedure to be followed, and paragraph (7) provides for the loss of the exemption if a commencement notice is not submitted before chargeable development commences:

"A person who is granted charitable relief ceases to be eligible for that relief if a commencement notice is not submitted to the collecting authority before the day the chargeable development is commenced."
99. Regulation 48 provides for withdrawal of charitable relief if a disqualifying event occurs.
100. Regulation 54A provides an exemption from CIL liability for self-build housing. Regulation 54B sets out the procedure to be followed, and paragraph (6) provides for the loss of the exemption if a commencement notice is not submitted before chargeable development commences:

"A person who is granted an exemption for self-build housing ceases to be eligible for that exemption if a commencement

notice is not submitted to the collecting authority before the day the chargeable development is commenced.”

101. Regulation 54D provides for withdrawal of self-build housing relief if a disqualifying event occurs.
102. The Claimant concedes that each of these provisions for the cessation of eligibility following failure to submit a commencement notice did apply after the grant of the relevant exemption and resulted in the loss of the exemption from liability. However, the Claimant seeks to distinguish these provisions from regulation 51(7) on the basis that each begins with the words “A person who is granted” whereas regulation 51(7) begins “A chargeable development”, and they do not have an equivalent provision to regulation 51(6).
103. I accept the Defendant’s submission that these distinctions between the different types of exemptions are insignificant in comparison to the striking similarities between each statutory scheme. There is no need for an equivalent of the regulation 51(6) deeming provision in relation to other exemptions/reliefs in the CIL Regulations because the eligibility for them arises from a person’s characteristics (e.g. householder, charity or self-builder) and the exemption/relief is therefore related to that person. Regulations 42A(1), 43(1), 44(1) and 54A(1) provide that a person/owner is exempt from liability to pay CIL or that a person/owner is eligible for an exemption or relief from liability to pay CIL. By contrast, for social housing relief under regulation 49(1), eligibility is founded upon the characteristics of the type of development. The purpose of the deeming provision is simply to ascribe the benefit of the amount of relief to the claimant.
104. The Claimant submitted for the first time in its skeleton argument that the state aid provisions resulted in a difference in the drafting of the provisions for social housing relief and other types of relief in the CIL Regulations. The CIL ‘*Information document*’, dated May 2011, contained a chapter on state aid, and explained at paragraph 91 that all relief from the levy must be given in accordance with state aid rules. Social housing relief came within the scope of the EU Block Exemption for Services of a General Economic Interest, and had been designed to comply with its requirements (paragraph 63). Other exemptions could fall within the *de minimis* Block Exemption. However, the Claimant was unable to identify any way in which these distinctions supported its restrictive interpretation of regulation 51(7)(a), so as to prevent it from operating after the grant of relief. Therefore the submissions on state aid did not assist its case.
105. The Defendant’s interpretation of regulation 51(7)(a) is also consistent with case law on the operation of regulation 54B(6) concerning the self-build housing exemption.
 - i) In *Gardiner v Hertsmere BC* [2021] EWHC 1875 (Admin), Thornton J. observed, at [63], that a failure to submit a commencement notice before the commencement of the chargeable development resulted in the loss of the exemption.
 - ii) In *R (Shropshire Council) v Secretary of State for Communities and Local Government & Anor* [2019] EWHC 16 (Admin), Mr C. M. G. Ockleton sitting as a High Court Judge, stated at [40]:

“The Regulations make it perfectly clear that the consequence of failure to comply is loss of the exemption and failure to comply means failure to submit a notice under regulation 7.”

- iii) In *R (Trent) v Hertsmere Borough Council* [2021] EWHC 907 (Admin), it was common ground between the parties (the claimant appearing in person) that, under regulation 54B(6) of the CIL Regulations, a person who has been granted an exemption ceased to be eligible for that exemption if a commencement notice was not submitted before chargeable development commenced.

Extrinsic material

106. The origins of regulation 51(7) and other similar regulations including regulation 47(7) may be traced back to the draft regulations² published for consultation in July 2009. The procedure for claiming a relief was set out in draft regulations 21 and 22. Draft regulation 22(1) provided:

“(1) A person ceases to be eligible for relief if a commencement notice in respect of the chargeable development for which relief has been claimed or allowed is not submitted to the collecting authority on or before the day the chargeable development is commenced.”

107. This provision was explained in the accompanying consultation document³ as follows (*emphasis added*):

“Universal conditions on relief

4.50 All exemptions or reductions from CIL for charities are subject to three conditions. The first two seek to prevent CIL relief being misused in a way that would help non exempt parties to avoid payment. First, under draft regulations 17(2)(b), 18(2)(c) and 19(2)(a), the charity claiming relief must not own its interest in the land jointly with a non exempt party. This would mean that where a charity jointly owned a freehold or leasehold with a non exempt party it could not be given CIL relief, but it would not prevent relief being given where there were other non exempt interests in the land.

4.51 Second, under draft regulation 17(2)(c), 18(2)(d) and 19(2)(b), CIL relief cannot be claimed by a charity or any other person to avoid paying CIL. This would not stop a charity claiming an exemption where it was claiming for a legitimate qualifying purpose but it would rule it out where the purpose of claiming was to assist a CIL liable party in not paying. Both

² Community Infrastructure Levy Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation – Draft Regulations and Reference documents – July 2009.

³ Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation – July 2009.

measures are consistent with safeguards already present in the SDLT regime. Finally, despite being exempt from all, or a portion, of its CIL charge, under draft regulation 22(1) a charity must submit a commencement notice before it starts developing – this is necessary to ensure the period of ‘clawback’ can be accurately calculated.”

108. Whilst the document refers to, and the draft regulations concerned, relief for charities, the consultation document also consulted on the prospect of introducing a separate relief for an affordable housing discount which was then introduced as part of the CIL Regulations as social housing relief. As the Explanatory Memorandum to the CIL Regulations explains:

“Overall, most respondents supported some form of relief from CIL for non-charitable social housing to complement the exemption provided to the charitable social housing sector. As a result of comments made concerning the need to ensure a ‘level playing field’ for social housing provided by charities and non-charities, the CIL regulations now give a 100% CIL exemption to developments which will be used as social housing.”

109. The Information Document published in May 2011 gave the following guidance in respect of regulation 51(7)(a) (*emphasis added*):

“54. The collecting authority must inform the claimant in writing of its decision, the reasons for it, and the amount of relief granted. A valid commencement notice must be submitted for chargeable developments granted social housing relief. The date of commencement determines when the seven-year clawback period expires. Where a commencement notice is not issued, the claimant is no longer eligible for relief from the levy and the full charge plus any surcharge is immediately payable.”

110. Paragraph 36 of the Information Document explains the operation of regulation 47(7) concerning charitable relief in essentially the same terms:

“36.A commencement notice must be submitted for chargeable developments granted charitable relief. The date of commencement determines when the seven-year clawback period expires. Where a commencement notice is not issued, the claimant is no longer eligible for relief from the levy and the full charge plus any surcharge is immediately payable...”

111. The Information Document does not draw any distinction between the effect of regulation 47(7) and 51(7)(a).

112. Similarly, the 2014 version⁴ of the Planning Practice Guidance (“PPG”) provided, at [124]:

“[...] A party claiming social housing relief must submit a commencement notice to the charging authority for a development that is granted relief. The date of commencement determines when the 7-year clawback period expires, apart from dwellings granted social housing relief under regulation 49(7A) for which the clawback period expires 7 years after the dwelling is first let. If development begins without a commencement notice, the claimant is no longer eligible for social housing relief and the full charge plus any surcharge is immediately payable. [...]” (1 April 2015 Version - Reference ID: 25-124-20150401)

113. The explanation of the draft regulations concerning charitable relief in the consultation documents is consistent with the 2011 Information Document and the 2014/2015 PPG in respect of social housing relief and shows that the purpose of regulation 51(7) was to ensure no social housing relief was provided where no commencement notice was submitted prior to the commencement of development. From the relevant background materials, it is evident that the reason this provision was included was because of a need for clarity for the collecting authority as to when the development commenced and liability to pay CIL is triggered⁵, and also when calculating the ‘clawback’ period which applies to disqualifying events, for example, under regulation 53 discussed further below. The purpose of regulation 51(7) and the intended consequence of a failure to submit a commencement notice was that the benefit of the relief would be lost and the full CIL liability, plus any surcharge, became payable immediately.
114. In 2019, regulation 51(7)(a) was revoked by the Amendment Regulations, together with the comparable provisions for other exemptions and relief, which I have referred to above. The Secretary of State’s explanation in 2019 of the scope of these provisions is, in my view, a legitimate aid to their interpretation, even though it was provided some years after they were made in 2010.
115. The Explanatory Note to the Amendment Regulations explains that regulation 6 provides for the removal of the provisions which resulted in relief being lost if a commencement notice was not submitted before commencing the development.
116. The Explanatory Memorandum to the Amendment Regulations provides at paragraphs 7.7 and 7.8 that:

“7.7 The 2010 Regulations allow for certain development (such as residential extensions and self-build housing) to be exempt, or to gain relief, from CIL. In most cases a developer must submit a Commencement Notice to the charging authority prior to the start of works so as not to lose the exemption or relief. Failure to do so results in the exemption or relief being lost, and the full

⁴ See version first published 12 June 2014. This paragraph remained in the revised version published on 01 April 2015 but was amended in consequence of the Amendment Regs on 1 September 2019.

⁵ Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation – July 2009 at paragraphs 4.135 and 4.206.

CIL liability becoming due immediately. This particularly affects smaller developers and self-builders, as they tend to be less familiar with the requirements of the legislation. The Government considers that the immediate application of this penalty is disproportionate to the failure to submit a Commencement Notice on time.

7.8 Under this instrument the penalty for a late Commencement Notice will be reduced from the removal of the exemption or relief to a surcharge equal to 20% of the notional chargeable amount or £2,500, whichever is the lower amount; this mirrors surcharges elsewhere in the 2010 Regulations. This will therefore always be lower than the current penalty of the full CIL liability. This instrument also clarifies that a Commencement Notice is not required at all in relation to an exemption for residential extensions.”

117. The use of the words “in most cases” in paragraph 7.7, relied on by the Claimant, is simply a reflection of the fact that not all exemptions or reliefs in the CIL Regulations required a commencement notice prior to the commencement of development so as not to lose the exemption e.g. the exemption for minor development under regulation 42 and the discretionary relief for exceptional circumstances under regulation 55.
118. The Annex to the Memorandum explains the changes in relation to regulation 51 as follows (*emphasis added*):

“If the developer fails to submit a commencement notice in time, the exemption or relief is lost, and the full chargeable amount becomes payable.

[...]

For each of the relevant exemptions and reliefs, the relevant regulations are amended (as below) so that the exemption is not removed if a commencement notice is not submitted on time. In parallel, Regulation 83 is amended to introduce the surcharge.

[...]

Regulation 51 (Social housing relief: procedure) is amended so that where social housing relief has been granted in relation to a chargeable development and then a section 73 permission allows the development to change after building works have commenced, the developer is allowed to apply for the relief i.e. the relief is not automatically lost on granting of the new permission. It also requires the charging authority to explain the need for a commencement notice to be submitted before commencement ((regulation 67(1)); but deletes regulation 51(7)(a) so if a commencement notice is not submitted beforehand, the social housing relief is not lost.”

119. In my view, this extrinsic material supports the Defendant's interpretation of regulation 51(7)(a).

Overall conclusion on Ground 1

120. In my judgment, the Defendant's interpretation of regulation 51(7)(a) is correct. A chargeable development ceases to be eligible for social housing relief if, before the chargeable development is commenced, a commencement notice is not submitted to the collecting authority. This interpretation does not depend on reading any words into regulation 51(7). This is the ordinary meaning and effect of the words used in regulation 51(7), read in their statutory context. The Court should interpret the language used in regulation 51(7) so as to give effect to the purpose of the provision. The purpose of the CIL Regulations is to give certainty to developers and the collecting authority as to when and how the liability for CIL will arise. The general purpose behind the requirement to submit a commencement notice is a need for clarity for the collecting authority as to when chargeable development has commenced and liability to pay CIL is triggered. From the relevant background materials, it is evident that regulation 51(7)(a) was included to further this purpose, and also so that the collecting authority could accurately calculate the 'clawback' under regulation 53. In my judgment, the effect of regulation 51(7)(a) is clear for both the collecting authority and the developer. Additionally, the pro forma forms issued by the Council in this case repeatedly advised the Claimant of the requirement to submit a commencement notice in time, and warned of the loss of relief if it failed to do so. Therefore Ground 1 does not succeed.

Ground 2

Submissions

121. The Claimant submitted that the Council erred in issuing surcharges for late payment in the demand notice dated 11 February 2020, as payment was not due until after that demand notice had been served on the Claimant, and the grace periods for payment (30 days and 6 months), before any surcharge could be triggered under regulation 85, ran from 11 February 2020, and so had not expired.
122. The Inspector erred in concluding that payment was due in full on 19 June 2019, which was the date on which development was deemed to have commenced. Furthermore, regulation 70 of the CIL Regulations, referred to by the Inspector, made no provision for a deemed commencement date. Time for payment could only run from the date of service of a valid demand notice, pursuant to regulation 69, after a valid liability notice had been served. The demand notice issued on 5 August 2019 was invalid because it erroneously stated that a "disqualifying event for relief purposes has occurred", implying that regulation 53 was engaged.
123. In response, the Defendant accepted that the Inspector erred in referring to regulation 70 of the CIL Regulations, when the relevant provision was regulation 71(2). However, his reasoning was correct, and there was no error of law. Regulation 71(2) provides that, where the collecting authority determines a deemed commencement for chargeable development, the amount of CIL payable is due in full on the deemed commencement date.

124. The Council had to determine a deemed commencement date of 19 June 2019 because the Claimant failed to notify it of the actual commencement date. The Claimant never challenged the deemed date of 19 June 2019. Accordingly, the deemed commencement date was the date upon which payment became due, not the date on which the demand notice was issued.
125. The demand notice issued on 5 August 2019 was not invalidated by the inapt use of the term “disqualification”, to describe the loss of the social housing relief under regulation 51(7). In any event the Claimant never challenged the validity of that demand notice, either by an appeal or a judicial review claim, and it remained in force until replaced by the demand notice issued on 11 February 2020, which was updated to include the late payment surcharges and interest payments which had accrued under regulation 85.

Conclusions

126. Liability to pay CIL arises upon the commencement of the chargeable development. Section 208(1) PA 2008 provides that, where liability to CIL would arise in respect of proposed development, a person may assume liability to pay the levy. Section 208(3) PA 2008 provides:
- “A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission”.
127. By regulation 31 of the CIL Regulations, a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an assumption of liability notice to the collecting authority.
128. Regulation 31(3) sets out the point at which liability arises:
- “A person who assumes liability in accordance with this regulation is liable on commencement of the chargeable development to pay an amount of CIL equal to the chargeable amount, less than the amount of any relief granted in respect of the chargeable development.”
129. The date upon which payment of CIL is due is prescribed by regulations 70 and 71 of the CIL Regulations.
130. Regulation 70 applies where a person has assumed liability to pay CIL in respect of a chargeable development and submitted a commencement notice (paragraph (1)). Paragraphs (3) to (6) make provision for payment by instalments. Paragraph (7) is the default position and states:
- “(7) In all other cases, A is payable in full at the end of the period of 60 days beginning with the intended commencement date.”
131. Paragraph (8) provides:
- “(8) Where an amount payable in accordance with this regulation is not received in full on or before the day on which it is due –

(a) the unpaid balance of A becomes payable in full immediately;
and

(b) the collecting authority must send a copy of any demand notice which it serves as a result of the non-payment to each person known to the authority as an owner of the relevant land.”

132. Regulation 71 applies where the conditions in regulation 70(1) have not been met, and so payment in full has to be made at the date of intended or deemed commencement. The material provision in this claim is paragraph (2):

“71. Payment in full

(1).....

(2) Where the collecting authority determines a deemed commencement for a chargeable development, the amount of CIL payable in respect of that chargeable development is due in full on the deemed commencement date.”

133. When these provisions are read together with regulation 69(2)(e), it is clear that the demand notice must state the date on which payment of CIL is due, but it does not set that date. The date is set by operation of regulations 70 and 71, and then stated in the demand notice.

134. In *Lambeth v Secretary of State for Housing Communities and Local Government & Anor*, Thornton J. rejected an argument similar to that relied upon by the Claimant before me. She correctly concluded, at [75]:

“The interested party falls into the same error of analysis as that rejected by Swift J. in *Oval Estates* [2020] PTSR 861, paras 32-34. Liability to pay CIL and the date and quantum of payments is not determined by the issue of liability or demand notices. Rather those notices record the liability and terms of payment.”

135. The Claimant cited the case of *R (Trent) v Hertsmere Borough Council* [2021] EWHC 907 (Admin) in which I held at [57]:

“...the Defendant was required to issue and serve statutory notice which complied with the requirements in the CIL Regulations, and to do so in the prescribed sequence. In consequence, the Claimant was not under an obligation to pay the CIL, as required by the 2020 demand notice, unless and until the Defendant had issued and served a valid liability notice, in accordance with regulation 65 of the CIL Regulations.”

136. However, the Claimant’s submission in this claim, namely, that the date of payment was set by the demand notice rather than by regulation 71(2), was not raised in *Trent*. The issue in *Trent* was the failure to issue a valid liability notice. Therefore, paragraph 57 in *Trent* was not authority for the Claimant’s submission.

137. In my judgment, the Council correctly applied the relevant provisions in the CIL Regulations to this claim.

138. The first Liability Notice, issued on 14 May 2019, stated:

“When will this CIL amount be due for payment?”

If the payment procedure is followed correctly, this CIL amount will be payable 60 days after commencement.”

139. It appears that this was intended to reflect the default payment date under regulation 70(7) of the CIL Regulations, and that the Council was working on the assumption that the Claimant would submit a commencement notice prior to the commencement of the chargeable development.

140. However, after the Site visit on 19 June 2019, the Council realised that the Claimant had failed to submit a commencement notice prior to the commencement of the chargeable development. By regulation 68 of the CIL Regulations, it was required to determine a deemed commencement date.

141. On 5 August 2019, the Council issued a revised Liability Notice (LN00000877) to the Claimant, which stated that the amount of relief awarded was nil, and that the Claimant was now liable to pay an increased charge, assessed at £1,451,899.58. It gave revised information to the Claimant, confirming that the payment date was reduced from 60 days to zero days:

“When will this CIL amount be due for payment?”

If the payment procedure is followed correctly, this CIL amount will be payable 0 days after commencement.”

142. On 5 August 2019, the Council also issued a Demand Notice (LN00000877), pursuant to regulation 69 of the CIL Regulations. It identified the date of deemed commencement of development as 19 June 2019. It stated that the outstanding amount of CIL payable (£1,451,899.58) was “due for payment immediately (except if there is an appeal) and is subject to interest being added” and surcharges being applied.

143. The Claimant did not seek a review of, or an appeal against, the Liability Notice or the Demand Notice.

144. The two Notices served on 5 August 2019 stated the result of the Council’s application of regulation 71(2) of the CIL Regulations, under which the amount of CIL payable became due in full at the deemed commencement date of 19 June 2019. Essentially, by failing to comply with the requirement to submit a commencement notice, the Claimant had forfeited the benefit of the more favourable payment provisions in regulation 70. It is important to bear in mind that the Claimant’s liability to pay arose upon the commencement of chargeable development, under regulation 31(3).

145. On 11 February 2020, the Council issued a revised Demand Notice which re-stated the deemed commencement date of 19 June 2019 and applied surcharges for late payment and interest to the Claimant’s unpaid liability for CIL. Under regulation 85(1) of the CIL Regulations, liability to pay a surcharge arose by reason of the non-payment of the

CIL in full “after the end of the period of 30 days beginning with the day on which payment is due”. Under paragraph (2), liability to pay a further surcharge arose by reason of the non-payment of the CIL in full “after the end of the period of 6 months beginning with the day on which payment is due”. I have already found that, by operation of regulations 31(3) and 71(2), the date on which payment was due was 19 June 2019.

146. The Claimant submitted that the periods of time specified in regulation 85 of the CIL Regulations ran from the issue of the Demand Notice on 11 February 2020, because time only ran from the date on which a valid demand notice was issued. The Demand Notice issued on 5 August 2019 was invalid because its reasons stated:

“Reason for issuing demand notice:

Development is deemed to have commenced.

A surcharge has been imposed.

A disqualifying event for relief purposes has occurred.”

147. It was common ground before me, and before the Inspector, that the reference to a disqualifying event was incorrect as it implied that regulation 53 was engaged, whereas social housing relief had been lost by application of regulation 51(7)(a), as the Council explained in its email of 9 August 2019. It appears that the error arose because the decision template which the Council had to complete did not include an appropriate option. Nonetheless, the Council was required “to include the other information specified in the form” (regulation 69(2)(g)), and I consider that the inaccuracy in the reasons was more than trivial; it was potentially misleading.
148. However, in law, the Demand Notice of 5 August 2019 was valid until struck down either in a statutory appeal, or in a claim for judicial review (*De Smith’s Judicial Review* (8th ed), at paragraph 5-058). The Claimant did not challenge the validity of this Demand Notice prior to this claim for judicial review. By then it had already been superseded by the Demand Notice issued on 11 February 2020, which did not include the incorrect reference to a disqualifying event (regulation 69(5)). Therefore the error in the Demand Notice issued on 5 August 2019 does not assist the Claimant in its challenge to the surcharges.
149. The Claimant submitted that the Inspector erred in law by referring to regulation 70 of the CIL Regulations, instead of regulation 71(2), at DL17. In my judgment, this was merely an inadvertent slip by the Inspector and did not invalidate his reasoning on this issue, which was otherwise entirely sound.
150. For the reasons set out above, Ground 2 does not succeed.

Final conclusion

151. For the reasons given in this judgment, the claim for judicial review is dismissed.