Neutral Citation Number: [2019] EWHC 16 (Admin)

Case No: CO/4218/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2019

Before :

MR C. M. G. OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL
(SITTING AS A JUDGE OF THE HIGH COURT)

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Between :

The Queen on the Application of Shropshire Council	**Claimant**
and	
The Secretary of State for Communities and Local Government	**Defendant**
and	**Interested Party**
Lee Jones	

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- -

Mr Hashi Mohamed (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
The Defendant did not appear and was not represented
Ms Saira Kabir Sheikh QC (instructed by **CLP Solicitors**) for the **Interested Party**

Hearing dates: 13 September 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR C M G OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL

Mr C.M.G. Ockelton:

1. Community Infrastructure Levy ("CIL") is a planning charge introduced by Part 11 of the Planning Act 2008. It enables local authorities to levy a charge on developments for which planning consent is granted; the income from the charge is then distributed within the local authority area at the various levels at which infrastructure improvements may be needed. It is for each planning authority to decide whether to impose CIL and to determine the rate applicable from time to time; but, if CIL is imposed, all other aspects of liability, collection and other administrative matters are governed by the Community Infrastructure Levy Regulations 2010 as amended ('the Regulations').

2. Where CIL is charged it is in principle chargeable on any development creating more than 100 square metres of additional floor space, as well as any newly built houses or flats. There are a number of important exemptions. For the purposes of the present claim I need focus on only one: that for self-built houses.

THE REGULATIONS

3. The exemption for self-built houses is to be found for the most part in amendments to the Regulations introduced in 2014. Regulation 54A defines the developments subject to the exemption: self-build housing is a dwelling built by a person (P) (including where built following a commission by P) and occupied by P as P's sole or main residence. Then reg 54B sets out the process for obtaining exemption:

> "54B.
>
> (1) A person who wishes to benefit from the exemption for self-build housing must submit a claim to the collecting authority in accordance with this regulation.
>
> (2) The claim must—
>
> (a) be made by a person who—
>
> (i) intends to build, or commission the building of, a new dwelling, and intends to occupy the dwelling as their sole or main residence for the duration of the clawback period, and
>
> (ii) has assumed liability to pay CIL in respect of the new dwelling, whether or not they have also assumed liability to pay CIL in respect of other development;
>
> (b) be received by the collecting authority before commencement of the chargeable development;
>
> (c) be submitted to the collecting authority in writing on a form published by the Secretary of State (or a form substantially to the same effect);

> (d) include the particulars specified or referred to in the form; and
>
> (e) where more than one person has assumed liability to pay CIL in respect of the chargeable development, clearly identify the part of the development that the claim relates to.
>
> (3) A claim under this regulation will lapse where the chargeable development to which it relates is commenced before the collecting authority has notified the claimant of its decision on the claim.
>
> (4) As soon as practicable after receiving a valid claim, and subject to regulation 54A(10), the collecting authority must grant the exemption and notify the claimant in writing of the exemption granted (or the amount of relief granted, as the case may be).
>
> (5) A claim for an exemption for self-build housing is valid if it complies with the requirements of paragraph (2).
>
> (6) 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."

4. Regulation 54C requires a certificate of the completion of the development to be sent to the collecting authority within six months after the development is completed.

5. Other aspects of the administration of the self-build exemption are in those provisions of the Regulations that apply generally. Those relevant to this claim are as follows.

6. Regulation 2(1) has definitions, including:

> "Commencement notice" means a notice submitted under regulation 67."

Regulation 2(5)(b) provides that

> "References to notices, representations, forms or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form."

Regulation 67 is as follows:

> "Commencement notice
>
> 67 (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) 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).”

7. Regulation 68 provides that if a collecting authority either believes that a development has commenced but has received no commencement notice, or believes that the date of commencement was earlier than the date in any commencement notice it has received, it must determine the date on which the development was commenced, ‘the

deemed commencement date'. The next regulation, reg 69, contains general provisions for the issue of demand notices stating what amount is payable by way of CIL and any surcharges or interest and when payment is due. Regulation 70 provides that if the collecting authority has received a commencement notice the levy is payable in accordance with any instalment policy or otherwise after 60 days, but if the collecting authority has determined a deemed commencement date, the CIL is due in full on the deemed commencement date.

8. Part 9 of the Regulations is headed 'Enforcement'. Within that Part, reg 83 permits a collecting authority to impose a surcharge of 20 percent of the amount payable, or £2500 if that is less, if a chargeable development is commenced before the collecting authority has received a valid commencement notice; and reg 87 permits the charging of interest on late payments. Subsequent provisions permit recovery of unpaid CIL and associated charges as a debt. There are rights of appeal to the Secretary of State or a person appointed by him (that is, in all probability, a Planning Inspector) under Part 10. A person aggrieved at a decision to impose a surcharge may appeal under reg 117 on the ground that the claimed breach which led to the imposition of the surcharge did not occur. A person on whom a demand notice stating a deemed commencement date is served may appeal under reg 118 on the ground that the collecting authority has incorrectly determined the date. If an appeal on that ground is allowed, all previously-issued demand notices cease to have effect; the Inspector must determine a revised deemed commencement date, and any surcharge imposed may be quashed.

THE FACTS

9. Mr Lee Jones, the interested party, obtained planning permission from Shropshire Council, the claimant, to build a detached house with triple garage at Ellesmere, Shropshire. The CIL liability was assessed at £36,861.43, but Mr Jones was a self-builder. He therefore applied as required by reg 54A and received a certificate entitling him to exemption from CIL. Under a s 106 agreement, however, a sum of £9,000 was due within two years of the commencement of development or within three months of the completion of the development, whichever was sooner. On 10 July 2015 Mr Jones sent to Gay Goodwin, a Council official with whom he had been dealing and who had enquired about payment of the £9,000, an email under the heading "RE: Section 106 Agreement relating to land at Mayfield Farm, Elson, Ellesmere -13/102362/OUT & 14/05016/FUL", reading as follows:

> "Dear Gay,
>
> Further to your mail of 17 June, please be advised that site clearance works will begin on site tomorrow 11 July for site 14/05016/FUL.
>
> I understand that the £9000 fee will be payable 2 years from this date or 3 months after project completion, whichever occurs first under the terms of the 106 agreement.
>
> regds
>
> Lee Jones."

10. Ms Goodwin replied by email dated 13 July 2015 under the same heading,

> "Dear Mr Jones,
>
> Thank you for your email informing me that work was to commence on the 11th July 2015. Your comments have been noted and our records updated. … "
>
> [The rest of the email details the crystallisation of the s 106 liability and methods of payment.]

11. The next event revealed by the documents is that on 13 August 2015 the Council issued a demand notice requiring an immediate payment of £39,361.43 on the ground that development had commenced without a commencement notice being sent to the Council. The sum charged consisted of the CIL plus a surcharge of £2,500 for "invalid commencement". The notice gave a deemed commencement date of 13 August 2015.

12. Mr Jones responded with a letter of horror and apology, saying that he knew about the Regulations and thought that he had given sufficient notice of commencement by his email of 10 July. The relevant Council official replied in sympathetic terms but pointing out that the CIL process is separate from the planning process and is controlled very precisely by national regulations in relation to which the local authority had no discretion.

13. Mr Jones responded through solicitors who had taken the advice of counsel. His position was that the courts do not treat every instance of non-compliance with statutory requirements as fatal, even if the provisions concerned are expressed in mandatory terms. He argued that the email of 10 July was substantially in compliance with the Regulations and should be accepted as having been a commencement notice sufficient to prevent the operation of cesser of exemption under reg 54B(6). The Council disagreed. There was then further correspondence about whether development had been commenced in any event, Mr Jones claiming that as the only development so far undertaken was not referable to the plans accompanying the application, it could not constitute the commencement of the development for which consent had been given. By then Mr Jones was long out of time for any appeal against the original demand notice, so the Council agreed to issue him with a new notice. The new notice was dated 27 January 2017 and was in terms identical to that of 13 August 2015, but added an interest charge of £200, the minimum amount permitted under the Regulations where CIL is more than 30 days overdue. Mr Jones appealed under both s 117 and s 118.

THE INSPECTOR'S DECISION

14. The Inspector, Mr A U Ghafoor, made his decision on 8 August 2017. He dealt first with Mr Jones' contention that the works so far undertaken did not amount to commencement of the development for which permission had been granted and rejected that element of the appeal. He noted Mr Jones' acceptance of the fact that that work had started on 11 July 2015. He set out the determinative issue in the appeal as "Whether the CA [collecting authority] has incorrectly determined the deemed commencement date and whether the claimed breach, which led to surcharges being imposed, occurred". He discussed the latter issue first. He said at para 6 that "the purpose of the Regulations is to make the CA aware of the intended start date of

development permitted before work begins, which then sets in motion a number of actions or requirements, as specified in the Regulations". After a summary of reg 67(2) he noted that the Council had not drawn Mr Jones' attention to any failure to comply with those requirements, as a "responsible authority" would have done.

15. He went on to say that he accepted that "on a literal interpretation of the Regulations" the email did not include particulars required by Form 6 (the form specified for the purpose under reg 67) and failed to identify the LN reference, but that the "oversight" was not fatal to Mr Jones' case, because the email did refer to the relevant site and planning permission and unambiguously specified the intended date of commencement. In these circumstances, at para 10, he held that "in practice, substance, form and all intent and purposes the email communication has the same effect as Form 6". He said he was content that "the purpose behind CIL reg 67 has been satisfied in spirit at least" and "the apparent failure to strictly comply with the terms of reg 67(2) should be put aside". There was in any event no prejudice to the collecting authority because it was aware of the date.

16. The inspector concluded that the date of commencement was 11 July and the deemed date of 13 August was incorrect; Mr Jones had given a commencement notice for 11 July by his email and had not commenced without sending a commencement notice. The appeal therefore succeeded on both grounds.

THE PRESENT PROCEEDINGS

17. These proceedings were filed on 13 September 2017. The Council, as claimant, seeks against the Secretary of State the quashing of Mr Ghafoor's decision, and costs. Mr Jones is named and was served as an interested party. The grounds of claim were and are that the Inspector erred in his understanding of, or misconstrued, reg 67. There were mandatory requirements for the commencement notice and the email was in stark contrast to what was required. It was "plainly absurd" to regard the email, specifically concerned with the s 106 payment, as meeting the requirements of reg 67(2). Further, the Inspector erred in his apparent placing on the Council as a "responsible authority" the burden of notifying the developer if it received an email that was not proper compliance with a mandatory form. It was at all times Mr Jones' responsibility to submit the correct form. Finally, the Inspector's approach was bound to introduce a level of uncertainty into the administration of CIL and indeed appeared impermissibly appeared to introduce a level of discretion into the application of the Regulations. And as a matter of fact, the CIL team at the Council were not made aware of the contents of the s 106 email at the time it was sent.

18. The Secretary of State responded promptly, conceding the claim. Mr Jones responded by saying he was minded to resist the claim, and summary grounds duly followed. They asserted that the Council's grounds entirely failed to take proper account of the legal foundations of the case put to the Inspector and apparently accepted by him. In London & Clydesdale Estates Ltd v Aberdeen District Council [1980] 1 WLR 182 per Lord Hailsham at 189F-190C, and recently in Oldham MBC v Tanna [2017] EWCA Civ 50 at [29] and in numerous other cases in between, the courts had emphasized that even where a requirement was expressed in a mandatory form there was a range of possible defects, some of which might be regarded as nugatory, or some might be capable of being waived: it could not be said that every failure to comply with the

requirements would render the act invalid. It was necessary, looking at the facts of the individual case, to consider what Parliament had intended as the consequences of non-compliance, in particular of the non-compliance that had occurred. In the resent case the email had conveyed everything that needed to be conveyed by a commencement notice, and the Council had not been prejudiced. A parallel was drawn with non-compliance with s 65 of the Town and Country Planning Act 1990: even though s 65(5) prohibited a local planning authority from entertaining an application 'unless any requirements imposed by virtue of this section have been satisfied' there were decided cases in which the courts had refused to quash grants of grant of planning permission where the requirements were not satisfied, provided that the person seeking the relief had not been prejudiced by the failure. The Council served a response to that, reasserting the mandatory nature of the requirements and the extreme nature of the failure to comply with them. The nuanced approach advocated in London & Clydesdale Estates and later cases did not assist when the failure was so extensive. The analogy with s 65 was unhelpful as the wording of that section is different.

19. Permission was granted by Ouseley J. He remarked that the grounds, on the basis of which the defendant had conceded, were plainly arguable, and that the Interested Party's continued opposition to the grant of permission was surprising. I do not read that as implying any criticism of Mr Jones' decision to resist the claim once permission had been granted: he has, after all, a considerable financial interest in preserving the Inspector's decision in his favour. But the purpose of the grounds put in at this early stage is to assist in determining whether permission is to be granted, and it is not easy to see that anything in what had been submitted by or on behalf of Mr Jones could reduce the claim to being unarguable, even without taking into account the stance of the defendant.

20. At the hearing before me the parties' stances were in essence unchanged. Mr Hashi Mohamed on behalf of the Council drew attention, in the firmest of terms, to the mandatory requirements of reg 67. Mr Jones had simply failed to comply with them. Parliament's intention, as expressed in reg 67(6), could not be clearer: if there is no commencement notice, the exemption is lost. This is made clear in the Regulations themselves, on the forms, and in the published guidance. There was no legal basis for any claim by Mr Jones that any of the requirements could be waived. The email simply did not comply with reg 67 by a very long way, and that was an end of it.

21. Mr Mohamed also relied on other Inspectors' decisions, reaching a contrary view on the interpretation of s 67 from that adopted by Mr Ghafoor. It transpires, however, that these decisions were all made by the same inspector. Finally, Mr Mohamed asserted again that, as set out in the Council's witness statements supporting the claim, the email had not in fact served to communicate the intended communication date to the CIL team, which was differently constituted from those dealing with s 106 matters.

22. So far as the facts were concerned, Ms Sheikh QC for Mr Jones pointed out that a Council officer had replied to the email saying that the Council's records would be updated, which appeared to show that the Council as a whole knew of the date. She acknowledged, as she had to, that the email did not comply with the terms of s 67. But in addition to the cases previously cited she relied in particular on the principles

and the staged series of questions set out by the Court of Appeal in R v Secretary of State for the Home Department ex parte Jeyeanthan [2000] 1 WLR 354, and endorsed by the House of Lords in R v Soneji [2006] 1 AC 340. In Jeyeanthan, Lord Woolf MR said at [16]-[17]:

> "16. I suggest that the right approach is to regard the question of whether a requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance than the application of the mandatory/directory test: The questions which are likely to arise are as follows.
>
> (a) Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and, if so, has there been substantial compliance in the case in issue even though there has not been strict compliance? (The substantial compliance question.)
>
> (b) Is the non-compliance capable of being waived, and if so, has it, or can it and should it be waived in this particular case? (The discretionary question.) I treat the grant of an extension of time for compliance as a waiver.
>
> (c) If it is not capable of being waived or is not waived then what is the consequence of the non-compliance? (The consequences question.)
>
> 17. Which questions arise will depend upon the facts of the case and the nature of the particular requirement. The advantage of focusing on these questions is that they should avoid the unjust and unintended consequences which can flow from an approach solely dependent on dividing requirements into mandatory ones, which oust jurisdiction, or directory, which do not. If the result of non-compliance goes to jurisdiction it will be said jurisdiction cannot be conferred where it does not otherwise exist by consent or waiver."

23. Ms Sheikh is able to point to the application of the Jeyeanthan approach in a CIL context in R (Hillingdon Borough Council) v Secretary of State for Housing, Communities and Local Government and another [2018] EWHC 845 (Admin). For these reasons Ms Sheikh argued that the Inspector had been entitled, and indeed had been correct, to consider what purpose was to be served by the commencement notice, and whether it had been served by the email. There had been substantial compliance; the only real omission of what was required by Form 6 was the signed declaration, and that was chiefly intended to remind the developer of his obligations. In any event, the penal provisions of the Regulations, surcharges and interest, were discretionary, which was a pointer to Parliament's intention that defects of this sort would not always incur penalties. The self-build provisions must be aimed at the sort of people who might be building their own houses; it was not appropriate to construe them with the eyes of a lawyer.

24. Regulation 67, she pointed out, both refers to the requirements of a commencement notice and provides that a commencement notice meeting those requirements is a valid commencement notice. There is, she said, no provision stating that a notice not meeting all those requirements is for all purposes invalid. That leaves scope for precisely the sort of notification given in the present case; but where the omissions lead to the collecting authority having to chase things up the fact that the notice was not "valid" will enable a surcharge under s 83 to be the response. Further, the provision for cesser of the exemption, in reg 54B(6), does not refer to a "valid" commencement notice: it would appear to follow that a notice that does not exactly comply with the requirements of reg 67(2) may not cause the loss of the exemption.

25. The collecting authority already had all the information required by the form except the commencement date, and that was provided by the email. It was open to the authority in these circumstances to treat the email as sufficiently complying with the Regulations or to waive any defect, and the Inspector was entitled to conclude, as he essentially did, that it should have done so. Further, there was considerable merit in the Inspector's observation that it was not going to treat the email as a commencement notice it should have told Mr Jones so. In these circumstances there had been no breach of the requirement to serve a commencement notice before commencement, so the appeal rightly succeeded under reg 117. There was no reviewable legal error in the Inspector's conclusions.

26. Ms Sheikh then addressed the appeal under s 118. She argued that it was clear from the facts that 13 August 2015 was not the commencement date. The date was 11 July 2015: none of the material before the Inspector suggested anything different. The Inspector was bound to allow the reg 118 appeal on the basis that the deemed commencement date had been wrongly determined, which would have the effect that the demand notices ceased to have effect. The Inspector would clearly then have exercised his discretionary power under reg 118 to quash the surcharge, given what he had said about the email and its effect. Thus, even if the Inspector had erred in his interpretation or application of reg 67 in the reg 117 appeal, the result would have been the same because of the inevitable outcome of the reg 118 appeal.

27. Finally, Ms Sheikh submitted that in the circumstances of the case the court should exercise its discretion to withhold relief from the claimant, which had wrongly asserted to Mr Jones that it had no discretion, whereas on the clear terms of the relevant regulations, which use the word "may" it had discretion in relation to surcharges and interest. As the Council had suffered no prejudice by the failure to use Form 6, and had proceeded on a misunderstanding of its enforcement powers, the claim should be dismissed now.

DISCUSSION AND CONCLUSIONS

28. Ms Sheikh's arguments in relation to the commencement notice were deployed with her usual persuasive skill and taken by themselves appear to establish that the claim pursued by the Council should fail. That is particularly so where the Council's case was, with respect to Mr Mohamed, not fully developed. I am, however, confident that the Council's claim does succeed. The essential reason is that Ms Sheikh's argument starts in the wrong place. Although this is certainly not exactly what Mr Mohamed argued, in a public law forum there is rarely a good reason for determining a case (or

at any rate a case that has not been conceded) in a manner contrary to the law and the authorities, even if they have not been the subject of specific reliance; and here, although the points to which I am about to refer did not have any major role in the arguments of either side, the sources for them are in the joint bundle of authorities and nobody can claim to be taken by surprise.

29. Jeyeanthan helps to answer the question what is to happen if a person undertaking a particular act has failed to comply with all the requirements prescribed for that act. But that can be a relevant question only if the actor has actually engaged in the regulated conduct. If the path of compliance has not, so to speak, been trodden at all, there is likely to be little scope or need for analysis of error or omissions in attempted or partial compliance.

30. The crucial authority on this point is the decision of the Court of Appeal in R (Winchester College and another) v Hampshire County Council [2008] EWCA Civ 431 ("Winchester"). The primary question was whether for the purposes of s 67(3) of the Natural Environment and Rural Communities Act 2006 certain applications had been made in accordance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981. That paragraph required an application to be on the proper form and to be accompanied by a map at a prescribed scale and certain other documents. The applications in question had been made on the proper form and were accompanied by the map but not the other documents, although it appears that the latter were already available to the recipient of the application.

31. Giving the only substantive judgment, with which Thomas and Ward LJJ agreed, Dyson LJ considered the statutory provisions and both London & Clydesdale and Jeyeanthan and concluded that the trial judge was wrong in deciding that the applications had been made in accordance with the provisions: "In my judgment, as a matter of ordinary language an application is not made in accordance with paragraph 1 unless it satisfies all three requirements of the paragraph." (at [46]). In the context of the legislation under interpretation, he found two factors confirming that conclusion. First, the heading to paragraph 1, "Form of Applications", showed that the whole paragraph (including all three requirements) had to do with that subject. Secondly, the prescribed form itself had reference to attaching and enclosing the map and the other documents, which showed that they were all intended to be an integral part of the application.

32. Dyson LJ emphasized that he was not saying that for other purposes it might not be open to an authority to treat an application such as that in the present case as a valid application and to waive the defect, but the specific requirement in s 67(3) meant that for the purposes of that section there was no application except if all the requirements of Paragraph 1 of Schedule 14 were met.

33. Winchester was followed in Maroudas v Secretary of State for the Environment, Food and Rural Affairs [2010] EWCA Civ 280, where again Dyson LJ gave the only substantive judgment.

34. In R (Trail Riders Fellowship and another) v Dorset County Council [2015] UKSC 18 the Supreme Court heard argument some of which was concerned with whether Winchester and Maroudas were rightly decided. In the event the Court did not need

to reach a view on that. Doubts were expressed by Lord Carnwath JSC in the following terms at [55]:

> "In my view, with respect, this approach was too narrow. For the reasons I have given, this is not a context in which either statute needs to be read as requiring more than substantial compliance to achieve validity."

35. But there can be no doubt that his observations were obiter; as he said at [79], "It is unnecessary for present purposes to determine whether the Winchester case was correctly decided on its own facts." In fact, the issue he was addressing (the second issue in the case) did not require determination because the agreement of Lord Clarke, Lord Toulson and Lord Carnwath JJSC on the first issue was determinative of the appeal. It is therefore particularly worthy of observation that Lord Neuberger PSC, together with Lord Sumption and Lord Toulson, specifically disagreed with Lord Carnwath on this point and endorsed the view taken by Dyson LJ in Winchester.

36. It follows that Winchester remains binding on this Court. I should add that the same conclusion was reached by Gilbart J in Trail Riders Fellowship v Secretary of State for Environment Food and Rural Affairs and another [2016] EWHC 2083 (Admin).

37. In my judgment, a provision of the Regulations, which received scant attention in the submissions before me, places the present case in the same frame as Winchester. It is the provision to which I have already referred in reg 2: "commencement notice" means a notice submitted under regulation 67'. Given the provisions of reg 67, a separate definition of what amounts to a commencement notice would not have been necessary unless to say something in addition to those provisions, and if Ms Sheikh is right in her submissions it would not have been necessary. The definition chosen is not 'a notice informing the charging authority of the date of commencement of the development': it is "a notice submitted under regulation 67". On the ordinary meaning of the words it is extremely difficult to draw a conclusion other than that a notice that does not comply with the requirements of reg 67 (as to both content and timing) is not a commencement notice at all for the purposes of the Regulations.

38. That conclusion would, I think, have been tempting even in the absence of authority: given the binding force of Winchester it is compelling. I identify two features which tend to confirm that it is correct. The first is that to which I have just referred, that is to say the specific drafting choice to include a definition at this point (this could not operate as a confirmatory factor in Winchester, because the requirements were not contained in the same instrument and so it would in any event have been necessary to define an "application"). The second is the provision of reg 67(3), requiring a copy of the commencement notice to be served on any persons known to be an owner of the land. This provision makes it clear that the notice must contain the material that would enable any such person to be properly informed about the development. The regulation clearly does not envisage that a commencement notice could be a document containing only such information as might be new to the collecting authority; and the requirement of a copy of course excludes the possibility of a different notice being served to meet the perceived needs of a different recipient.

39. The Inspector does not seem to have considered either the Winchester line of authorities or the wording of the definition. In my judgment he should have done so, and he should have concluded that the email was incapable of being a commencement notice, because, as it failed to comply with the requirements imposed by reg 67, it was not "submitted under reg 67".

40. Even apart from that point, however, the Inspector's treatment of the issue was seriously defective. The starting-point of the Jeyeanthan process is that of determining what the legislator intended to be the consequences of non-compliance. That is a matter of interpretation of the legislation. The authorities do not justify a process of simply looking to see the apparent purpose of the regulations and treating any act fulfilling that purpose as sufficient to comply with them. The Regulations make 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 reg 67. This step in the process appears entirely to have escaped the Inspector, who appears as a result to have decided that an indication of a commencement date wholly failing to meet the requirements of reg 67 was a commencement notice under reg 67. There is no other way in which his decision can be married with the regulations; but that conclusion verges on the irrational and is certainly insufficiently reasoned.

41. Both the Winchester point and the statutory interpretation point are logically anterior to the nuanced approach to non-compliance advocated in London & Clydesdale and Jeyeanthan, and their application in the present case means that that approach did not in reality fall for consideration in the appeal. Hillingdon does not assist Mr Jones because the regulation under consideration there was worded in a much less exclusive way; similarly, the cases on s 65(5) of the 1990 Act are not in point because the wording of that section specifically envisages that even when there is non-compliance there is an "application". For the reasons I have given I agree with the Council that the Inspector erred in his understanding of reg 67; it was indeed plainly absurd to regard the email as a commencement notice within the meaning of the Regulations; or at any rate substantial reasons would need to be given for taking that view despite the terms of the Regulations as a whole. It follows that the Inspector's conclusion that the s 117 appeal fell to be allowed because the claimed breach (commencement without a commencement notice) did not occur, cannot stand.

42. I turn then to the appeal under reg 118. The appeal was allowed, with the results identified by Ms Sheikh. I do not, however, accept that that means that the overall decision would be the same despite any error of law in the reg 117 appeal. The reg 118 appeal is limited to the question of determining the correct commencement date (it remains a deemed commencement date in the absence of a commencement notice served before commencement). The demand notices cease to have effect because they will have been based on the old deemed commencement date and so will be inaccurate following the Inspector's determination of a different date. There is no suggestion in reg 118 or elsewhere that the moving of the commencement date by a successful appeal means that CIL ceases to be payable; but new demand notices will need to be issued. The consequence of Mr Jones having established that the deemed commencement date should have been a month earlier than that originally determined is that if (and I emphasise "if", because that is governed by the outcome of the s 117 appeal) he commenced the development without sending a commencement notice, the whole sum became payable on 11 July rather than 13 August 2015. There would be

no perceptible reason in the reg 118 appeal for quashing the surcharge, because its imposition was not caused by the error in determining the deemed commencement date.

43. It does not begin to follow that success in the reg 118 appeal would produce essentially the same result as that reached by the inspector. If the reg 117 appeal succeeds, no CIL is payable. If only the reg 118 appeal succeeds, the full amount of CIL is payable and must be the subject of a new demand notice, reflecting the newly-determined commencement date.

44. Finally, I reject Ms Sheikh's argument that in the circumstances of the present case the court should in its discretion refuse to grant relief to the Council. The requirements and the forms for fulfilling them are readily available, were made available to Mr Jones, and he accepted that he knew a commencement notice needed to be given. Only when the consequences of his failure were brought home to him in a substantial charge did Mr Jones claim that an email sent to the Council on an entirely different topic was his attempt to comply with the detailed requirements of which he was aware. There is no trace of any waiver or attempted waiver by the Council, and I do not see that Mr Jones could properly have interpreted the reply to his email in relation to s 106 as a waiver of the obligation to submit a commencement notice if he wished to maintain his self-build exemption. The argument based on the Inspector's view that the Council should have told him (again) that he needed to submit a commencement notice is without merit: the Inspector was simply wrong about that. No system of administration could survive a duty imposed on a recipient of an email on one subject to remind its sender of all other notices on different subjects that he might want to send. The fact that the penalties are discretionary does not mean that the imposition of CIL itself is discretionary: it is not. The Council seems to have behaved as sympathetically as they could, imposing a minimum interest charge; and maintaining the imposition of the surcharge, in the absence of which Mr Jones would have no right of appeal. His difficulties have been caused entirely by his own acts and I see no good reason to relieve him from the consequences at the expense of the ratepayers of Shropshire.

45. I will quash the Inspector's decision under reg 117. The decision under reg 118 stands unchallenged; its effect is that new demand notices need to be issued, based on a commencement date of 11 July 2015. There is as I understand the Regulations no inhibition on their being issued forthwith. The appeal under reg 117 has become academic because of the effect of the reg 118 appeal on the demand notices; but if the new notices include any surcharges there will be a new right of appeal under reg 117.