

Planning Legal Update

April 2016

Case Report: Community Infrastructure Levy - Combining Planning Permissions

We discuss below the recent case of R (oao Orbital Shopping Centre Swindon Limited) v Swindon BC [2016] EWHC 448 (Admin) where the High Court considered the issue as to whether it is lawful for a local planning authority to charge the Community Infrastructure Levy (CIL) by treating two planning permissions as a single planning permission.

Splitting planning applications to avoid or reduce CIL

In practice, developers have for some time now been proposing development works under separate planning applications rather than a single application (despite an intention that the works will be carried out together) to avoid or reduce their CIL liability. This has occurred because there is no provision in the CIL legislation which allows a local authority charging CIL to treat two or more planning permissions as a single planning permission. The High Court has upheld this position in the Orbital Shopping Centre case.

Facts of the Case

The case involved two planning applications submitted to Swindon Borough Council which proposed works to a retail unit in the Orbital Shopping Centre. The first application was for external works which resulted in no increase in floorspace and the second application proposed to increase a mezzanine floor in the unit.

Separately, each of the applications attracted no CIL liability. Only if a single planning application had been made then CIL would be payable.

The Council decided it would link the applications and treat this as a combined single application to charge CIL liability which amounted to £170,900.

The Court's decision

The High Court held that the approach of the Council in combining the two planning permissions to charge CIL was unlawful. The Court in its judgment made the following points:

- There is nothing in the CIL legislation which prevents the splitting of developments
- The developments approved by the two planning permissions could be commenced at different dates and there is nothing in the CIL legislation to cater for a combine permission
- The CIL regime is a taxing regime and the local authority charging CIL does not have a discretion as to who is to be subject to the tax or the amount