



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 25 May 2023

Appeal ref: APP/H1705/L/23/3316747

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Basingstoke and Deane Borough Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 20 December 2022.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on 3 January 2023.
- A Demand Notice was served on 3 January 2023.
- The alleged breaches are: the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The surcharge for failure to assume liability is [REDACTED].
- The surcharge for failure to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date stated in the Demand Notice is 20 December 2022.

Summary of decision: The appeal is dismissed and the surcharges are upheld.

The appeal under Regulation 117(1)(a)¹

1. Regulation 80 explains that where nobody has assumed liability to pay CIL and the chargeable development has commenced, the Collecting Authority (Council) may impose a surcharge of [REDACTED]. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, they may impose a surcharge equal to 20% of the chargeable amount payable or [REDACTED] whichever is the lower amount. In this case, it is clear, and not disputed, that a vehicle access has been constructed on the site, which appears to have taken place in the period between the submission of the application form and the issue of the Decision Notice. However, the appellant contends that the entrance is a temporary one, constructed to provide access for trade vehicles, materials, plant and skips, in relation to renovation works, and did not form part of the chargeable development. The appellant also contends that the access was constructed under

¹ The claimed breach which led to the surcharge did not occur

permitted development rights in accordance with the Town & Country Planning (General Permitted Development) (England) Order 2015.

2. While I note the appellant's arguments, I would point out that the CIL regime is not concerned with whether or not a development has begun with other purposes in mind, it is only concerned with whether it has commenced as a matter of fact. There is nothing in the CIL Regulations which requires the commencement to be intentional. The trigger for CIL is the carrying out of a material operation as defined in section 56(4) of the Town & Country Planning Act 1990. It is not disputed that a material operation has taken place in this case in the form of the creation of a vehicle access. The carrying out of this work, for whatever reason, does not detract from the fact that it resulted in the commencement of the chargeable development, particularly given that "new vehicle entrance" formed part of what was applied for and subsequently approved. Therefore, while I have sympathy with the appellant if it was his intention for the entrance to only be temporary and for other purposes, it unfortunately amounted to commencement of works on the chargeable development.
3. Constructing the access under permitted development rights does not alter the above. Planning permission for the purposes of CIL includes 'general consent', which is defined as development authorised by an Act of Parliament or an order approved by both Houses of Parliament, which designates specifically the nature of the development authorised and the land on which it may be carried out, or planning permission granted. This includes planning permission granted through permitted development rights in the Town and Country Planning (General Permitted Development) (England) Order 2015.
4. As liability was not assumed and a Commencement Notice submitted before works began, I have no option but to conclude that the alleged breaches which led to the surcharges have occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 118²

5. The deemed commencement date stated in the Demand Notice is 20 December 2022, but I note that the Council state that they first became aware that works had commenced from a site visit conducted on 1 December 2022. However, it would appear that as the works had already begun, the Council correctly determined the deemed commencement date to be the date planning permission was granted, which is in accordance with Regulation 7(5). Therefore, I cannot conclude that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. Consequently, the appeal also fails on this ground.

Formal decision

6. For the reasons given above, the appeal is dismissed on the grounds made and the surcharges of [REDACTED] and [REDACTED] are upheld.

K McEntee

² The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date