



Appeal Decision

by Ken McEntee

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

Decision date: 8 June 2023

Appeal ref: APP/P0119/L/23/3319897

Land at [REDACTED]
[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 South Gloucestershire Council.
- The relevant planning permission to which the CIL relates is [REDACTED]
- planning permission was granted on 19 August 2022.
- The description of the planning permission is: "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was served on 31 August 2022.
- A Demand Notice was served on 12 March 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 deemed commencement date stated in the Demand Notice is 19 August 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 demolition of a conservatory has been carried out. However, the appellant contends that [REDACTED] was sold on 2 March 2022, and it was the new owners who carried out the works for safety reasons due to damage caused by strong winds, but without the appellant's knowledge.

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

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, intentionally or otherwise, in the form of the demolition works. The carrying out of demolition due for safety reasons due to the damaged condition of the conservatory, does not detract from the fact that the result of such works was the commencement of the chargeable development, particularly given that demolition formed part of what was applied for and subsequently approved. Therefore, while I have sympathy with the appellant if the works took place without their knowledge, I can only suggest that this is a matter he may wish to take up with the current owners.
3. As liability was not assumed and a Commencement Notice not submitted, 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

4. Although the appellant has also appealed on this ground, the main basis of his case is that works have not commenced at all, rather than the Council have determined the wrong date of commencement. Therefore, on the evidence before me, I have no reason to believe the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. Consequently, the appeal on this ground also fails.

Formal decision

5. 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