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# Appeal Decision

by Ken McEntee

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

Decision date: 30 August 2023

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**Appeal ref: APP/R0335/L/23/3323785**

**Land at** [REDACTED]

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bracknell Forest Council.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 5 August 2020.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on previous owners, [REDACTED] on 13 August 2020.
- A Demand Notice was served on the appellant on 23 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, and the failure to pay the CIL within 30 days.
- The surcharge for failure to assume liability is [REDACTED].
- The surcharge for failure to submit a Commencement Notice is [REDACTED].
- The late payment surcharge is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 20 April 2023.

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

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## Reasons for the decision

1. An appeal under Regulation 118 is that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date. However, in this case it appears clear that the basis of the appeal is not to dispute the date of commencement, but more that development has not commenced at all. It is clear, and not refuted, that demolition works have taken place on the site, but the appellants insist that such works were only undertaken for safety reasons due to the dilapidated condition of the existing structures. They contend that they have no intention of implementing the planning permission as under HMRC rules the land must remain in commercial use, otherwise it will attract substantial tax charges. Therefore, they believe that no material operation under section 56(4) of the Town & Country Planning Act 1990 has taken place as the demolition was not carried out in the course of the erection of a building.

2. While I note the appellants' arguments, for the purposes of CIL the important point to consider is not whether there was an intention for works to be implemented pursuant to a planning permission, but whether works have commenced. 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.
3. Section 56(4)(aa) states "any work of demolition of a building" as an example of a material operation. It does not state a proviso that this is only relevant if the demolition was carried out in the course of the erection of a building. While demolition works may have been carried out for safety reasons in mind, unfortunately the result of such works was to cause the commencement of the chargeable development, particularly given that demolition formed part of the planning permission. The description of the permission includes demolition of existing buildings, which is required to make way for the erection of a dwelling. The prior demolition of existing structures on the site is part of the total works necessary to undertake the permitted development. The planning permission specifically authorised the demolition of the structure and those works of demolition are taken as the start of the point at which development had begun.
4. The CIL regime is not concerned with whether or not a development was 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 or for commencement to progress to implementation.
5. Therefore, while I have sympathy with the appellants if it was not their intention to commence works on the chargeable development, I conclude that the demolition works amounted to such a commencement, and I have no reason to believe the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal fails accordingly.

### **Formal decision**

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

*K McEntee*