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# Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 21 October 2016

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Appeal ref: APP/L3815/L/16/1200046

- The appeal is made under Regulation 117(a) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Chichester District Council.
- A Liability Notice was issued on 25 May 2016.
- A Demand Notice was issued on 25 May 2016.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED]
- The description of the development is: [REDACTED]
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge payable for failure to submit a Commencement Notice is [REDACTED]

**Summary of decision: The appeal under Regulation 117(a) is dismissed and the surcharges [REDACTED] are upheld, but the appeal under Regulation 118 is allowed.**

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## The appeal on ground (a) of Regulation 117<sup>1</sup>

1. The alleged breaches which led to the surcharges in this case are the failure to assume liability, as required by CIL Regulation 31 and the failure to submit a Commencement Notice (CN) before the chargeable development commenced, as required by Regulation 67. The main basis of the appellants' case is that as the Liability Notice (LN) and Demand Notice (DN) were served at the same time, they did not have the opportunity to respond to the requirements of the LN and submit a CN. The correct time for a LN to be served by the Collecting Authority is after planning permission has been granted. As the appellants point out, it is envisaged by the guidance that the LN will be followed by the submission of a CN by the relevant person. However, in this case the development was begun before planning permission was granted and consequently before the Council could serve a LN. By deciding to commence works before receiving planning permission, the appellants effectively prevented the normal sequence of events from taking place and immediately became liable for CIL surcharges as it was clearly not possible for a CN to be submitted before beginning works as a result

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<sup>1</sup> The claimed breach which led to the surcharge did not occur

of their actions. In other words, this was a situation of the appellants' own making.

2. After granting retrospective planning permission, the Council correctly issued a LN, along with a DN, as the appellants automatically became liable for the surcharges with immediate effect. There would have been nothing to be gained by delaying the issue of the DN. Submitting a CN after the event would not exonerate the appellants from the breach. It is an inescapable fact, and is not disputed by the appellants, that they did not submit a CN before beginning works on the development and neither did they assume liability. Therefore, the appeal cannot succeed on this ground as the breaches occurred as a matter of fact and the Council have imposed the correct surcharges in accordance with Regulation 80 and 83. The appeal on Regulation 117 (a) fails accordingly.

### **The appeal under Regulation 118<sup>2</sup>**

3. Regulation 68 explains that a collecting authority must determine the day on which a chargeable development was commenced if it has not received a commencement notice in respect of the chargeable development but has reason to believe it has been commenced. In this case, the Council have deemed the commencement date to be 1 March 2016 and point out that CIL Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operations begins to be carried out on the relevant land. However, Regulation 7(3) explains that this general rule is subject to provisions, such as Regulation 7(5) (Development for which planning permission is (a) granted under section 73A of TCPA (planning permission for development already carried out) is to be treated as commencing on the day planning permission for that development is granted). Therefore, as retrospective permission was granted in this case, the general rule in Regulation (2) is displaced and the correct commencement date should be the date of the grant of planning permission, which in this case was 23 May 2016. Consequently, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118 (4), the DN ceases to have effect.
4. For the avoidance of doubt, while the appeal on Regulation 118 succeeds the appeal on Regulation 117 (a) fails and I decline to exercise my discretionary powers under Regulation 118 (6) to quash the surcharges imposed for the reasons given in paragraphs 1 and 2 above. Therefore, should they see fit, it is open to the Council to issue a revised Demand Notice imposing the same surcharges but incorporating a revised commencement date.

### **Formal decision**

5. For the reasons given above, the appeal on ground (a) of CIL Regulation 117 is dismissed and the surcharges are upheld, but the appeal under Regulation 118 is allowed.

*K McEntee*

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<sup>2</sup> The collecting authority has issued a demand notice with an incorrectly determined deemed commencement date