



# Appeal Decision

by **Ken McEntee**

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

Decision date: 1 November 2016

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**Appeal ref: APP/G3110/L/16/1200051**

- The appeal is made under Regulation 117(b) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued on 17 June 2016.
- A Demand Notice was issued on 22 June 2016.
- The deemed date of commencement of development is stated as "Development complete".
- The relevant planning permission to which the CIL surcharges relate is [REDACTED].
- The description of the development is: [REDACTED]

**Summary of decision: The appeal under Regulation 117(b) is dismissed, but the appeal under Regulation 118 is allowed and the Demand Notice ceases to have effect.**

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## Reasons for the decision

### *The appeal under Regulation 117(b)*

1. An appeal on this ground is that the collecting authority failed to serve a Liability Notice in respect of the development to which the surcharge relates. The appellant contends that a Liability Notice was issued before planning permission was granted rather than afterwards as required by Regulation 65. However, the Council explain that although the Liability Notice is dated 2 June 2016, this was an error and it was actually served on 17 June 2016, which is 2 days after planning permission was granted. They have submitted a case record screen print which supports their contention. Therefore, I am satisfied that on the balance of probabilities, the Liability Notice was issued on 17 June 2016. In any event, irrespective of whether or not the Liability Notice was issued at the correct time, it is clear that one was actually served. It should also be noted that no surcharges have in fact been imposed by the Council. Therefore, the appeal on under Regulation 117 (b) fails accordingly.

### *The appeal under Regulation 118*

2. An appeal on this ground is that the collecting authority has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council contend that they did not determine a commencement date as

the planning application was retrospective and they assumed the development had been completed. However, 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, which it clearly has been in this case.

3. With that in mind, 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, as pointed out by the appellant, Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out and granted planning permission under section 73A of the TCPA. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as retrospective permission was granted in this case, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, [REDACTED]
4. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect.
5. As required by Regulation 69(4), the Council must now serve a revised Demand Notice.

#### **Formal decision**

6. For the reasons given above, the appeal under Regulation 117(b) is dismissed, but the appeal under Regulation 118 is allowed.

*K McEntee*