



Appeal Decision

by **Ken McEntee**

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

Decision date: 11 November 2016

Appeal ref: APP/H5960/L/16/1200049

- 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].
- A Liability Notice was issued on 8 February 2016.
- A Demand Notice was issued on 7 July 2016.
- The deemed date of commencement of development is 8 June 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal under Regulation 117(a) is allowed and the surcharge [REDACTED] is quashed. The appeal under Regulation 118 is allowed and the Demand Notice ceases to have effect.

Preliminary matters

1. As the outcome of the appeal under Regulation 118 has a bearing on the outcome of the appeal under Regulation 117(a), I consider it appropriate to address the Regulation 118 appeal first.

The appeal under Regulation 118¹

2. In an e-mail exchange with the Council on 8 June 2016, the appellant stated that "We started the work 2 weeks ago". In view of this, the Council reasonably decided to determine a deemed commencement date of 8 June 2016 as that is when they were made aware of the commencement. However, the appellant explained in an e-mail to the Council of 11 June 2016 that he had not actually carried out any new or structural work. He elaborated on this in his appeal correspondence explaining that he had only carried out health and safety work, such as providing kitchen and toilet facilities for the building contractors and stripping out of old rooms, such as carpets and wallpaper, rather than starting

¹ The collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.

works on the actual chargeable development. The Council were invited to comment on the appellant's explanation but no response was received.

3. Section 56 (2) of the Town and Country Planning Act 1990 explains that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56 (4) gives examples of what 'material operation' means and are listed in the annex to this letter. I am satisfied that the works the appellant describes were carried out, which has not been disputed by the Council, cannot be described as 'material operations' comprised in the approved development and are more appropriately described as preparatory works. Consequently, I consider that on the balance of probabilities the appellant had not commenced works on the chargeable development on 8 June 2016. Therefore, it follows that the Council have issued a Demand Notice with an incorrectly determined commencement date.
4. In these circumstances, the appeal under Regulation 118 succeeds accordingly and, in accordance with Regulation 118 (4), the Demand Notice ceases to have effect.
5. Regulation 118 (5) requires me to determine a new commencement date and this is addressed below.

The appeal under Regulation 117 (a)²

6. The alleged breach which led to the surcharge is the failure to submit a Commencement Notice (CN) before the chargeable development commenced. Regulation 67 (1) explains that such a notice must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced. In this case, after an exchange of correspondence with the Council on 10 June 2016, the appellant submitted a CN by e-mail on Saturday 11 June 2016 which stated that the works had also commenced on 11 June 2016. However, he later explained that this was a typing error as he has an agreement with the restaurant next door not to carry out any building works on a Saturday due to noise disturbance, and therefore the form should have stated 13 June 2016. I take the view that the appellant's explanation is plausible and consider it reasonable to give him the benefit of doubt. I am content therefore to accept that the correct commencement date is 13 June 2016.
7. The Council correctly points out that Regulation 126 (4) explains that where a notice or document sent by electronic communications is received by the recipient outside the recipient's business hours, it shall be taken to have been received on the next working day. However, while this is noted, the relevant issue to consider is when the CN was actually submitted, as opposed to when it was received. As it was submitted on 11 June 2016 and works commenced on 13 June 2016, the CN was clearly submitted no later than the day before the day on which the chargeable development was to be commenced, as required by Regulation 67.
8. In these circumstances, the appeal under Regulation 117 (a) succeeds and the surcharge is quashed in accordance with Regulation 117 (4).

² The claimed breach which led to the surcharge did not occur.

9. As required by Regulation 69 (4), the Council must now serve a revised Demand Notice.

Formal decision

10. For the reasons given above, I allow the appeals under CIL Regulations 117(a) and 118.

K McEntee

Annex to the decision

- (a) Any work of construction in the course of the erection of a building;
- (b) The digging of a trench which is to contain the foundations or part of the foundations, or part of the foundations, of a building;
- (c) The laying of any underground main pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) Any operation in the course of laying out or constructing a road or part of a road;
- (e) Any change in the use of any land which constitutes material development.