



Appeal Decision

by **Ken McEntee**

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

Decision date: 12 January 2017

Appeal ref: APP/W0340/L/16/1200052

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served on the appellant on 8 August 2016.
- A Demand Notice was served on the appellant on 11 August 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "Demolition of existing dwelling, erection of 4 bed two storey house".
- Planning permission was granted on 13 July 2016.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal under Regulation 118 is allowed and the Demand Notice ceases to have effect.

Procedural matters

1. Although the appellant has appealed under Regulation CIL Regulation 118, it appears clear from his arguments that the main purpose of the appeal was to have the surcharge removed and to be able to pay the CIL by instalments. However, since submitting the appeal, it appears the appellant has paid the CIL and the surcharge in full. Consequently, the appeal case officer wrote to the appellant asking if he wished to withdraw the appeal as it would now appear to be academic. However, no response was received by the appellant; as such I am required to proceed to determine the appeal on the ground made.

Reasons for the Decision

2. An appeal under Regulation 118 is that the collecting authority has issued a Demand Notice with an incorrectly determined deemed commencement date. CIL 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 deemed the commencement date to be 7 March 2016 as that was the date of the site inspection where it became apparent that demolition works had taken place.

Although the appellant contends that demolition only took place due to health and safety reasons, the fact remains that such works signifies that operations have begun on the chargeable development.

3. 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 rule is subject to provisions, such as that stated in Regulation 7(5) (a) where planning permission has been granted under section 73A of the TCPA for development already carried out. 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 or part 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, which in this case was 13 July 2016.
4. In these circumstances, although I acknowledge the appellant has paid the CIL and surcharge, the appeal under Regulation 118 must succeed, 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 118 is allowed.

K McEntee