



Appeal Decision

by **Ken McEntee**

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

Decision date: 19 January 2017

Appeal ref: APP/D1590/L/16/1200060

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served on the appellants on 10 March 2016.
- A Demand Notice was served on the appellants on 27 September 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "Demolish existing building, erect part three and part four storey building comprising of; 267SQ.M commercial at ground floor, 17 self-contained flats with balconies, associated amenity space, refuse and cycle storage, layout parking and landscaping".
- The date on which planning permission was issued is 8 March 2016.
- The alleged breach of planning control is the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal under Regulations 117(a) and 118 is dismissed and the surcharge of [REDACTED] is upheld.

The appeal under Regulation 117 (a)

1. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 (1) of the CIL regulations explains that a Commencement 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, the appellants carried out demolition works before submitting a Commencement Notice. However, they argue that the 'commencement of development' means when construction begins and that demolition is a separate matter to construction. They contend that demolition is covered by a Demolition Notice, which they submitted on 10 May 2016. The appellants submitted a Commencement Notice on 22 September 2016.
2. The description of the development granted by the relevant planning permission includes "*Demolish existing building...*". 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 includes in section 56 (4) (aa) "*any work of demolition of a building*". Therefore, as the appellants carried out demolition works, it follows that they began work on the chargeable development before submitting a Commencement Notice. Consequently, I am satisfied that the alleged breach of planning control did occur and the appeal under Regulation 117 (a) fails accordingly.

3. The appellants point out that a 'Demolition Notice' indicating the intended date of beginning demolition was submitted to the Council on 10 May 2016, which is required by section 80 of the Building Act 1984. It is required in order for the Building Control Officer to consider whether any precautions or conditions are needed for the protection of public/property. The building control system is a separate statutory regime to that of CIL, which is a very formulaic process and makes clear, as explained in the Liability Notice, that a valid Commencement Notice must be submitted before development commences. A Demolition Notice does not act as a substitute for a Commencement Notice. It is also noted that the Liability Notice recommends that the appellants familiarise themselves with each stage of the process to ensure full compliance with the CIL Regulations and refers the appellants to the Council's website for full details. The process is fully explained on the website and explains that 'demolition' is classed as 'commencement' as it is defined as a material operation.

The appeal under Regulation 118

4. An appeal on this ground states that the collecting authority has issued a Demand Notice with an incorrectly determined deemed commencement date. The Council, as the collecting authority, determined the deemed commencement date to be 6 June 2016 as that was the intended date given in the Demolition Notice and letter of 10 May 2016 to the Council's Building Control department. However, the appellants' now contend that demolition works did not actually begin until 1 August 2016, as stipulated in the Commencement Notice of 22 September 2016. Unfortunately, the Council insist they have no record of having received the said notice. I note the appellants have not taken the opportunity to respond to the Council's contention. Although a copy of the Commencement Notice was submitted with the appeal, there is no evidence before me, such as proof of postage, to demonstrate that it was actually submitted to the Council.
5. Therefore, on the evidence available and on the balance of probabilities, I cannot be satisfied that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In these circumstances, the appeal under Regulation 118 fails accordingly.

Formal decision

6. For the reasons given above, I hereby dismiss the appeal on the grounds made and uphold the CIL surcharge.

K McEntee