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# Appeal Decision

by Ken McEntee

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

Decision date: 10/02/2017

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**Appeal ref: APP/T5720/L/16/1200061**

- 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].
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a commencement notice is £[REDACTED].
- The relevant planning permission for which the CIL surcharges relate is [REDACTED].
- The description of the chargeable development is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]".
- Planning permission was granted on [REDACTED].

**Summary of decision: The appeal is dismissed and the surcharges of £[REDACTED] for failure to assume liability, [REDACTED] for failure to submit a Commencement Notice and £[REDACTED] for late payment of the CIL are upheld.**

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## Preliminary matters

1. The appellant questions the Council's calculations of the CIL. However, if the appellant disagreed with the calculation of the chargeable amount of CIL payable, it was open to him under Regulation 113 to request that the Council review it. If after receiving a decision on the review, he was still aggrieved, he could have exercised his right of appeal under Regulation 114 to the Valuation Office Agency within 60 days from the date of the Liability Notice. Such a matter cannot now be revisited on a surcharge appeal. Therefore, as there is no evidence before me of any such review or subsequent appeal having been made, the CIL chargeable amount of £[REDACTED] is taken to be correct.

## The appeal under Regulation 117 (a)

2. The claimed breaches of planning control to which the surcharges relate, are failure to assume liability (Regulation 80), failure to submit a Commencement (Regulation 83) and failure to pay the CIL in full within 30 days (Regulation 85). The appellant does not refute that he failed to submit an assumption of Liability Notice and a Commencement Notice, and that he did not pay the CIL within 30 days of commencement. However, he contends that although he carried out demolition works, the demolition had no connection with the planning permission

that is the subject of the CIL. He claims that the works took place some 18 months before permission was granted and it was an oversight that "Demolition" was not removed from the application. However, while I note the appellant's arguments, I can only consider the evidence before me and the inescapable fact is that the description of the proposed development in the planning application includes "Demolition" as does the planning permission granted on [REDACTED].

3. Therefore, on the evidence before me, I conclude that works commenced on the chargeable development before a valid Assumption of Liability Notice and a Commencement Notice were submitted. I am also satisfied that the CIL was not paid in full by the due date. The appeal under Regulation 117 (a) fails accordingly.

### **The appeal under Regulation 118**

4. An appeal on this ground is that the collecting authority has issued a demand notice with an incorrectly determined deemed commencement date. The Council (as the collecting authority) have determined the deemed date of commencement of the chargeable development to be 26 July 2016. 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 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 [REDACTED].
5. Therefore, I am satisfied the Council have correctly determined the deemed commencement date. 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 surcharges.

*K McEntee*