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# Appeal Decision

by **Ken McEntee**

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

Decision date: 24/05/2017

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**Appeal ref: APP/X4725/L/16/1200071**

**Land at** [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a), 117 (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was served on 8 September 2016.
- A revised Liability Notice was served on 9 November 2016.
- A Demand Notice was served on 9 November 2016.
- A further revised Liability Notice was served on 29 November 2016.
- A revised Demand Notice was served on 30 November 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- The alleged breaches of planning control are the failure to assume liability and the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

**Summary of decision: The appeal under Regulation 117 (a) and (c) and Regulation 118 is dismissed and the surcharges of [REDACTED] and [REDACTED] are upheld.**

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## Procedural matters

1. I note that the first surcharge referred to in the revised Demand Notice states the "Failure to submit a notice of chargeable development", (Regulation 82) but in their statement the Council (Collecting Authority) refer to the failure to submit a Commencement Notice (Regulation 83). As the Council have since confirmed that the correct breach of planning control is the failure to submit a Commencement Notice, I am satisfied I can proceed with the decision on that basis without causing injustice to either party.
2. Much of the appellant's case concerns the conduct of the Council in allegedly not providing the relevant CIL information or even knowing what the correct procedures are. However, while I have sympathy with the appellant if he experienced poor service from the Council, any complaints concerning their conduct or their adopted procedures in determining planning applications should be addressed through their established complaints procedure in the context of local government accountability.

3. I also note that the appellant considers he should be exempt from CIL. However, that is not a matter before me to consider as I can only determine the appeal on the grounds made (Regulation 117 (a) and (c) and Regulation 118).
4. Although initially the appellant appealed against the imposition of the surcharges and how they were calculated, in his correspondence of 7 March 2017 he states "...I have no issue with the charge (fine) it's the having to pay £1820 for the CIL itself...". Therefore, it would appear that grounds 117 (a) and (c) of the appeal have been conceded and the surcharges accepted. Nevertheless, I have considered the original grounds of appeal below for the avoidance of doubt.

### **Appeal on Regulation 117 (a)**

5. The appellant does not refute that he did not assume liability and did not submit a Commencement Notice. He contends that demolition was carried out only to clear the site ready for development and therefore works on the chargeable development had not commenced. However, as the Council point out, Regulation 7 (2) explains that "Development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land". Section 56 (4) of the Town and Country Planning Act provides a list of works which are deemed to constitute a "material operation" and "any work of demolition of a building" is included. While it is unfortunate that the appellant was not aware of this and it would have been helpful had the Council informed him of such, the inescapable fact is that the appellant failed to assume liability and submit a Commencement Notice before beginning works on the chargeable development.
6. In view of the above, I am satisfied that the claimed breach occurred and consequently the appeal on ground 117 (a) fails accordingly.

### **Appeal on Regulation 117 (c)**

7. An appeal on this ground is that *the surcharge has been calculated incorrectly*. However, as noted above, the appellant now takes issue with the actual CIL amount payable, as opposed to the surcharges. 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.
8. With regards to the calculation of the surcharges, Regulation 80 explains that the Collecting Authority may impose a surcharge of £50 on each person liable to pay CIL where nobody has assumed liability and the chargeable development has commenced. Regulation 83 explains that where a chargeable development is commenced before the collecting authority has received a valid Commencement Notice the Collecting Authority may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2,500, whichever is the lower amount. As the appellant did not assume liability, the £50 surcharge for failing to assume liability

is correct. With regards to the second surcharge for failure to submit a Commencement Notice, [REDACTED], it follows that this surcharge has also been calculated correctly.

9. In view of the above, I am satisfied the Council correctly calculated the surcharges. The appeal on ground 117 (c) fails accordingly.

### **Appeal on Regulation 118**

10. The Council decided the deemed commencement date to be 4 November 2016 as that is the date they discovered that demolition works had begun on the site. As explained above, 'demolition' is deemed to be a material operation. Therefore, in the absence of a Commencement Notice, it is reasonable the Council should choose the date of the site visit to the deemed commencement date. Consequently, I am satisfied that the Council have not issued a Demand Notice with an incorrectly deemed commencement date. In these circumstances, the appeal on ground 118 also fails.

### **Formal decision**

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

*K McEntee*