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# Appeal Decision

by **Ken McEntee**

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

Decision date: 20 July 2017

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**Appeal ref: APP/Q1255/L/17/1200100**

- The appeal is made under Regulation 117(1)(a) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served on 24 June 2016.
- A Demand Notice was served on 26 January 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED] granted on 22 June 2016.
- The description of the development is: [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

**Summary of decision: The appeal under Regulation 117(1) (a) is dismissed and the surcharge of [REDACTED] is upheld.**

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## Procedural matters

1. It is noted that in his appeal form the appellant states that he wishes to appeal the withdrawal of the CIL Self Build Exemption Certificate. However, I should make clear that there is no ground of appeal available to restore such a certificate and I have no powers to do so. All that is before me to consider are the appeals on the grounds made, Regulation 117 (1) (a)<sup>1</sup> and 118<sup>2</sup>.

## Appeal on Regulation 117(1) (a)

2. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced. Regulation 83 states that where a chargeable development (D) is commenced before the collecting authority has received a valid Commencement Notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or [REDACTED], whichever is the lower amount. An appeal under section 117(1) (a) states that the claimed breach which led to the imposition of the surcharge did not occur.

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<sup>1</sup> The claimed breach which led to the surcharge did not occur

<sup>2</sup> The collecting authority has issued a demand notice with an incorrectly deemed commencement date

3. In this case, the appellant contends that he submitted a CN on 11 July 2016 but the Council (Collecting Authority) insist they have no record of having received it. While this is unfortunate, the onus was on the appellant to ensure a CN was submitted at least one day before works were due to commence. Although not required to do so, had the appellant submitted the CN by registered post, it would have produced proof of postage in the form of a signed receipt. As the Council point out, having not received an acknowledgement of receipt of the CN and given the fact that the appellant could potentially be facing a surcharge, it is not unreasonable to expect him to have contacted the Council before starting works to check that they were in safe receipt of the Commencement Notice and to obtain written confirmation. I take the view that to begin works without taking such steps, was a risky strategy for the appellant to take.
4. In the absence of any documentary evidence to support the appellant's claim that he submitted a CN before commencing works, it is not possible for me to reach a decision in his favour. Therefore, on the evidence before me, I cannot be satisfied that a CN was submitted to the Council before works began on the chargeable development as required by Regulation 67(1). In these circumstances, the appeal on this ground fails accordingly.
5. I should point out that even if I had found in the appellant's favour and accepted that a CN was submitted on 11 July 2016, I note from the copy provided that the commencement date is also given as 11 July 2016. Therefore, as Regulation 67(1) requires notification to be made to the Council at least one day before commencement, the purported notice would not have met this requirement.

### **Appeal on Regulation 118**

6. Although the Council had evidence to demonstrate that works commenced "before November 2016", the deemed commencement date given in the Demand Notice is 24 January 2017. It is not entirely clear from the evidence why the Council chose to settle on this particular date. However, given that it favours the appellant I see no good reason not to accept it. If not, I would be required by CIL Regulation 118 (5) to determine a revised commencement date. If I determined that date to be 11 July 2016 as stated in the copy of the purported CN provided by the appellant, it would result in him being liable to pay a larger CIL as the purpose of the commencement date is to determine the starting point for CIL liability. Therefore, as the Council are clearly content with 24 January 2017, I see no good reason to change it. Consequently, the appeal on this ground also fails.

### **Formal decision**

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

*K McEntee*