



Appeal Decision

by **Ken McEntee**

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

Decision date: 8 August 2017

Appeal ref: APP/K0235/L/17/1200101

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(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 21 July 2016.
- A Demand Notice was served on the appellants on 1 March 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- The date on which planning permission was issued is 21 July 2016.
- The alleged breaches of planning control is the failure to submit a Commencement Notice and an Assumption of Liability Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for failure to assume liability is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharges of [REDACTED] are upheld.

Procedural matters

1. Bedford Borough Council (Collecting Authority) has made an application for costs against the appellant. This is the subject of a separate decision accompanying this letter.

Reasons for the decision

2. An appeal under section 117 (1) (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. The other alleged breach which led to a surcharge is the failure to submit an Assumption of Liability Notice, as required by Regulation 31. In this case, the appellants submitted a Commencement Notice on 24 February 2017 and stated a commencement date of 6 March 2017. However, the Council discovered after a site visit on 28 February 2017 that demolition works had been carried out.

3. Nevertheless, the Council have not stipulated on what date they consider works actually commenced. Indeed, to compound this, the Demand Notice does not state a deemed commencement date as required by Regulation 69 (2)(d). As no commencement date has been identified, in theory the demolition works could have commenced on 25, 26 or 27 February 2017, which would mean the alleged breach of planning control did not occur as a Commencement Notice was submitted on 24 February 2017. However, the appellant does not dispute that demolition works began before submitting a Commencement Notice and neither does he dispute that he failed to assume liability. Instead, his case focusses on his belief that 'demolition' does not constitute development. He argues that it was necessary to demolish the bungalow in order for the excavation plant to access where the new opening is being formed. Therefore, he contends that the works do not constitute 'commencement of development'.
4. However, as the Council point out, the description of the development granted by the relevant planning permission clearly includes "*Demolition of existing dwelling...*". Moreover, 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*". Also, as pointed out by the Council, section 55 (1A) includes "demolition of buildings" in the meaning of 'development'. Therefore, as the appellant carried out demolition works, and does not dispute that such works were carried out before submitting a Commencement Notice, it follows that the appeal cannot succeed. Consequently, while I acknowledge the appellant's interpretation of the matter, on the evidence before me, I can only conclude that the alleged breaches of planning control occurred. The appeal under Regulation 117 (1) (a) fails accordingly.

Formal decision

5. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharges.

K McEntee