



Appeal Decision

by Ken McEntee

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

Decision: 18 October 2017

Appeal ref: APP/R0335/L/17/1200103

- 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 issued by Bracknell Forest Council on 25 January 2017.
- A Demand Notice was served on 3 March 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED].
- Planning permission was granted on 24 January 2017.
- 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 Regulations 117(1)(a) and 118 is dismissed and the surcharges of [REDACTED] and [REDACTED] are upheld.

Appeal on Regulation 117(1)(a)¹

1. The appellant does not refute that he did not submit an Assumption of Liability Notice or a Commencement Notice before carrying out demolition works. However, the main basis of his case is that he believes no obligation arose for CIL until the time when full planning permission was granted. The appellant carried out [REDACTED] following the granting of outline planning permission [REDACTED] on 8 February 2016 and before submitting an application [REDACTED] to vary condition 4 of the permission, and this was approved on 25 October 2016. He then submitted a reserved matters application [REDACTED], which was approved on 24 January 2017. The appellant argues that no CIL liable development existed at the time of [REDACTED] as application [REDACTED] was still pending.
2. However, CIL Regulation 9(8) of the Community Infrastructure Levy Regulations 2010 as amended, makes clear that "for the purposes of paragraphs (6) and (7),

¹ The claimed breach which led to the surcharge did not occur.

the liability to CIL under regulation 40 should be calculated in relation to an application made under section 73 of TCPA 1990 as if the date on which the planning permission granted under that application first permits development was the same as that for the application for planning permission to which the application under section 73 of TCPA 1990 relates". The s73 application in this case was merely to vary a condition of the original approval and could not alter the description of the development permitted. The approval of [REDACTED] leaves the original permission intact and unamended. As the Council (Collecting Authority) point out, the development authorised by both the [REDACTED] and [REDACTED] permissions, includes 'demolition', which is a material operation for the purposes of the CIL Regulations. Therefore, the liability for CIL arose at the time of demolition, albeit that the CIL was not to be determined until all reserved matters had been approved. The appellant seems to be confusing the time at which the amount of the liability is actually calculated. Therefore, the existence of the undetermined s73 application at the time of demolition did not impact on the liability for CIL in this case.

3. In view of the above, as no Assumption of Liability Notice and no Commencement Notice were submitted to the Council before demolition works began, I can only conclude that the claimed breach which led to the surcharge occurred as a matter of fact. The appeal on this ground fails accordingly.

Appeal on Regulation 118²

4. As the Council did not receive a Commencement Notice, they reasonably determined the deemed date of commencement to be the date of approval of the reserved matters (24 January 2017). However, it appears that the demolition works actually began in the week commencing 12 September 2016. Nevertheless, given that the date of 24 January 2017 favours the appellant I consider it expedient 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 12 September 2016, it could 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

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

K McEntee

² The collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.