



Appeal Decision

by **Ken McEntee**

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

Decision Date: 7 November 2017

Appeal ref: APP/L3245/L/17/1200114

- The appeal is made under 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 Shropshire Council on 2 May 2014.
- A revised Liability Notice was issued on 27 May 2014.
- A further revised Liability Notice was issued on 9 July 2015.
- A Demand Notice was issued on 26 April 2017.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED], granted on 30 April 2014.
- The description of the development is [REDACTED].
- The deemed commencement date given in the Demand Notice is 19 April 2017.
- The alleged breach of CIL Regulations is failure to submit a Commencement Notice before beginning works.
- The outstanding surcharge payable for failure to submit a valid Commencement Notice is [REDACTED].

Summary of decision: The appeal on Regulations 117(1)(a) and 118 is dismissed and the surcharge of [REDACTED] is upheld.

Procedural matters

1. Although the appeal has been made on Regulations 117(1)(a) and 118, most of the arguments put forward by the appellant concerns the Council's (Collecting Authority) decision to withdraw his self-build exemption. For the avoidance of doubt, whether such an exemption should have been withdrawn or whether it should be restored is not within my remit to determine. I can only consider the appeal on the grounds made.

The appeal under Regulation 117(1)(a)

2. An appeal on this ground is that, the claimed breach which led to the surcharge did not occur. Regulation 67 (1) requires a Commencement Notice (CN) to be submitted, no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant submitted a CN dated 19 April 2017 also stating a commencement date of 19 April 2017. The

Council (Collecting Authority) received the notice on 21 April 2017 and consequently they considered the notice to be invalid. The appellant insists that the commencement date of 19 April 2017 was stated in error and the works did not actually commence until 21 April 2017. He has submitted photographic evidence and a 'letter of intent' from his architects to the building company, clarifying that they will be able to start works on 21 April 2017.

3. The appellant argues that he did submit a CN before commencing works but the Council insist that they did not receive one until after the stated commencement date. The wording of the Regulation 67(1) requires a notice to be submitted (my emphasis) not later than one day before the day on which the chargeable development is to be commenced and Regulation 42B (6) also uses the term 'submitted'. However, paragraph 053 of the CIL guidance states that a CN must be received (my emphasis) by the Council at least one day before development is due to commence and the CN itself also states that it must be received by the Council prior to the commencement of development. Furthermore, Regulation 83 states "*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 percent of the chargeable amount payable in respect of D or £2500, whichever is the lower amount.*".
4. Significantly in this case, Section 10 of 'Form 0:Determination of CIL Liability', explains that "*In compliance with CIL Regulation 67, notification of commencement must be submitted and received (my emphasis) in writing...*". It is noted that the appellant signed this section declaring that he had read and agreed to the terms and conditions.
5. The Oxford English Dictionary provides a definition of 'submit' as to '*Present (a proposal, application, or other document) to a person or body for consideration or judgement*'. Sending a document by post would clearly not meet this definition as it follows that the act of presenting would have the immediate effect of receiving. Therefore, in the absence of no clear distinction between 'submit' and 'received' and taking into account all the available guidance/information referred to above, I take the view that the clear intention is that a CN should be received (be within the Council's possession) at least one day before work commences on the chargeable development. I am also satisfied the appellant was fully aware of his responsibilities with regard to the CN.
6. While photographs were provided in support of the appellant's claim, I agree with the Council that as they were taken on 21 April 2017, this only demonstrates that commencement took place by that date and not necessarily on that date. I have also considered the 'letter of intent' from the appellant's architects to [REDACTED]. This letter notes the construction company's ability to start works on 21 April 2017 and is dated 20 April 2017. It could be argued that had the works already begun on 19 April 2017, there would have been no need for such a letter to have been sent, which would add weight to the appellant's case. However, even if it is accepted that the appellant simply made an error in stating that the works commenced on 19 April 2017 but development did not actually commence until 21 April 2017, the inescapable fact is that the Council did not receive the CN until 21 April 2017. That being the case, the requirement for a CN to be received by the Council at least one day before commencement, has clearly not been met.

7. Therefore, while I have sympathy with the appellant if he has genuinely made an error, based on the evidence before me, I cannot conclude that the Council received a CN at least one day prior to works commencing on the chargeable development. The appeal on Regulation 117(1)(a) fails accordingly.

The appeal on Regulation 118

8. An appeal on this ground is that, the Collecting Authority issued a Demand Notice with an incorrectly determined deemed commencement date. In view of my findings above, it follows that I cannot be satisfied that the Council, as the Collecting Authority, has issued a Demand Notice with an incorrectly deemed commencement date. The appeal on Regulation 118 fails accordingly.

Formal decision

9. For the reasons given above, the appeal on the grounds made is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee