



Appeal Decision

by Ken McEntee

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

Decision 21 November 2017

Appeal ref: APP/W0340/L/17/1200118

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a), 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served by West Berkshire Council on 14 July 2016.
- A Demand Notice was served on 10 October 2016.
- A revised Demand Notice was served on 22 May 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Planning permission for reserved matters was granted on 5 January 2016.
- The alleged breach which led to the surcharge is late payment of the CIL.
- The outstanding surcharge for late payment of the CIL is [REDACTED]

Summary of decision: The appeal on all grounds made is dismissed and the surcharge of [REDACTED] is upheld.

Appeal under Regulation 117(1)(a)¹

1. It was agreed by the Council (Collecting Authority) for the CIL to be paid in two instalments. The first instalment was paid on time but the second one, which was due to be paid by 8 April 2017, was not received by the Council until 11 May 2017. The appellant does not dispute that the CIL was paid late. Therefore, I am satisfied that the breach occurred as a matter of fact. The appeal on this ground fails accordingly.

Appeal under Regulation 117(1)(c)²

2. Regulation 85 explains that where an amount is not received in full after the period of 30 days beginning with the day payment was due, the Collecting Authority may impose a surcharge equal to five percent of the CIL or £200, whichever is the greater amount. In this case, there is no dispute that the final

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

² The surcharge has been calculated incorrectly.

payment was made more than 30 days late. The outstanding amount of CIL payable was [REDACTED]. Five percent of this amount = [REDACTED]. Therefore, I am satisfied the Council have correctly calculated the surcharge in accordance with Regulation 85. The appeal on this ground fails accordingly.

Appeal on Regulation 118³

3. Regulation 68 explains that a Collecting Authority must determine the day on which a chargeable development was commenced (deemed commencement date) if it has not received a Commencement Notice or has received a Commencement Notice but has reason to believe the development began earlier than the intended commencement date. In this case, two Commencement Notices were received by the Council - an initial notice giving an intended commencement date of 12 September 2016 and a revised one giving an intended date of 10 October 2016. Therefore, in accordance with Regulation 68, the Council were not required to determine a deemed commencement date for the purposes of the Demand Notice; they were only required to state an intended commencement date in accordance with Regulation 69(1)(d). As the revised Commencement Notice stated an intended commencement date of 10 October 2016, it was reasonable for the Council to state this date in the Demand Notice, irrespective of when the works actually began. The appeal on this ground fails accordingly.
4. The appellant questions whether the Council has acted in a reasonable and proportionate manner and within the spirit of the CIL Regulations by imposing the surcharge. However, the Council were entitled to use their discretionary powers to impose a surcharge in these circumstances and I am satisfied they have imposed the correct amount in accordance with the Regulations. Nevertheless, any complaints concerning the Council's conduct or their adopted procedures should be addressed through their established complaints process in the context of local government accountability.

Formal Decision

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

K McEntee

³ The collecting authority has issued a Demand Notice with an incorrectly determined deemed commencement date.