



Appeal Decision

by Ken McEntee

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

Decision date: 21 December 2017

Appeal ref: APP/E0345/L/17/1200130

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was issued by Lichfield District Council on 3 May 2017.
- A Demand Notice was issued on 28 June 2017.
- The description of the development referenced in the Demand Notice is: [REDACTED]
[REDACTED]
- Planning permission was granted on 8 December 2016.
- The alleged breach of the CIL Regulations is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is allowed and the surcharge of [REDACTED] is quashed.

Reasons for the decision

1. The main basis of the appellant's case is that the Liability and Demand Notices refer to planning permission [REDACTED], but the appellant contends that she did not commence work on this permission. She contends that works actually began on development for planning permission [REDACTED]¹, which was granted on 20 January 2017. Although the approval refers to an amendment to the original permission, the appellant argues that the proposal was submitted as a separate application in its own right as her "free go", with no fee paid. It is noted that in the Council's (Collecting Authority) response to the appellant's assertions, they do not actually refute that the second permission was in relation to a new application. Instead, they argue that given the new application proposed an identical floor space, it is still liable for CIL. They also point out that at no point in the CIL process did the appellant draw their attention to the fact that what they were building was in relation to a new application.
2. I accept that it would have been helpful had the appellant explained the situation early in the CIL process. However, the fact remains that the Demand Notice refers to an incorrect planning permission, which does not appear to have been

¹ [REDACTED]
[REDACTED]

implemented or been begun. The CIL proceedings cannot simply be transferred to the new planning permission where works have commenced. In view of this, it follows that the deemed commencement date of 27 June 2017 given in the Demand Notice is incorrect. That being the case, I have no option but to allow the appeal made under Regulation 118² and quash the surcharge as empowered by Regulation 118(6). In the circumstances of this case, I am unable to determine a revised commencement date as required by Regulation 118(5).

3. As I am quashing the surcharge, the appeal under Regulation 117(1)(c)³ does not fall to be considered.

Formal decision

4. For the reasons given above, I hereby allow the appeal and quash the surcharge of [REDACTED].

K McEntee

² The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.

³ The surcharge has been calculated incorrectly.