



Appeal Decision

by Ken McEntee

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

Decision date: 7 February 2018

Appeal ref: APP/W0340/L/17/1200141

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a), 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued by West Berkshire Council on 8 May 2017.
- A Demand Notice was issued on 1 September 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 1 March 2017.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

Preliminary matters

1. In the appellants' final comments of 6 November 2017 they state that they are appealing the whole charge and not just the surcharge. For the avoidance of doubt, there is no right of appeal against the CIL charge and all that is before me to consider is the appeal on the grounds made, which are solely in relation to the CIL surcharge.

The appeal under Regulation 117(1)(a)¹

2. Regulation 67(1) explains that a Commencement Notice (CN) must be submitted to the Council (Collecting Authority) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellants do not refute that they did not submit a CN. However, they contend that they did not do so as they assumed the notice only applied to habitable buildings and they had only started works on the garage. However, it is not clear why the appellants made such an assumption. There is nothing in the CIL literature, such as the Liability Notice, to suggest this to be the case and construction of the garage

¹ That the claimed breach which lead to the surcharge did not occur

clearly formed part of the relevant planning permission. Therefore, I am satisfied that the claimed breach which led to the surcharge occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(b)²

3. Although the appellants have ticked the box for an appeal on this ground, they have not submitted any supporting arguments. The Council has submitted a copy of an e-mail of 8 May 2017 to the appellants, in which they attached a copy of the Liability Notice, but I note the appellants have not commented on this. Therefore, on the evidence before me, I am satisfied the Council correctly served a Liability Notice as required by Regulation 65(1). The appeal on this ground fails accordingly.

The appeal under Regulation 118³

4. The basis of the appellants' case on this ground is simply that the works have not commenced, rather than disputing the specific date the Council have determined. Regulation 68 explains that a Collecting Authority must determine the day on which a chargeable development was commenced if it has not received a Commencement Notice. The Council have determined the commencement date in this case to be 14 August 2017. As they first became aware that development had commenced from their site visit conducted on that date, I consider it reasonable the Council have deemed that to be the commencement date in the absence of any other contrary evidence. The appeal on this ground fails accordingly.

Formal decision

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

K McEntee

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates

³ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date