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# Appeal Decision

by Ken McEntee

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

Decision date: 21 February 2018

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**Appeal ref: APP/G1250/L/17/1200140**

- 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 served by Bournemouth Borough Council on 2 February 2017.
- A Demand Notice was served on 21 August 2017.
- The relevant planning permission to which the CIL relates is [REDACTED]
- The alleged breaches are the failure to submit a Commencement Notice and the failure to assume liability.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The deemed commencement date determined by the Collecting Authority (Council) is 14 August 2017.

**Summary of decision: The appeal is dismissed and the surcharges of [REDACTED] are upheld.**

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## The appeal under Regulation 117(1)(a)<sup>1</sup>

1. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has received a valid Commencement Notice, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or £2,500, whichever is the lower amount. Regulation 80 explains that a Council may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if the chargeable development has commenced and nobody has assumed liability. The appellant's agent argues that the appellant did not submit the required notices as he does not consider the works carried out ("*...the removal of the original windows and a door from the rear elevation and the installation of three windows in the elevations at the side. He had also boarded-up the rear window and doorway openings*"), constitute a material operation as described in section 56(4) of the Town and County Planning Act and describes the works as preparatory and *de minimus*.
2. Section 56(4) of the 1990 Act gives a list of examples of the meaning of 'material operation' - example (a) is "*any work of construction in the course of the erection of a building*". It appears from the evidence that the alterations made were part

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<sup>1</sup> That the claimed breach which led to the surcharge did not occur.

of the approved plans and there does not appear to have been any phasing of development agreed with the Council. I consider that as the works fall within the scope of the planning permission they constitute a 'material operation' as described in section 56(4)(a) of the 1990 Act.

3. Therefore, as the appellant did not submit a Commencement Notice or an Assumption of Liability Notice before starting works on the chargeable development, the appeal on this ground fails accordingly.

### **The appeal under Regulation 118<sup>2</sup>**

4. 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.
5. Therefore, I do not consider the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground also fails accordingly.

### **Formal decision**

6. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharges are upheld.

*K McEntee*

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