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# Appeal Decision

by **Ken McEntee**

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

Decision date: 11 April 2018

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**Appeal ref: APP/U5930/L/17/1200145**

- 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 on the appellant on 4 October 2017.
- A Demand Notice was served on the appellant on 4 October 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED], [REDACTED].
- The description of the development is: [REDACTED]
- The alleged breaches which led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 1 January 2017.

**Summary of decision: The appeal under Regulation 117(1)(a) is dismissed and the surcharges of [REDACTED] are upheld, but the appeal under Regulation 118 is allowed.**

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

1. 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. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority (Council) 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. The appellant does not refute that he did not do either of these things but contends that he received poor and confusing communication in telephone conversations with the Council. He argues that if he received clear guidance from the Council this situation could have been avoided.
2. In the absence of any documentary evidence before me it is not possible to conclude that the appellant was given confusing or incorrect information regarding his CIL responsibilities. I can only consider the appeal on the known facts. With that in mind, it is not disputed by the appellant that he failed to submit an

Assumption of Liability Notice or a Commencement Notice before starting works on the chargeable development, even though he received requests from the Council to do so. The appellant points out that any correspondence received by the Council stated that a surcharge **may** be imposed and contends that had it said a surcharge **will** be imposed, he would have ensured he submitted the required forms. I consider this argument to be irrelevant. Irrespective of the precise wording used, it was clear from the correspondence that the appellant was in danger of having to pay surcharges if he did not comply with the requests for submission of the notices. I consider the appellant's decision to ignore these warnings was a risky strategy to take.

3. The overall conclusion reached on the appeal on ground 117(1)(a) is that it is an inescapable fact the appellant did not submit an Assumption of Liability Notice or a Commencement Notice before commencing works on the chargeable development. Therefore, the appeal cannot succeed on this ground as the breaches occurred as a matter of fact. The appeal under Regulation 117(1)(a) fails accordingly.

### **The appeal under Regulation 118**

4. An appeal on this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. 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 in respect of the chargeable development but has reason to believe it has been commenced, which it clearly has been in this case.
5. The Council accept that the date of 1 January 2017 was merely a "placeholder" and should probably have been input as 4 October 2017. As this date favours the appellant, in the event of any late payment interest being imposed (although I note the Council have said they do not intend to do so), I see no reason not to accept it. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. As required by Regulation 69(4), the Council must now serve a revised Demand Notice with a revised deemed commencement date.
6. However, while the appeal under Regulation 118 succeeds, I see no good reason to use my discretionary powers under Regulation 118 (6) to quash the surcharges imposed for the reasons given in paragraphs 2 and 3 above.

### **Formal decision**

7. For the reasons given above, the appeal under Regulation 117(1)(a) is dismissed and the CIL surcharges are upheld, but the appeal under Regulation 118 is allowed.

*K McEntee*