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# Appeal Decision

by **Ken McEntee**

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

Decision date: 23 May 2018

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**Appeal ref: APP/W0340/L/17/1200154**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a), (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 1 August 2016.
- A Demand Notice was issued on 8 November 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- [REDACTED]
- The date on which planning permission was issued 6 July 2016.
- The alleged breach of the CIL Regulations is to which the surcharge relates 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 under Regulations 117(1)(a) and 117(b) is dismissed and the surcharge of [REDACTED] is upheld, but the appeal under Regulation 118 is allowed.**

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## Procedural matters

1. Although the appeal has been made on grounds 117(1)(a), (b) and 118, it is clear that the main purpose of the appeal is for the withdrawal of the self-build exemption that was withdrawn by the Council (Collecting Authority), to be re-instated. For the avoidance of doubt, it is not within my remit and neither do I have the powers to re-instate such an exemption. All that is before me to consider is the appeal on the grounds made.

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

2. The appellant concedes that he "inadvertently omitted" to submit a Commence Notice before starting works on the chargeable development, but clearly feels he should not be penalised for what he describes as "a stupid oversight". However, while I have sympathy with the appellant if he has simply made a genuine mistake, the inescapable fact is that a Commencement Notice was not submitted before works began on the chargeable development as required by CIL Regulation 67(1). Consequently, the Council were entitled to use their discretionary powers

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<sup>1</sup> The surcharge which led to the surcharge did not occur.

to impose a surcharge. Therefore, I have no option but to dismiss the appeal on this ground as the breach which led to the surcharge occurred as a matter of fact. The appeal under Regulation 117 (a) fails accordingly.

### **The appeal under Regulation 117 (1)(b)<sup>2</sup>**

3. Although the relevant box on the appeal form for an appeal on this ground has been ticked, the appellant has offered no supporting arguments to suggest that he did not receive a Liability Notice. Indeed, it is noted that a copy the Liability Notice was provided with his appeal documents. Therefore, on the evidence before me, I am satisfied the Council correctly served a Liability Notice in accordance with Regulation 65. The appeal under Regulation 117(1)(b) fails accordingly.

### **The appeal under Regulation 118<sup>3</sup>**

4. The Council have deemed the commencement date in this case to be 29 September 2017 as that was the date they conducted a site visit. However, the appellant contends that works commenced on 14 December 2016 and have produced correspondence from the builder to support his contention. In the absence of any contradictory evidence available at the time, it was reasonable for the Council to deem the commencement date to be 29 September 2017 as that was the date they discovered the development from the site visit made. However, in view of the documentary evidence provided by the appellant, I conclude the deemed commencement date should be 14 December 2016. Consequently, the appeal on this ground succeeds and in accordance with Regulation 118(4), the Demand Notice of 8 November 2017 ceases to have effect.
5. As required by Regulation 69(4), the Council must now serve a revised Demand Notice. However, while the appeal under Regulation 118 succeeds, I am not satisfied there is good reason to use my discretionary powers under Regulation 118 (6) to quash the surcharge imposed for the reasons given in paragraph 2 above.

### **Formal decision**

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

*K McEntee*

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<sup>2</sup> The Collecting Authority failed to serve a liability notice in respect of the development to which the surcharge relates.

<sup>3</sup> The Collecting Authority has issued a Demand Notice with an incorrectly deemed commencement date.