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# Appeal Decision

by **Ken McEntee**

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

Decision date: 31 May 2018

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**Appeal ref: APP/P1235/L/17/1200144**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued by Weymouth and Portland Borough Council on 27 April 2017.
- A Demand Notice was issued on 25 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 26 April 2017.
- The alleged breach of the CIL Regulations 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.**

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## Procedural matters

1. As well as ground 117(1)(a)<sup>1</sup>, the appellant has ticked the box for an appeal under Regulation 117(1)(b)<sup>2</sup>. However, his supporting arguments concern his contention that the Council (Collecting Authority) failed to send a letter prior to service of the Liability Notice. The case officer informed the appellant that there was no such ground of appeal available and asked him to confirm whether or not he wished to continue with an appeal on ground 117(1)(b). However, in his response the appellant did not do so, and instead expressed his wish to now pursue the appeal on the basis that he was served with a Demand Notice within 4 working days of the planning permission. For the avoidance of doubt, there is also no ground of appeal available to pursue such a matter. I can only consider the appeal on valid grounds and therefore shall determine the appeal under Regulation 117(1)(a) only.

## Reasons for the decision

2. There is an unusual situation in this case where the Council granted planning permission on 26 April 2017, but a member of staff inadvertently re-created the decision notice on 21 September 2017 and made it available on the Council's

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

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

website, which has clearly caused some confusion. As a result, the appellant contends that once permission was issued on 21 September 2017 he submitted a Commencement Notice as soon as possible on 1 October 2017. However, notwithstanding the fact that the Commencement Notice submitted with the appeal is actually dated 1 September 2017, Regulation 67(1) explains that a Commencement Notice must be submitted to the Collecting Authority no later than the day before the day on which the chargeable development is commenced. It is noted that the commencement date stated in the notice submitted by the appellant is "July 2017". Therefore, even if the date of 21 September 2017 were to be taken as the correct date of permission, it is clear a Commencement Notice was not submitted at least one day before works commenced on the chargeable development as required by Regulation 67(1).

3. Therefore, irrespective of the issue of the correct date of planning permission, I am satisfied that the claimed breach which led to the surcharge occurred as a matter of fact. The appeal fails accordingly.

**Formal decision**

4. For the reasons given above, the appeal is dismissed and the surcharge is upheld.

*K McEntee*