



Appeal Decision

by Ken McEntee

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

Decision date: 21 June 2018

Appeal ref: APP/L5240/L/17/1200159

- 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 Croydon Council on 23 June 2017.
- A Demand Notice was served on 23 November 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
- Planning permission was granted on 8 June 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.

Appeal under Regulation 117(1)(a)

1. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, it appears the appellant attempted to hand deliver a CN at the Council's offices on 30 October and again on 31 October 2017. Unfortunately, he was unsuccessful due to lengthy delays at the reception. In desperation, he decided to leave the Council's offices and post the CN instead, even though development was due to commence that same day. That being the case, it follows that the CN was not submitted at least one day before commencement as required.
2. While I have sympathy with the appellant in view of the difficulties he encountered at the Council's offices, delivery by hand was not the only form of submission open to him. Although the appellant points out that the Liability Notice does not provide an e-mail address, it is not clear why he did not simply take steps to find out the address for himself by either telephoning the Council or by asking someone while he was at the Council's offices. Had he submitted the CN by e-

mail, it would have ensured it was received by the Council on time. Instead, the Council did not receive the notice until 2 November 2017.

3. The appellant then asserts that he incorrectly stated 31 October 2017 as the commencement date in any event as it transpired the works that were carried out at that stage (clearing the building of contents and moving residents out) did not actually constitute operational development as defined by section 56(4) of the Town and Country Planning Act. He contends that such development did not commence until 3 November 2017. Given the time that has elapsed, it would be impossible to assess from a site inspection precisely what works were carried out on what dates, as such I can only determine the appeal on the facts and documentary evidence before me. With that in mind, while I again have sympathy with the appellant if he has made a genuine error, the fact remains that the CN clearly stated a commencement date of 31 October 2017. In the absence of any other evidence, this is the date I have to accept.
4. Ultimately, the onus was on the appellant to ensure a CN was received by the Council at least one day before works began on the chargeable development. The Liability Notice makes clear *"If a valid Commencement Notice has not been submitted before development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced.* The CN – Form 6 also warns of the imposition of a surcharge for failure to submit a CN in advance of commencement. I note that the appellant was also aware of the 'Community Infrastructure Levy in Croydon' guide and employed the services of an architect and building control specialist. Consequently it is reasonable to expect him to have been in a position to have followed the CIL procedures correctly. In these circumstances, I cannot allow the appeal on this ground.
5. The appellant points out that the Liability Notice does not specify precisely how much in advance a CN is required to be submitted, as explained in Regulation 67(1). While I accept this would be helpful and avoid any confusion, it is nevertheless an irrelevant point in this case as a CN was not received by the Council until after the commencement date in any event.
6. It is clear that the appellant is not happy with the experience he has had with the Council in this matter. If he is not satisfied with the Council's conduct or their adopted procedures it is open to the appellant to submit a complaint through the Council's established complaints process in the context of local government accountability.

Appeal under Regulation 118

7. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. The Council have deemed the date to be 31 October 2017 as that was the date given in the CN. In view of my findings above, I cannot be satisfied the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. Therefore, the appeal on this ground must also fail.

Formal decision

8. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharge is upheld.

K McEntee