



Appeal Decision

by Ken McEntee

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

Decision date: 19/09/2018

Appeal ref: APP/W0340/L/18/1200177

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a),(b) and (c) Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served by West Berkshire Council on 9 February 2018.
- A Demand Notice was served on 14 February 2018.
- A revised Demand Notice was served on 22 February 2018.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning Permission was granted on 3 July 2017.
- The alleged breaches which led to the surcharges are: failure to assume liability and failure to submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharges are upheld.

Appeal under Regulation 117(1)(a)¹

1. Regulation 80 explains that a Collecting Authority (Council) may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if the development has commenced and nobody has assumed liability. 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. The appellants do not refute that they did not do either of these things but their case is more one of mitigation as they contend that they have been let down by their architects who were conducting matters on their behalf. While I have every sympathy with the appellants if this was the case, this is a matter for the appellants to resolve with their architects. Unfortunately, I can only consider the appeal on the facts in relation to the grounds of appeal. With that in mind, it is an inescapable fact that the relevant forms were not submitted to the Council before works commenced on the chargeable development. Therefore, the appeal on this ground cannot succeed.

¹ The claimed breach which led to the surcharge did not occur.

Appeal under Regulation 117(1)(b)²

2. Other than tick the relevant box, the appellants have not submitted any evidence in support of this ground to demonstrate that the Council failed to serve a Liability Notice. Therefore, on the evidence before me, the appeal on this ground fails accordingly.

Appeal under Regulation 117(1)(c)³

3. As with the previous ground, the appellants have submitted no supporting evidence to demonstrate that the Council has miscalculated the surcharges. Nevertheless, I am satisfied that the surcharges have been calculated correctly in accordance with Regulations 80 and 83 as explained in paragraph 1 above. Therefore, on the evidence available, the appeal on this ground fails accordingly.

Appeal under Regulation 118⁴

4. The Council have understandably determined the deemed date of commencement to be 7 February 2018 as that is the date of the site visit when it was discovered development had commenced. However, it would appear from e-mail exchanges between the appellants and their architects that suggest the works may have actually begun on 21 October 2017. Nevertheless, given that the date of 7 February 2018 favours the appellants I consider it expedient to accept it. If not, I would be required by CIL Regulation 118(5) to determine a revised commencement date. If I determined that date to be 21 October 2017 it could potentially result in the appellants being liable to pay late payment surcharges as the purpose of the commencement date is to determine the starting point for CIL liability. Therefore, as the Council are content with 21 October 2017, I see no good reason to change it. Consequently, the appeal on this ground also fails.

Formal decision

5. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharges of [REDACTED] are upheld.

K McEntee

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

³ The surcharge has been calculated incorrectly.

⁴ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.