



Appeal Decision

by **Ken McEntee**

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

Decision date: 15 November 2018

Appeal ref: APP/G2245/L/18/1200192

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Sevenoaks District Council.
- Planning permission was granted on 2 December 2016.
- A Liability Notice was issued on 24 July 2017.
- A Demand Notice was issued on 4 June 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is [REDACTED].

Summary of decision: The appeal is dismissed.

Procedural matters

1. It appears clear from the evidence that the main purpose of this appeal concerns the Council's (Collecting Authority) decision to withdraw a self-build exemption. For the avoidance of doubt, there is no ground of appeal available to restore a self-build exemption and I have no powers to do so. I can only determine the appeal solely on the ground made, which is - *The collecting authority has issued a Demand Notice with an incorrectly determined deemed commencement date.*
2. Also, much of the appellant's arguments concern the way the Council has dealt with matters, such as offering incorrect advice on CIL. While I have sympathy with the appellant if he has been given conflicting information by the Council, any complaints concerning their conduct or their adopted procedures should be addressed through the Council's established complaints process in the context of local government accountability. If the appellant is still not satisfied after going through this process, it is open to him to make a complaint to the Local Government Ombudsman.

Reasons for the decision

3. The appellant focuses much of his case on whether or not he was required to submit a Commencement Notice and whether or not the Council served a Liability Notice. However, these are not matters that are relevant to an appeal under

Regulation 118. I can only consider whether or not the Council were correct to determine the deemed commencement date of development to be 3 January 2017.

4. With that in mind, it is clear that a Commencement Notice in relation to planning permission [REDACTED] was submitted by the appellant with a commencement date of 3 January 2017, but was not received by the Council until 13 April 2018. Although the Council have gone with 3 January 2017 in the Demand Notice, they contend that development had not actually lawfully commenced until 24 March 2017 as that is when the pre commencement conditions were approved. However, they felt they had no option but to go with the 3 January 2017 due to Regulation 68(b), which they consider prevented them from stating a later date. However, Regulation 7(2) states that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. There is nothing in the Regulations that requires the commencement to be lawful for it to be CIL liable. The trigger for CIL is the carrying out of a material operation as defined by section 56(4) of the Town & Country Planning Act 1990, as amended. Therefore, while not for the same reasons, I take the view that the Council have correctly determined the deemed commencement date in the Demand Notice as 3 January 2017.
5. In these circumstances, I can only conclude that the Council did not issue a Demand Notice with an incorrectly determined deemed commencement date. The appeal fails accordingly.

Formal decision

6. For the reasons given above, the appeal is dismissed.

K McEntee