



Appeal Decision

by **Ken McEntee**

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

Decision date: 17 January 2019

Appeal ref: APP/C3620/L/18/1200214

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Mole Valley District Council.
- Planning permission was granted on 4 May 2018.
- A Liability Notice was served on 25 May 2018.
- A Demand Notice was served on 27 July 2018.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- 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 is upheld.

Reasons for the decision

1. An appeal under section 117 (1) (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. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN, they may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount.
2. In this case, the appellants did not submit a CN as they did not believe 'demolition' constituted development, and, in any event, felt they had met the requirements of the Regulations by giving notice of demolition to [REDACTED] on 11 July 2018, who apparently work in partnership with the Council to deliver the building control service. However, the description of the development granted by the relevant planning permission clearly includes "*Demolition of [REDACTED]*". Section 56(2) of the Town and Country Planning Act 1990 explains that development shall be taken to be begun on the earliest date on which any material operation comprised in the development

begins to be carried out. Section 56(4) gives examples of what 'material operation' means and includes in section 56(4)(aa) "*any work of demolition of a building*". Also, section 55(1A) includes "demolition of buildings" in the meaning of 'development'.

3. A Demolition Notice is separate to a CN and is required in order for the Building Control Officer to consider whether any precautions or conditions are needed for the protection of public/property. The building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. A Demolition Notice does not act as a substitute for a CN. Although a CN was eventually submitted, unfortunately it was sent some 4 days after demolition works had commenced and was therefore not valid.
4. I note that the appellants are unhappy about the information and advice provided by the Council, which they consider to be unclear. However, I am satisfied that the Liability Notice of 25 May 2018 makes clear the need for a CN to be submitted before starting works on the chargeable development and warns of the possible consequences of failing to do so. The notice also refers the recipient to the Planning Portal and Council websites for further information. Nevertheless, should the appellants be unhappy with the Council's conduct in this matter or their adopted procedures, it is open to them to make a complaint through the Council's established complaints process in the context of local government accountability.
5. The overall conclusion reached is that while I have sympathy with the appellants that this was their first development involving CIL, as a valid CN was not submitted to the Council before works started on the chargeable development, I have no option but to conclude that the alleged breach occurred as a matter of fact. Therefore, the appeal cannot succeed in these circumstances.

Formal decision

6. For the reasons given above, the appeal is dismissed and the CIL surcharge of [REDACTED] is upheld.

K McEntee