



Appeal Decision

by **Ken McEntee**

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

Decision date: 18 January 2019

Appeal ref: APP/M1710/L/18/1200212

- The appeal is made under Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by East Hampshire District Council.
- Planning permission was granted on 11 May 2018.
- A Liability Notice was served on 14 May 2018.
- A revised Liability Notice Demand Notice was served on 19 July 2018.
- A Demand Notice was served on 19 July 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the permission 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.

Procedural matters

1. For the avoidance of doubt, I have no powers to reinstate the CIL exemption granted to the appellant on 14 May 2018. This is not a matter within my remit to consider. I can only determine the appeal solely in relation to the surcharge and on the ground made – *the claimed breach which led to the surcharge did not occur*.

The appeal under Regulation 117(1)(a)

2. 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 (1) explains that where a chargeable development is commenced before the Collecting Authority has received a valid CN the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. In this case, it is clear that demolition of the existing building took place without a Commencement Notice being submitted. However, the appellant's agent argues these works took place outside the terms of the relevant planning permission. She contends that it was necessary to demolish the

existing building as permitted by condition B.2(a)¹ of Part 11 of Schedule 2 of the General Permitted Development Order 2015, for health & safety reasons due to its ruinous state. She points out that to have notified the Council in advance would have been contrary to the purpose of condition B.2(a) in terms of urgency. Written justification was eventually submitted on 29 August 2018.

3. However, while such actions would normally be justified, I note from the agent's grounds of appeal and the justification notice that the ruinous and unsafe state of the building was established when it was acquired by the appellant in June 2017. However, demolition works did not take place until May 2018. It has not been explained why there was a delay of some 11 months before deciding to take such action. It is reasonable to conclude from this delay that demolition of the building was not of such urgency as to justify neglecting to notify the Council of the appellant's intentions and submitting a Commencement Notice before starting demolition works. As demolition formed part of the planning permission, it is clear that a Commencement Notice was required. In the circumstances described above, I cannot be satisfied there was justification for failing to do so in this case. The appeal on this ground fails accordingly.

The appeal under Regulation 118

4. An appeal on this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, in the absence of a Commencement Notice, the Council determined that date to be 2 July 2018. However, it is not clear why they settled upon that specific date. I note from the grounds of appeal it is stated that it was decided to demolish the house "around May 2018", but a specific date is not given. In these circumstances, it would appear on balance that the deemed commencement date of 2 July 2018 is incorrect. However, as this date favours the appellant I consider it expedient to accept it. Otherwise I would be required by Regulation 118(5) to determine a revised commencement date. If I determined that date to be any earlier it could potentially result in the appellant 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 2 July 2018, 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 on the grounds made is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee

¹ "where demolition is urgently necessary in the interests of safety or health and the measures immediately necessary in such interests are demolition of the building the developer must, as soon as reasonably practicable, give the local planning authority a written justification of the demolition"