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# Appeal Decision

by **Ken McEntee**

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

Decision date: 27 February 2019

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**Appeal ref: APP/P1940/L/19/1200217**

- The appeal is made under Regulations 117(1)(a) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by Three Rivers District Council.
- Planning permission was granted on 16 July 2018.
- A Liability Notice was served on 16 August 2018.
- A Demand Notice was served on 16 August 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the permission is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- The alleged breach is the failure to submit to assume liability.
- The outstanding surcharge for failure to assume liability is [REDACTED]

**Summary of decision: The appeal is dismissed and the surcharge is upheld.**

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## The appeal under Regulation 117(1)(a)

1. An appeal under this Regulation is that the alleged breach which led to the surcharge did not occur. In this case, the alleged breach is the failure to assume liability before works commenced on the chargeable development. Although the relevant box for an appeal on this ground has been ticked, no supporting evidence has been submitted to demonstrate that liability has been assumed by the completion of an Assumption of Liability Notice. In these circumstances, I can only conclude that the alleged breach occurred as a matter of fact. The appeal on this ground fails accordingly.

## The appeal under Regulation 117(1)(c)

2. An appeal under this Regulation is that the surcharge has been calculated incorrectly. The surcharge for failure to assume liability is [REDACTED] in accordance with Regulation 80, which states 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 nobody has assumed liability. As nobody has assumed

liability in this case, I am satisfied the surcharge has been calculated correctly. The appeal on this ground fails accordingly.

### **The appeal under Regulation 118**

3. An appeal under this Regulation is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council understandably determined that date to be 2 July 2018 as that was the date given in the appellant's Commencement Notice of 15 August 2018, which was invalid as it was not submitted at least one day before works commenced in accordance with Regulation 67(1). However, the appellant now contends that works actually commenced on 13 July 2018. If this was the case, it is not understood why the date of 2 July 2018 was given in the invalid Commencement Notice. Therefore, on the evidence before me, I am not satisfied that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground fails accordingly.

### **Formal decision**

4. For the reasons given above, the appeal on the grounds made is dismissed and the surcharge of [REDACTED] is upheld.

*K McEntee*