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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: 7 March 2019

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**Appeal ref: APP/D1590/L/18/1200211**

- 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 CIL surcharge imposed by Southend on Sea Borough Council.
- Planning permission was granted on 26 April 2018.
- A Liability Notice was served on 3 July 2018.
- A Demand Notice was served on 25 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 before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

**Summary of decision: The appeal is allowed in part and the surcharge is quashed.**

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## Procedural matters

1. For the avoidance of doubt, there is no ground of appeal available to reinstate a CIL exemption and I have no powers to do so. I can only determine the appeal solely on the grounds made in relation to the surcharge – Regulations 117(1)(a) and 118. However, in view of this decision the appellant may wish to take the matter up with the Collecting Authority (Council).

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

2. An appeal on this ground is that the alleged breach which led to the surcharge did not occur. Regulation 67(1) explains that where planning permission is granted for a chargeable development, a Commencement Notice (CN) must be submitted to the Council no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant submitted a CN on 3 July 2018, but it stated a commencement date also of 3 July 2018. Therefore, the Council considered the CN to be invalid as it was not received at least one day before commencement in accordance with Regulation 67(1) and consequently they imposed a surcharge. However, the appellant's agent insists that the commencement date of 3 July 2018 was given in error and works did not actually commence until the next day on 4 July 2018, so the surcharge is unjust.

3. In this scenario, the wording of Regulations 67(2)(c) and 83(1) is considered to be significant. Although the wording on the CN simply says "Development Commencement Date", Regulation 67(2)(c) only requires an intended (my emphasis) commencement date, as opposed to the actual commencement date, to be stated. The Liability Notice also states that the payment procedure is to notify the Council before development commences of "The date on which you intend (my emphasis) to commence development...". Regulation 83(1), which allows for a surcharge to be imposed, states that where a chargeable development is commenced before (my emphasis) the Council has received a valid CN, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or £2,500, whichever is the lower amount. It would appear that the Council are content to accept the actual commencement date as 4 July 2018, as evidenced by the Demand Notice. That being the case, as there is no dispute that the Council received the CN on 3 July 2018, with a development commencement date of the same day (to be taken as the intended commencement date as per Regulation 67(2)(c)), it follows that a CN was submitted before development actually commenced.
4. Therefore, I can only conclude that the alleged breach which led to the surcharge did not occur and the criterion of Regulation 83(1) for a surcharge to be imposed has not been met in this case. In these circumstances, I have no option but to allow the appeal on this ground.
5. I note the Council's contention that the appellant was in breach of the CIL Regulations as they pressed ahead with development before receiving an acknowledgement that a valid CN had been received. However, while Regulation 67(4) states that on receiving a valid CN the Council must send an acknowledgement of its receipt, there is nowhere in the Regulations that requires the relevant person to wait for receipt of such an acknowledgement before starting works on the chargeable development.

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

6. I can only assume the appellant ticked the box to appeal on this ground in error as it contradicts their arguments in relation to the appeal under Regulation 117 (1)(a). In view of my findings above, it follows that the Council have not issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground fails accordingly.

### **Formal decision**

7. For the reasons given above, the appeal under Regulation 117(1)(a) is allowed and the surcharge of [REDACTED] is quashed, but the appeal under Regulation 118 is dismissed.

*K McEntee*