



Appeal Decision

by **Ken McEntee**

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

Decision date: 2 May 2019

Appeal ref: APP/F0114/L/18/1200229

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bath and North East Somerset Council.
- Planning permission was granted on 3 August 2018.
- A Liability Notice was served on 18 September 2018.
- A Demand Notice was served on 19 October 2018.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- The alleged breaches to which the surcharges relate are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharges are upheld.

The appeal under Regulation 117(1)(a)

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 31(1) of the CIL Regulations states that a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an Assumption of Liability Notice to the Collecting Authority (Council). Regulation 80 explains that a surcharge of [REDACTED] may be imposed on each person liable to pay CIL where the chargeable development has commenced and no one has assumed liability. Regulation 67(1) of the CIL regulations states that a Commencement Notice must be submitted to the 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 appellant carried out demolition works on the existing buildings and does not dispute that he did not submit either of the required notices before

doing so. However, he argues that it was necessary to carry out demolition works in order to conduct a contamination survey as required by a pre-commencement condition of the planning permission. He contends that demolition was agreed with the Council's Planning Officer. However, while I have sympathy with the appellant and accept that there are mitigating circumstances for his decision to carry out demolition works when he did, the fact remains that the description of the planning permission clearly includes "...demolition [REDACTED]". Therefore, it follows that as demolition took place, works began on the chargeable development as a matter of fact before either an Assumption of Liability Notice or a Commencement Notice was submitted to the Council as required by Regulations 31(1) and 67(1). In these circumstances, the appeal cannot succeed on this ground.

The appeal under Regulation 118

3. An appeal under Regulation 118 is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council determined the commencement date to be 9 October 2018 as that is the date they became aware of demolition works taking place. The appellant does not dispute that demolition took place on that date; his case is based on the contention that the demolition works did not actually constitute development commencing. However, I have determined above that demolition constituted the commencement of development. With no evidence to the contrary, I have no reason to believe that it did not commence on 9 October 2018. Therefore, I am not satisfied the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground also fails accordingly.
4. It is clear that the appellant is unhappy with the way the Council has conducted themselves in this matter. If the appellant is not satisfied with the Council's conduct or their adopted procedures, it is open to him to make a complaint through the Council's established complaints process in the context of local government accountability.

Formal decision

5. For the reasons given above, the appeal is dismissed and the surcharges of [REDACTED] are upheld.

K McEntee