



Appeal Decision

by **Ken McEntee**

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

Decision date: 31 July 2019

Appeal ref: APP/K0235/L/19/1200251

- 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 Bedford Borough Council.
- Planning permission was granted on 18 August 2015.
- A Liability Notice was served on 18 August 2015.
- A Demand Notice was served on 22 January 2019.
- 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].
- The deemed commencement date given in the Demand Notice is 29 September 2017.

Summary of decision: The appeal is allowed in part but the surcharges are upheld.

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 surcharges – Regulations 117(1)(a)¹ and 118².

The appeal under Regulation 117(1)(a)

2. 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 £50 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) 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

¹ The claimed breach which led to the surcharge did not occur.

² The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.

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.

3. In this case, the appellant does not dispute that he did not assume liability and did not submit a Commencement Notice before starting works on the chargeable development. However, he contends that this was simply an oversight as the development did not commence for some two and a half years after planning permission was granted. However, while I have sympathy with the appellant and can understand appreciate that the matter was overlooked due to the long passage of time, I can only determine the appeal on its facts. With that in mind, it is an inescapable fact that works began on the chargeable development 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

4. The Council determined the commencement date to be 29 September 2017 "*as this was the date Building Control were notified of commencement*". The Council have provided a copy of a document from a building control Inspector, entitled "Initial Notice" and is dated 28 September 2017. Unfortunately, I can find nowhere in that notice that states works commenced on the chargeable development on 29 September 2017, which was a day after the Initial Notice in any event. In fact, there is nowhere in the Notice that clearly states that works have commenced at all, irrespective of date. In these circumstances, I cannot be satisfied that works commenced on the chargeable development on 29 September 2017.
5. The appellant contends that works did not commence until 11 February 2018 and has provided photographs taken on that date to support his contention. However, the photographs do not appear to show any evidence that works had commenced at all. Therefore, it is reasonable to conclude that works must have commenced some time after 11 February 2018. However, in the absence of any conclusive evidence of the exact date, and as the appellant is content with 11 February 2018, I consider it reasonable to accept that date as the deemed commencement date.
6. The appeal on this ground therefore succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. If the Council are to continue to pursue the CIL, they must now issue a revised Demand Notice in accordance with Regulation 118(5).
7. For the avoidance of doubt, although the appeal on this ground is allowed, the surcharges are not being quashed, for the reasons explained in paragraph 3 above.

Formal decision

8. For the reasons given above, the appeal is dismissed under Regulation 117(1)(a) but allowed under Regulation 118. However, the surcharges of [REDACTED] and [REDACTED] are upheld.

K McEntee