



Appeal Decision

by **Ken McEntee**

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

Decision date: 7 August 2019

Appeal ref: APP/P2365/L/19/1200264

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by West Lancashire Borough Council.
- Planning permission was granted on 6 October 2017.
- A Liability Notice served on 24 October 2017.
- A Demand Notice was served on 22 February 2019.
- A revised Demand Notice was served on 11 March 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development 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].
- The determined deemed commencement date given in the Demand Notice is 22 February 2019.

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

Procedural matters

1. Although the appeal is made on the ground that the Collecting Authority (council) has issued a Demand Notice with an incorrectly determined deemed commencement date, most of the appellant's arguments concern his contention that a Commencement Notice was submitted, which relates to an appeal under Regulation 117(1)(a) – *the claimed breach which led to the surcharge did not occur*. However, as the Council have responded to the appellant's arguments on this issue, I am satisfied I can consider the appeal under this ground without causing prejudice to either party.

The appeal under Regulation 117(1)(a)

2. The appellant has submitted a copy of a Commencement Notice dated 1 October 2018 with a commencement date of 8 October 2018, which he contends he posted at the time. Unfortunately, he has not provided any proof of postage. Without such proof, I cannot conclude the notice was submitted in advance of the chargeable development commencing. As the Council point out, the Liability

Notice makes clear under “**Important**” *The Council will acknowledge receipt of all CIL forms submitted. If you submit any of the CIL forms and do not receive an acknowledgement of receipt, you must contact the CIL Officer....*” Given this warning and the potential consequences of failing to submit a commencement Notice at the right time (which was also made clear in the Liability Notice), the onus was on the appellant to have contacted the Council when it became apparent he had not received an acknowledgement of receipt of the Commencement Notice. To press ahead with the development without doing so was a risky strategy for the appellant to take. In these circumstances, the appeal under this ground cannot succeed.

The appeal under Regulation 118

3. The Council understandably determined the deemed commencement date to be 22 February 2019 as that is the date they became aware that works had commenced from a site visit made. However, it would appear that works actually began on 8 October 2018. As the 22 February 2019 favours the appellant and the Council are clearly content with it, I consider it expedient to accept it. Otherwise, as the Council point out, the earlier date could potentially result in the appellant being liable to pay late payment surcharges and interest as the purpose of the commencement date is to determine the starting point for CIL liability. Consequently, the appeal under this ground also fails.

Formal decision

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

K McEntee