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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: 21 August 2019

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**Appeal ref: APP/W0340/L/19/1200267**

- The appeal is made under Regulations 117(1)(a), (b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by West Berkshire Council.
- Planning permission was granted on 19 January 2018.
- A Liability Notice was served on 16 July 2018.
- A revised Liability Notice was served on 16 November 2018.
- A revised Liability Notice was served on 14 January 2019.
- A revised Liability Notice was served on 5 March 2019.
- A Demand Notice was served on 6 March 2019.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 27 February 2019

**Summary of decision: The appeal under grounds 117(1)(a) and (b) is allowed and the surcharge is quashed, but the appeal under Regulation 118 is dismissed.**

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## Procedural matters

1. It is clear that much of the arguments put forward by the appellant is that the development should not have been considered as CIL liable as the net floorspace measures under 100m<sup>2</sup>. However, there is no ground of appeal available for this to be considered. I can only determine the appeal on the grounds made solely in relation to the surcharge. I have no powers to determine whether or not the development should be CIL liable. I also have no powers to reinstate a CIL exemption. However, this is a matter the appellant may wish to take up with the Council in view of this decision.

## The appeal under Regulations 117(1)(a) and (b)

2. I note that the Council did not serve a Liability Notice (LN) until 16 July 2018, some 6 months after planning permission was granted. The Council have not

explained the reason for this delay. Regulation 65(1) explains that the Council must issue a LN as soon as practical after the day on which planning permission first permits development. I take the view that to serve a LN some 6 months later cannot reasonably be interpreted as meeting this requirement. The Council refers to other sources of communication where the appellant would have been aware of the requirement to submit a Commencement Notice and the potential consequences of failing to do so. However, CIL is a very rigid and formulaic process and Regulation 65(3)(a) requires a LN to be served on the relevant person. That person having knowledge by other means does not act as a substitute for the required notice. The LN is the trigger for the recipient to submit the necessary forms before starting works on the chargeable development. In the absence of a LN, it was not possible for the appellant to submit a valid Commencement Notice as he would not have been able to identify the LN as required by Regulation 67(2)(b).

3. In these circumstances, I conclude that the alleged breach that led to the surcharge did not occur. The appeal under Regulations 117(1)(a) and (b) therefore succeeds and the surcharge is quashed in accordance with Regulation 117(4).

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

4. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the stated date in the Demand Notice is 27 February 2019 but the appellant states that demolition works were carried out in April 2018. However, as the 27 February 2019 favours the appellant and the Council are clearly content with that date, I consider it expedient to accept it. Otherwise, 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 establish the starting point for CIL liability. The appeal on this ground fails accordingly.

### **Formal decision**

5. For the reasons given above, the appeal under Regulations 117(1)(a) and (b) is allowed and the surcharge of ██████ is quashed, but the appeal under Regulation 118 is dismissed.

*K McEntee*