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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: 11 September 2019**

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**Appeal ref: APP/A5840/L/19/1200247**

- 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 Southwark Council.
- Planning permission was granted on 16 November 2018.
- A Liability Notice was served on 19 December 2018.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED]  
[REDACTED]  
[REDACTED]
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 18 January 2019.

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

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

1. An appeal on this ground is that the alleged breach which led to the surcharge did not occur. The alleged breach is the failure to submit a Commencement Notice (CN) before starting works on the chargeable development. The documentary evidence before me demonstrates that a CN was initially submitted on 13 December 2018 stating a commencement date of 3 January 2019. However, no works actually commenced on 3 January 2019, as discovered from a site visit made by the Council on that day. The appellant then submitted a further CN, dated 17 January 2019 stating a commencement date of 18 January 2019. The Council (Charging Authority) issued a formal acknowledgement of this CN on 21 January 2019. However, the acknowledgement refers to a CN dated 18 January 2019. In the absence of any evidence of a CN dated 18 January 2019 before me, I consider it reasonable to assume that this date was stated in the acknowledgement in error and should have read 17 January 2019. Therefore, it appears from the evidence that the appellant submitted a CN before commencing works on the chargeable development.

2. However, for a CN to be valid it must identify the Liability Notice issued in respect of the chargeable development as required by Regulation 67(2)(b). This is normally done by inputting the Liability Notice reference under box 'C' of 'Details of Development' on the first page of the form. Unfortunately, the relevant box was not completed in this case. Therefore, as the Liability Notice was not identified, it rendered the CN invalid. Although the Council's acknowledgement failed to point out this fact, the appellant had already pressed ahead with development in any event before receipt of the acknowledgement. In these circumstances, I can only conclude that the alleged breach occurred as a matter of fact. The appeal on this ground fails accordingly.

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

3. 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 18 January 2019. As this is the date stated in the CN submitted by the appellant on 17 January 2019, I have no reason to believe that it is incorrect. Therefore, the appeal on this ground also fails.

### **Formal decision**

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

*K McEntee*