



Appeal Decision

by **Ken McEntee**

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

Decision date: 17/09/2019

Appeal ref: APP/J3720/L/19/1200273

- [REDACTED]
- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
 - The appeal is brought by [REDACTED] against a surcharge imposed by Stratford-on-Avon District Council.
 - The relevant planning permission to which the surcharge relates is [REDACTED]
 - Planning permission was granted on 14 January 2019.
 - A Liability Notice was served on 15 January 2019.
 - A revised Liability Notice was served on 1 February 2019.
 - A Demand Notice was served on 1 February 2019.
 - A revised Demand Notice was served on 5 February 2019.
 - A further revised Liability Notice was served on 2 April 2019.
 - A further revised Demand Notice was served on 2 April 2019.
 - The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - The alleged breach of planning control is the failure to submit a Commencement Notice before commencing works on the chargeable development.
 - The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is under Regulation 117(1)(c) is dismissed and the surcharge upheld, but the appeal under Regulation 118 is allowed.

Procedural matters

1. The appellant has made an application for costs against the Council. This is the subject of a separate decision accompanying this one.

The appeal under Regulation 117(1)(c)

2. The alleged breach which led to the surcharge in this case is the failure to submit a Commencement Notice before the chargeable development commenced, as required by Regulation 67(1). At the time of the original planning permission, [REDACTED], no CIL charging schedule was in place for Stratford on Avon. However, CIL was in force by the time retrospective permission [REDACTED]

was granted. Therefore, the development automatically became liable for CIL, as well as a surcharge, as it was clearly now not possible for a Commencement Notice to be submitted before starting works on the chargeable development as it had already commenced. While I appreciate this is an unfortunate situation for the appellant, by not carrying out the original planning permission in accordance with the approved plans, it is effectively one of his own making. It is also unfortunate that the Council incorrectly granted Residential Annex Relief, which had to be withdrawn, and initially issued a Liability Notice indicating there was nothing to pay. The confusion was then compounded by the issue of a further incorrect Liability Notice on 1 February 2019 and two incorrect Demand Notices on 1 and 5 February 2019.

3. Nevertheless, the main issue for me to determine in an appeal under Regulation 117(1)(c), is whether the surcharge has been calculated correctly. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority (Council) has received a valid Commencement Notice, the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. The amount payable in this case is

Therefore, I am satisfied the surcharge has been calculated correctly. The appeal on this ground fails accordingly.

The appeal under Regulation 118

4. An appeal on this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. Regulation 68 explains that a Collecting Authority must determine the day on which a chargeable development was commenced if it has not received a commencement notice in respect of the chargeable development but has reason to believe it has been commenced, which it clearly has in this case.
5. CIL Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. However, Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out and granted planning permission under section 73A of the Town & Country Planning Act. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as retrospective permission was granted in this case, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which in this case was 14 January 2019.
6. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. As required by Regulation 69(4), the Council must now serve a revised Demand Notice with a revised deemed commencement date of 14 January 2019.
7. For the avoidance of doubt, while the appeal under Regulation 118 succeeds, I see no justification to use my discretionary powers under Regulation 118(6) to quash the surcharge imposed, for the reasons explained in paragraphs 2 and 3 above.

Formal decision

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

K McEntee