



Appeal Decision

by **Ken McEntee**

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

Decision date: 8 October 2019

Appeal ref: APP/D1590/L/19/1200255

- The appeal is made under Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Southend-on-Sea Borough Council.
- Planning permission was granted on 24 August 2018.
- A Liability Notice was issued on 31 January 2019.
- A Demand Notice was issued on 31 January 2019.
- The relevant planning permission to which the surcharges relate is [REDACTED]
- The description of the development is [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- The alleged breaches 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 failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is allowed and the surcharges are quashed.

Procedural matters

1. An application for costs has been made by the appellants. This is the subject of a separate decision accompanying this one.

The appeal under Regulation 117(1)(b)

2. An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. Much of the appellants' arguments concern their contention that the Council should have issued LNs in relation to Prior Approval permissions [REDACTED]. For the avoidance of doubt, I can only consider whether the Council issued a LN solely in relation to planning permission [REDACTED], the subject of this appeal.
3. In this case, the Council served a LN, but not until 31 January 2019, some 5 months after planning permission was granted. Regulation 65(1) explains that the

Council must issue a LN as soon as practicable after the day on which planning permission first permits development. The Council point out that Regulation 65(1) does not define a time limit for issuing a LN. While I accept this is the case, I consider the Regulation cannot reasonably be interpreted as giving Councils *carte blanche* to issue a LN at any stage. To do so, could in theory prevent a development from ever being implemented while the applicant awaits receipt of a LN. In the absence of a defined time limit, I take the view that it is for me as the decision maker to make a judgement on whether 5 months is a reasonable time period in which to serve a LN.

4. The Council have explained they did not issue a LN in respect of the Prior Approval permissions as they did not receive a Notice of Chargeable Development (NCD) as required by Regulation 64. However, they have not cited this as a reason for the delay in issuing a LN in respect of permission [REDACTED]. With no explanation before me for the delay, I do not consider that 5 months can reasonably be interpreted as meeting the requirement of Regulation 65(1) for a LN to be served as soon as practicable after the day on which planning permission first permits development.
5. The LN is the trigger for the recipient to submit the necessary forms, such as a Commencement Notice, before starting works on the chargeable development. The Council's failure to issue a LN more promptly effectively deprived the appellants of the opportunity to do so. Regulation 67(2)(b) explains that a CN must identify the LN in respect of the chargeable development for it to be valid. As the appellants did not receive a LN until some 5 months after approval, it would simply not have been possible for them to identify the LN and therefore to submit a valid Commencement Notice.
6. In these circumstances, I conclude that the alleged breaches that led to the surcharges did not occur. Therefore, I will quash the surcharges in accordance with Regulation 117(4).

The appeal under Regulation 118

7. 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 date given in the Demand Notice is 18 October 2018. It appears the Council settled on this date as that is when they became aware that works had begun due to an e-mail exchange between the appellants and their agent on the same date. However, the appellants have confirmed that works commenced in late August 2018. Therefore, I shall deem the commencement date to be 31 August 2018.
8. Consequently, the appeal under this ground also 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).
9. I would add that the Demand Notice appears to be invalid in any event as it does not state the total amount payable as required by Regulation 69(2)(e). This will no doubt be rectified by any revised Demand Notice.

Formal decision

10. For the reasons given above, the appeal under both Regulations 117(1)(b) and 118 is allowed and the surcharges [REDACTED] are quashed.

K McEntee