



Appeal Decision

by **Ken McEntee**

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

Decision date: 7 November 2019

Appeal ref: APP/Q1255/L/19/1200286

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Poole Borough Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- Planning permission was granted on 3 December 2018.
- A Liability Notice was served on 14 January 2019.
- A Demand Notice was served on 21 March 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].
- The determined deemed commencement date given in the Demand Notice is 6 February 2019.

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

Procedural matters

1. Much of the arguments put forward by the appellant concerns the issue of self build exemption and the calculations of the existing floor space. For the avoidance of doubt, these are not matters before me to consider. I can only determine the appeal on the grounds made specifically in relation to the surcharge and not the CIL chargeable amount.

The appeal under Regulation 117(1)(a)

2. An appeal under this ground is that the alleged breach that led to the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable

development is to be commenced. In this case, the appellant contends that he submitted a CN on 19 November 2019 but incorrectly stated the original planning permission reference of APP/17/01513/F. However, the Council insist they did not receive it. The appellant has provided a copy of the CN and a copy of his posting book which indicates that it was sent by first class post. While the appellant was entitled to use this method of postage it unfortunately does not provide proof of postage, unlike Recorded Delivery or Registered Post, which requires a signature of receipt. Having received no acknowledgement from the Council, it is not clear why the appellant did not contact them to check they had received the CN, particularly given the possible consequences. To press ahead with the development without receiving an acknowledgement was a risky strategy for the appellant to take.

3. In any event, as the CN was dated before planning permission was granted and a Liability Notice issued, it would not have been valid as it was not possible to identify the Liability Notice as required by Regulation 67(2)(b).
4. In the absence of any proof of postage before me, I cannot be satisfied that a CN was submitted in accordance with Regulation 67(1) and therefore have to conclude the alleged breach that led to the surcharge occurred. The appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(c)

5. An appeal under this ground is that the surcharge has been calculated incorrectly. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN, the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. The CIL amount payable in this case is [REDACTED]. Therefore, I am satisfied the surcharge has been calculated correctly. The appeal on this ground fails accordingly.

The appeal under Regulation 118

6. 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 Council must determine the day on which a chargeable development was commenced if it has not received a CN in respect of the chargeable development but has reason to believe it has been commenced. In the Demand Notice in this case, the Council have determined that date to be 6 February 2019. However, this is contradicted by their appeal representations in which they state that it was clear from a site visit made on 16 January 2019 that works had already commenced and provided photographic evidence to support their contention. In view of this, I consider it reasonable to accept the date given by the appellant of 26 November 2018
7. 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 26 November 2018.

8. 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 to 4 above.

Formal decision

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

K McEntee