



Appeal Decision

by **Ken McEntee**

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

Decision date: 21/11/2019

Appeal ref: APP/C1435/L/19/1200294

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) and (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Wealden District Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 5 May 2016.
- A Liability Notice was served on 5 May 2016.
- A Demand Notice was served on 24 May 2019.
- The description of the development is: [REDACTED]
- The alleged breaches are the failure to assume liability and to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 19 December 2016.

Summary of decision: The appeal is dismissed and the surcharges are upheld.

Procedural matters

1. The appellant questions the length of time it has taken for the Council (Collecting Authority) to pursue the matter of CIL, the communication process between Council departments and feels the matter of CIL should have been flagged up sooner after various site visits were made by the building control officers. In the absence of any explanation from the Council for the delay of some three years before issuing a Demand Notice, I can understand the appellant's concerns. However, the delay in pursuing CIL is not something for me to consider in the determination of this appeal. I should also explain that the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process and the onus is very much on the developer to ensure it is followed. Nevertheless, if the appellant is unhappy with the Council's conduct in this matter or their adopted procedures, it is open to her to make a complaint through the Council's established complaints process in accordance with local government accountability.

The appeal under Regulation 117(1)(b)¹

2. Regulation 126 explains the options open to the Council for service of documents. Regulation 126(1)(e) states "*in a case where an address for service using electronic communications has been given by that person, by sending it to that person at that address...*". In this case, [REDACTED] are stated in the application form of 1 December 2015 as the appellant's agents and their contact e-mail address is given as [REDACTED]. The Council contend that they submitted a Liability Notice to that address on 5 May 2016. The appellant does not suggest that her agents did not receive this e-mail.
3. I have sympathy with the appellant if her agents failed to act upon the notice, but on the evidence before me, I am satisfied the Council issued a Liability Notice as required by Regulation 65(1). The appeal under this ground fails accordingly.

The appeal under Regulation 117(1)(c)²

4. 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]. I am satisfied the surcharge has been calculated correctly. Regulation 80 explains that the Council may impose a surcharge of £50 where nobody has assumed liability and the chargeable development has commenced, which is the case here. Therefore, I am satisfied that this surcharge has also been calculated correctly. The appeal on this ground fails accordingly.

The appeal under Regulation 118³

5. Regulation 68 explains that a Council 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. In the Demand Notice in this case, the Council have determined that date to be 19 December 2016 from a site visit made. However, the appellant states that works actually commenced on 20 February 2017. She contends that before that date she undertook groundworks for services and a driveway. Section 56(2) of the Town & Country Planning Act 1990 explains that development shall be taken to be begun on the earliest date any material operation comprised in the development begins to be carried out. Section 56(4) sets out the types of works that constitute a material operation (as listed in the annex to this decision). It appears clear that the Council's building control officer was satisfied from the site visit made that the works so far carried out constituted a material operation.
6. I conclude on the evidence available and on the balance of probabilities, that works commenced on 19 December 2016. Therefore, I am not satisfied the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal under this ground fails accordingly.

¹ The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates

² The surcharge has been calculated incorrectly

³ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed Commencement date

Formal decision

7. For the reasons given above, the appeal is dismissed on the grounds made and the surcharges [REDACTED] are upheld.

K McEntee

Annex to the decision

Material Operation means –

- (a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations of a building;
- (c) the laying of any underground main pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development.