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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 December 2019

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**Appeal ref: APP/X4725/L/19/1200321**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Wakefield Council.
- The relevant planning permission is to which the surcharge relates is [REDACTED].
- Planning permission was granted on 12 July 2019.
- The description of the development is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- A Liability Notice was issued on 29 July 2019.
- A Demand Notice was issued on 29 July 2019.
- The alleged breach to which the surcharge relates 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 stated in the Demand Notice is 18 July 2019.

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

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

1. An appeal under this ground is that the claimed breach which led to the imposition of 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 carried out demolition works before submitting a Commencement Notice. However, she argues that as the demolition took place before planning permission was granted, works had not actually begun on the development and therefore a Commencement Notice was not required to be submitted.
2. The description of the development granted by the relevant planning permission includes "(including demolition works)". Section 56(2) of the Town and Country Planning Act 1990 explains that development shall be taken to be begun on the

earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) gives examples of what 'material operation' means and includes in section 56(4)(aa) "*any work of demolition of a building*". Therefore, I am satisfied that the demolition works that were carried out formed part of the planning permission granted. The fact that the Council were aware of the demolition and the fact that permission was granted retrospectively does not make it immune from CIL. Due to the permission being retrospective, it was obviously not possible for a CN to be submitted in advance of starting works as required, and thus it was not possible for the appellant to prevent the subsequent surcharge being imposed. It is envisaged by the CIL guidance that the issue of a Liability Notice (LN) will be followed by submission of a CN by the relevant person. However, by deciding to carry out demolition works in advance of planning permission, the appellant effectively prevented the normal sequence of events from taking place. As a result, the retrospective permission automatically became liable to CIL and CIL surcharges.

3. In these circumstances, I am satisfied that the alleged breach occurred. The appeal under this ground fails accordingly.

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

4. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council, as the Collecting Authority, determined the deemed commencement date to be 18 July 2019 as that was the date they visited the site. 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. 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 12 July 2019.
5. Having said that, as the Council are clearly content with 18 July 2019, I consider it expedient to accept it. Otherwise, the earlier date could potentially result in the appellant being liable to pay late payment surcharges and interest as the purpose of the commencement date is to establish the starting point for CIL liability. Consequently, I shall dismiss the appeal under this ground too.

### **Formal decision**

6. For the reasons given above, the appeal on the grounds made is dismissed and the surcharge is upheld.

*K McEntee*