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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: 10 December 2019

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**Appeal ref: APP/A5840/L/19/1200299**

- The appeal is made under Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by Southwark Council.
- Planning permission was granted on 18 August 2016.
- A Liability Notice was served on 22 August 2016.
- A Demand Notice was served on 5 June 2019.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 16 April 2019.

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

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

1. An appeal under this ground is that the alleged breach which led to the surcharge did not occur. Regulation 67(1) explains that where planning permission is granted for a chargeable development, a Commencement Notice 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's agent submitted a CN dated 27 March 2019 to the Building Control department on 29 April 2019. However, the form was returned as invalid as it did not contain an intended commencement date and the agent was asked to resubmit the form accordingly. The form was resubmitted on 5 June 2019 with a commencement date of 16 April 2019. Consequently, the Council issued a Demand Notice including a surcharge as the development had commenced before a CN was submitted. The appellant now contends that works did not actually commence until 13 May 2019 and the 16 April 2019 was input in error.

2. In a situation such as this I have to make a decision based on the documentary evidence before me. With that in mind, I note that the appellant's agent submitted an e-mail of 29 April 2019 to the Building Control Department, stating "*Please confirm receipt of CIL 6 as work has now commenced*". I consider this e-mail to be of significance in my determination of this appeal, particularly in view of the revised CN submitted on 5 June 2019. On the evidence before me and on the balance of probabilities, I conclude that works commenced on the chargeable development before a CN was submitted. Therefore, I am satisfied that the alleged breach which led to the surcharge occurred. The appeal under this ground fails accordingly.
3. I note the agent's argument that the Council should have got back to him sooner after he had submitted the initial CN on 29 April 2019. However, I should point out that the Building Control Department is not part of the CIL Collecting Authority and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. The CN needed to be submitted to the Collecting Authority for the requirements of Regulation 67(1) to be met.
4. In any event, even if the Council had responded sooner it would not have made any difference as works had already commenced, so the breach had already occurred and the surcharge could not be prevented. Nevertheless, should the agent or appellant be unhappy with the Council's conduct in this matter or their adopted procedures, they may wish to make a complaint through the Council's established complaints process in accordance with local government accountability

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

5. 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 stated date in the Demand Notice is 16 April 2019 as that was the date stated in the revised CN submitted on 5 June 2019. In view of my findings in paragraph 2 above, I am satisfied that this date is correct. Therefore, I do not consider that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal under this ground fails accordingly.

### **Formal decision**

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

*K McEntee*