



Appeal Decision

by **Ken McEntee**

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

Decision date: 7 February 2020

Appeal ref: APP/C1435/L/19/1200304

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Wealden District Council.
- Planning permission was granted on 27 April 2018.
- A Liability Notice served on 27 April 2018.
- A revised Liability Notice was served on 15 May 2019.
- A Demand Notice was served on 11 July 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [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 determined deemed commencement date given in the Demand Notice is 3 June 2019.

Summary of decision: The appeal is allowed but the surcharge is upheld.

Reasons for the decision

1. An appeal under Regulation 118 is that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case the Council deemed the commencement date to be 3 June 2019 after visiting the site on 4 June 2019. However, the Commencement Notice submitted by the appellants on 21 May 2019 states a commencement date of 3 June 2019, which coincides with the Council's determined date. Therefore, this would appear to suggest that the surcharge has been imposed incorrectly. However, it is clear from the evidence before me that works did not actually commence on 3 June 2019, but did so on 29 May 2019, as confirmed by the appellants' e-mails of 15 August and 17 October 2019. Added to this, the Commencement Notice submitted by the appellants is invalid as it fails to identify the Liability Notice as required by Regulation 67(2)(b). Therefore, the surcharge was correctly imposed, albeit effectively by default.
2. In the circumstances described above, I conclude that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal is therefore allowed. In accordance with Regulation 118(4), the Demand

Notice ceases to have effect and the Council must now issue a revised notice with a revised deemed commencement date.

3. While the appeal succeeds, I see no justification to use my discretionary powers under Regulation 118(6) to quash the surcharge for the reasons explained in paragraph 1 above.

Formal decision

4. For the reasons given above, the appeal is allowed on the ground made but the surcharge [REDACTED] is upheld.

K McEntee