



Appeal Decision

by Ken McEntee

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

Decision date: 11 February 2020

Appeal ref: APP/Z3825/L/19/1200334

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by ██████████ against surcharges imposed by Horsham District Council.
- The relevant planning permission to which the CIL relates is ██████████
- Planning permission was granted on 29 August 2019.
- A Liability Notice was served on 2 September 2019.
- A Demand Notice was served on 2 September 2019.
- The description of the permission is: ██████████
██████████
██████████
- The alleged breaches of planning control are the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability is ██████████
- The outstanding surcharge for failure to submit a Commencement Notice is ██████████
- The determined deemed commencement date given in the Demand Notice is 29 August 2019.

Summary of decision: The appeal is dismissed on all grounds made and the surcharges are upheld.

Procedural matters

1. Much of the arguments put forward by the appellant concerns his belief that the Council erred in not considering the amendments to the original planning permission as Minor Material Amendments under Section 73 of the Town & Country Planning Act 1990. For the avoidance of doubt, this is not a matter before me to consider. I can only determine the appeal on the specific grounds made as listed above.
2. However, if the appellant is unhappy with the Council's conduct in this matter or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

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

3. The claimed breaches that led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development, as required by Regulations 31(1) and 67(1) respectively. As the planning permission, the subject of the CIL, was retrospective, it follows that it was not possible for the said forms to be submitted in advance of commencing works and consequently the appellant automatically became liable for the subsequent surcharges. Therefore, I am satisfied the alleged breaches occurred as a matter of fact and therefore the appeal under this ground fails accordingly.

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

4. I can only assume that the appellant has ticked this ground of appeal in error as he does not argue that he did not receive a Liability Notice and has in fact included a copy with his appeal. Therefore, the appeal under this ground fails accordingly.

The appeal under Regulation 118³

5. As the appellant points out, Regulation 68 explains that a Collecting Authority (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, which it clearly has in this case due to the demolition works. With that in mind, 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. However, 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 then 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.
6. 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 29 August 2019. This is the date the Council have correctly stated in the Demand Notice. Therefore, I am satisfied the Council have not issued a Demand Notice with an incorrectly deemed commencement date.
7. In these circumstances, the appeal under this ground fails accordingly.

Formal decision

8. For these reasons, the appeal on all grounds made is dismissed and the surcharges [REDACTED] are upheld.

K McEntee

¹ The claimed breaches which led to the surcharges did not occur

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharges relate

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