



Appeal Decision

by Ken McEntee

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

Decision date: 12 March 2020

Appeal ref: APP/N1920/L/19/1200327

- The appeal is made under Regulation 117(1)(a) and (b) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Hertsmere Borough Council.
- Planning permission was granted on 10 February 2017.
- A Liability Notice was served on 5 August 2019.
- A Demand Notice was served on 5 August 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breaches to which the surcharges relate are the failure to assume liability and the failure to submit a Commencement Notice before starting 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 6 June 2019.

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

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

1. Although a Liability Notice (LN) was successfully served on 5 August 2019, the appellant contends that she did not receive the original LN dated 10 February 2017. Therefore, she asserts she could not submit a valid Commencement Notice (CN) before starting works on the chargeable development. The Council (Collecting Authority) contend that they sent the original LN to the appellant's e-mail address on 14 February 2017 and have provided a screenshot to support their contention. However, while the screenshot may demonstrate that a LN was generated on 14 February 2017, it does not provide proof that a LN or an e-mail was actually sent/delivered. Although, the Council successfully served a LN on 5 August 2019, as it was served some two and a half years after planning permission was granted it cannot reasonably be described as meeting the

¹ The claimed breach which led to the surcharge did not occur

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

requirement of Regulation 65(1), which states that the Council must issue a LN as soon as practicable after the day on which a planning permission first permits.

2. Therefore, on the evidence before me, I cannot be satisfied that a LN was served at the correct time in this case. It follows that if the appellant did not receive a LN she could not submit a valid CN as the LN acts as the trigger for this to happen and the CN requires the LN to be identified. In these circumstances, the appeal under grounds 117(1)(a) and (b) succeed accordingly.

The appeal under Regulation 118³

3. In this case, the deemed commencement date given in the Demand Notice is 6 June 2019 as that was the date they conducted a site visit and discovered development had commenced. However, the appellant contends that works began on 23 August 2017 and refers to correspondence with the building control and Council tax departments and the issue of a section 81 a Demolition Notice to support her case. The Council are correct to point out that these departments are separate to that of the CIL Collecting Authority and service of a Demolition Notice does not act as a substitute to that of a CN. It is also not clear why the appellant hasn't provided a copy of the Demolition Notice or documentary evidence from the building contractors to confirm that demolition works began on 23 August 2017 as she contends. However, she has provided a copy of a letter of 24 January 2019 from the Council's Revenues Department stating that the development is to be treated as substantially completed on 30 January 2019. Therefore, it is reasonable to conclude from this that works must have begun long before 6 June 2019.
4. Therefore, while it was understandable that the Council determined the deemed commencement date to be 6 June 2019, on the evidence before me, and on the balance of probabilities, I conclude that the correct deemed commencement date is 23 August 2017.
5. Consequently, the appeal under this ground also succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. If the Council are to continue to pursue the CIL they must now issue a revised Demand Notice with a revised determined deemed commencement date in accordance with Regulation 118(5).

Formal decision

6. For the reasons given above, the appeal under the grounds made is allowed and the surcharges [REDACTED] are quashed.

K McEntee

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