



Appeal Decision

by **Ken McEntee**

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

Decision date: 26 March 2020

Appeal ref: APP/W0340/L/19/1200307

- The appeal is made under Regulations 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by West Berkshire Council.
- Planning permission was granted on 26 March 2019.
- A Liability Notice was served on 25 June 2019.
- A Demand Notice was served on 26 June 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
- The alleged breach which led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is allowed and the surcharge is quashed.

Procedural matters

1. The parties have made applications for costs against one another. These are considered in separate decisions attached to this one.

Reasons for the decision

2. Since this appeal was submitted, the Valuation Office Agency (VOA) issued a decision on 13 January 2020 on an appeal made under Regulation 114. The VOA determined a zero CIL charge for the appeal development. Regulation 67(1) explains that where planning permission is granted for a chargeable development, a Commencement Notice must be submitted to the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. However, Regulation 67(1A) states "*This Regulation does not apply to a development (b) in relation to which the chargeable amount, calculated under Regulation 40, is zero*". Therefore, it follows that as a Commencement Notice was

not required in this case, the alleged breach did not occur and consequently a surcharge cannot be imposed. In these circumstances, the appeal under Regulation 117(1)(a) must succeed.

3. In view of the above, the appeal under Regulation 117(1)(c) does not fall to be considered.

Formal decision

4. For the reasons given above, the appeal is allowed and the surcharge of [REDACTED] is quashed.

K McEntee