



Appeal Decision

by **Ken McEntee**

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

Decision date: 15 May 2020

Appeal ref: APP/G5750/L/20/1200375

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by the London Borough of Newham.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 10 June 2019.
- A Default Liability Notice was served on 3 July 2019.
- A Demand Notice was served on 22 November 2019.
- A further revised Demand Notice was served on 24 December 2019.
- The description of the development is: [REDACTED]
- [REDACTED]
- The alleged breach is late payment of over 6 months of the CIL.
- The outstanding late payment surcharge is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 10 June 2019.

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

Procedural matters

1. For the avoidance of doubt, although surcharges have been imposed for late payment of over 30 days as well as for failing to assume liability and to submit a Commencement Notice, the appellant has made it clear that he is solely appealing against the surcharge imposed for late payment of the CIL of over 6 months. Therefore, that is the only surcharge I shall consider.

The appeal under ground 117(1)(c)

2. An appeal under this ground is that the surcharge has been calculated incorrectly. However, although the appellant has appealed under this ground, he has not provided any supporting arguments to support it. It would appear from his submissions that he is appealing against the surcharge in principal, rather than its calculation. Therefore, I have no reason to believe the surcharge has been calculated incorrectly. Whether the surcharge should have been imposed is considered in my determination of the ground 118 appeal below. The appeal under ground 117(1)(c) fails accordingly.

The appeal under Regulation 118

3. An appeal under this ground is that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date. Regulation 68 explains that a 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. Although the Council discovered from a site visit made on 10 April 2019 that works had commenced, they determined the deemed commencement date to be 10 June 2019 as that is when retrospective planning permission was granted. However, the appellant argues that as a section 106 agreement under the Town & Country Planning Act 1990 was not signed until 3 July 2019, technically planning permission was not actually granted until then. Therefore, he contends that the correct deemed commencement date should be taken as 3 July 2019, which is within 6 months of the Demand Notice and consequently would not fall for a late payment surcharge.
4. 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. Regulation 8(2) explains that planning permission first permits development the day planning permission is granted for that development, but subject to the provisions set out in paragraphs 8(3) to (7). The signing of a section 106 agreement is not one of the provisions listed. I am not aware of any planning legislation that states a planning permission is not a planning permission until an associated section 106 agreement is signed. Therefore, I cannot accept the appellant's argument and conclude that the Council have not incorrectly determined the deemed commencement date. It follows therefore that the Council were entitled to impose the late payment surcharge. The appeal under this ground also fails accordingly.

Formal decision

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

K McEntee