# **Appeal Decision**

## by Ken McEntee

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

Decision date: 21 May 2020

## Appeal ref: APP/C1435/L/19/1200369

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by against a surcharge imposed by Wealden District Council.
- The relevant planning permission is to which the surcharge relates is
- Planning permission was granted on 5 December 2016.
- The description of the development is ■
- A Liability Notice was issued on 5 December 2016.
- A Demand Notice was issued on 11 September 2019.
- A revised Demand Notice was served on 3 December 2019.
- The alleged breach is the late payment of the CIL.
- The outstanding late payment surcharge is
- The determined deemed commencement date stated in the Demand Notice is 20 August 2019.

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

#### Reasons for the decision

1. The basis of the appellants' case is that they contend that works did not begin on the chargeable development until 12 October 2019. Therefore, as the CIL was paid in full on 8 November 2019 (within 30 days) it was not late and consequently the late payment surcharge should not have been imposed. However, as the Council (Collecting Authority) point out, the Commencement Notice submitted on 9 August 2019 stated a commencement date of 20 August 2019 and includes a signed declaration which the appellants acknowledge that if the intended date changes, failure to notify the Council by way of a new Commencement Notice will result in the CIL amount being due in full on the day of commencement. As no new Commencement Notice was submitted, the Council had no option but to take 20 August 2019 as the date of commencement and the CIL automatically became payable in full from that date, although the Council imposed the surcharge from 9 September 2019 due to a delay in receiving a completed Assumption of Liability form. Either way, as the CIL was paid on 8 November 2019, it was not paid within

- 30 days of commencement. Therefore, the Council were entitled to impose a late payment surcharge in accordance with Regulation  $85(1)(b)^1$ .
- 2. In these circumstances, I am satisfied that the alleged breach occurred, and the Council has not issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on both grounds therefore fail accordingly.

#### Formal decision

3. For the reasons given above, the appeal on the grounds made is dismissed and the late payment surcharge of is upheld.

K McEntee

 $<sup>^1</sup>$  Where a CIL amount is not received in full after the period of 30 days beginning with the day on which the amount is due, the Collecting Authority may impose a surcharge equal to 5% of the amount or £200, whichever is the greater amount.