



Appeal Decision

by **Ken McEntee**

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

Decision date: 11 June 2020

Appeal ref: APP/A1910/L/20/1200378

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 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 Dacorum Borough Council.
- Planning permission was granted 26 February 2019.
- A Liability Notice was served on the previous landowner on 11 March 2019.
- A Liability Notice was served on the appellant on 17 January 2020.
- A Demand Notice was served on 17 January 2020.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- The alleged breaches are the failure to assume liability and 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 18 December 2019.

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

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

1. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN, they may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount.
2. In this case, the appellants carried out demolition works but did not submit a CN as they did not believe 'demolition' constituted development. However, the description of the development granted by the relevant planning permission clearly includes "*Demolition of [REDACTED]*". Section 56(2) of the Town and Country Planning Act 1990 explains that development shall be taken to

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

be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) gives examples of what 'material operation' means and includes in section 56(4)(aa) "*any work of demolition of a building*". Also, section 55(1A) includes "demolition of buildings" in the meaning of 'development'. Therefore, I am satisfied that works began on the chargeable development at the point demolition works were carried out. Although a CN was eventually submitted, unfortunately it was sent after works began and was therefore not valid. A Transfer of Assumed Liability Notice was also submitted after the event. The appeal under this ground fails accordingly.

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

3. The appellant contends that he didn't receive a Liability Notice (LN) until 20 January 2020. However, it is clear that the Council sent a LN to the original landowner on 11 March 2019. The notice was registered as a local land charge as the Council are required to do. Such a charge binds the land and any owner or purchaser are deemed to have full knowledge of any burden attached to the land by virtue of the registration. Therefore, I am satisfied a LN was correctly served. The appeal under this ground fails accordingly.

The appeal under Regulation 118³

4. The main basis of the appellant's case under this ground is that while he accepts that demolition works began on 18 December 2019, as he believed that this did not constitute building works, development had not actually commenced. However, this is contradicted by the appellant's submitted CN, which states a commencement date of 18 December 2019. Nevertheless, in view of my conclusions in paragraph 2 above, the appeal must also fail on this ground.
5. The appellant is clearly unhappy with the information and advice that was provided by the Council on their website, which he considers was misleading. While I have sympathy with the appellant if this was the case, it is not a matter for me to consider. If the appellant is not happy with the Council's conduct in this matter or their adopted procedures, it is open to him to make a complaint through the Council's established complaints process in the context of local government accountability.

Formal decision

6. For the reasons given above, the appeal is dismissed and the surcharges of [REDACTED] are upheld.

K McEntee

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

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