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# Appeal Decision

by Ken McEntee

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

Decision date: 11 June 2020

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**Appeal ref: APP/C1245/L/20/1200387**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a), (b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Dorset Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 13 February 2019.
- A Liability Notice was served on 14 February 2019.
- A Demand Notice was served on 10 February 2020.
- The description of the development is: [REDACTED]

- The alleged breach is the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

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

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## Procedural matters

1. It is clear that the main purpose of this appeal is to challenge the Council's calculation of the CIL liability in accordance with Regulation 40. However, this is not something within my powers to consider. I can only determine the appeal on the grounds made in relation to the surcharge. If the appellant was not satisfied with the CIL calculation, the appropriate course was to request a review under Regulation 113 within 28 days of the date of issue of the Liability Notice and subsequently by way of an appeal under Regulation 114 to the Valuation Office Agency. As there is no evidence before me of any such request or appeal having been made, the CIL charge stands.

## The appeal under Regulations 117(1)(a)<sup>1</sup> and (b)<sup>2</sup>

2. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice 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. The

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<sup>1</sup> The alleged breach which led to the surcharge did not occur

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

appellant does not refute that he did not submit a Commencement Notice, but instead argues that as the Liability Notice was issued by the former Weymouth & Portland Borough Council, Dorset Council did not actually serve a valid Liability Notice. However, as the Council point out, the Local Government (Structural Changes)(Transitional Arrangements)(No.2) Regulations 2008 make clear that *"Anything done by, or in relation to, a predecessor council or a successor council in the exercise of, or in connection with, a function that is to be exercised on and after the reorganisation date by the related single tier council shall have effect as if done by, or in relation to, that council"*. It goes on to explain that this applies in particular to any certificate, direction or notice given by or to such a Council. Consequently, I do not accept the appellant's argument.

3. Therefore, I conclude that a valid Liability Notice was correctly served and that the alleged breach of failing to submit a Commencement Notice before starting works on the chargeable development occurred. The appeals under Regulation 117(1)(a) and (b) fail accordingly.

### **The appeal under Regulation 117(1)(c)<sup>3</sup>**

4. The appellant has not provided any supporting evidence that the surcharge has been calculated incorrectly. Instead, he simply argues that the surcharge should not have been imposed at the outset as the development was not CIL liable. However, I have addressed this matter in paragraph 1 above. Therefore, there is no evidence before me that the surcharge has been calculated incorrectly. The appeal under this ground also fails.

### **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*

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<sup>3</sup> The surcharge has been calculated incorrectly