The Planning Inspectorate

# Appeal Decision

**by Ken McEntee**

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

**Decision date: 6 July 2020**

## Appeal ref: APP/C3620/L/19/1200366

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 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 Mole Valley District Council.
- Planning permission was granted on appeal [redacted] on 5 November 2019.
- The description of the permission is [redacted]
- A Liability Notice was issued on 14 November 2019.
- A Demand Notice was issued on 14 November 2019.
- A revised Demand Notice was issued on 22 November 2019.
- The alleged breach to which the surcharge relates is the failure to submit a Commencement Notice before commencing work 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 [redacted] is upheld.**

## Procedural matters

1. The appellant's agent contends that the Liability and Demand Notices are invalid as they have referenced the original development description instead of the one given in the appeal decision, they do not state the appeal reference and they do not include details of social housing relief and/or any calculated deductions for demolished floor space. However, I am satisfied that both notices correctly describe the development as was given permission on appeal. The appeal Inspector removed the words "Retrospective application" and the description in the Liability and Demand Notices reflect this. While it may have been appropriate for the notices to have referenced the appeal decision, I do not consider the fact they didn't do so renders the notices invalid. In any event, it is important to note that if I considered otherwise, the Council would simply issue revised notices which would only serve to cause the appellants to re-appeal, resulting in unnecessary delay and would not alter my conclusions on the merits of the case.

2. With regard to the point about the omission of social housing relief and deduction for demolished floor space, this is not something within my remit to consider. For the avoidance of doubt, I have no power to amend or quash the CIL charge and can only determine the appeal solely in relation to the surcharge, which was imposed for the alleged breach of failing to submit a Commencement Notice (CN) before starting works on the chargeable development. The only way a CIL charge can be changed is by way of a review under Regulation 113 or subsequent appeal under Regulation 114 to the Valuation Office Agency.

## The appeal under Regulation 117(1)(a)[1]

3. Regulation 67 (1) of the CIL regulations explains that a 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. In this case, the appellant demolished the public house before obtaining planning permission, which was granted on appeal. The basis of the appellant's case appears to be that as the Inspector altered the description of the development by omitting the words 'Retrospective application' the demolition works do not form part of the development permitted and consequently as the remaining aspects of the permission have not yet begun, the alleged breach of failing to submit a CN has not occurred. However, although the Inspector removed the words 'Retrospective application', he did not remove 'demolition' (which also formed part of the application) from the description of the development and the fact remains that demolition works had already occurred before planning permission was granted. As the Inspector also states in his decision "[redacted] *has already been demolished, and therefore the development has commenced*". The development automatically became CIL liable from the point demolition works began as that is when a material operation took place as defined by section 56(4)(aa) of the Town & Country Planning Act 1990.

4. As with appeal decision [redacted] referenced by the Council, due to the permission already having commenced, it was obviously not possible for a CN to be submitted in advance of starting works as required, and thus it was not possible for the appellant to prevent the subsequent surcharge being imposed. It is envisaged by the CIL guidance that the issue of a Liability Notice will be followed by submission of a CN by the relevant person. However, by carrying out demolition works in advance of planning permission, the appellant effectively prevented the normal sequence of events from taking place.

5. The appellant's agent argues that the Council were informed of the demolition works by way of a submission of a Demolition Notice under section 80 of the Building Regulation Act 1984. However, a Demolition Notice is required in order for the Building Control Officer to consider whether any precautions or conditions are needed for protection of public/property. The building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. A Demolition Notice does not act as a substitute for a CN and the fact remains that a CN was not submitted before works began on the chargeable development. In these circumstances, I have to conclude that the alleged breach occurred. The appeal under this ground fails accordingly.

[1] The alleged breach which led to the surcharge did not occur

## The appeal under Regulation 117(1)(b)[2]

6. It is clear from the evidence that the Council issued a Liability Notice on 14 November 2019 and the appellant has enclosed a copy with his appeal documents. As the appeal decision was issued on 5 November 2019, I am satisfied the Council have met the requirements of Regulation 65(1) that a Liability Notice must be issued as soon as practicable after the day on which planning permission first permits development. Therefore, it is not clear why the appellant has appealed under this ground, which fails accordingly.

## The appeal under Regulation 117(1)(c)[3]

7. Again, the appellant's decision to appeal under this ground appears to have been misplaced. He has not submitted any supporting evidence to demonstrate that the surcharge has been calculated incorrectly. Instead, he has simply argued that a surcharge should not have been imposed. I have already concluded on that issue under the appropriate ground of appeal - Regulation 117(1)(a). Therefore, the appeal under this ground also fails accordingly.

## Formal decision

8. For the reasons given above, the appeal on all grounds made is dismissed and the surcharge [redacted] is upheld.

*K McEntee*

[2] The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates
[3] The surcharge has been calculated incorrectly