



Appeal Decision

by **Ken McEntee**

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

Decision date: 4 August 2020

Appeal ref: APP/R3650/L/20/1200397

- The appeal is made under Regulation 117(1)(c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Waverley Borough Council.
- Planning permission was granted on 6 November 2019.
- A Liability Notice was served 16 January 2020.
- A Demand Notice was served on 6 March 2020.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the permission is [REDACTED]
- The alleged breaches to which the surcharges relate are the failure to assume liability, the failure to submit a Commencement Notice before starting works on the chargeable development and the late payment of the CIL.
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for late payment of the CIL is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 6 November 2019.

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

Appeal under Regulation 117(1)(c)¹

1. Although the appellants have appealed on this ground it is clear from their representations that they are arguing that the surcharges should not have been imposed, rather than they have been incorrectly calculated. Therefore, I shall address this argument first. When the original planning permission² was granted on 23 March 2018 a CIL charging schedule had not been adopted for Waverley Borough Council (the Collecting Authority). However, development was not carried out in accordance with the approved plans. As a result, retrospective permission was required. However, when retrospective permission was subsequently granted on 6 November 2019 a CIL charging schedule was now in place and the development automatically became CIL liable, irrespective of whether or not development was carried out when there was no CIL schedule in place or whether what had been built is any larger than that originally permitted. As neither an

¹ The surcharges have been incorrectly calculated.

² [REDACTED]

Assumption of Liability Notice nor a Commencement Notice were submitted, as it was obviously not possible to do so, the relevant surcharges were correctly imposed. By not carrying out the works in accordance with the planning permission, this situation was effectively one of the appellants' own making.

2. Regulation 81 explains that the Council may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development where nobody has assumed liability. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid CN the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. The chargeable amount in this case is [REDACTED] I am satisfied these surcharges has been calculated correctly.
3. The Council have also imposed a late payment surcharge totalling [REDACTED] Regulation 85(1) explains that where a chargeable amount is not received in full after the end of the period of 30 days, beginning with the day on which payment is due, the Council may impose a surcharge equal to 5% of the amount or £200, whichever is the greater. As more than 30 days have lapsed since the chargeable amount became due (the date of the deemed commencement), the appellants became liable to pay a late payment surcharge. [REDACTED] I am satisfied the Council has also correctly calculated this surcharge.

The appeal under Regulation 118³

4. The appellants contend that the correct date of commencement is 1 November 2018. However, Regulation 68 explains that a Collecting Authority 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. CIL 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. However, Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out then granted planning permission under section 73A of the Town & Country Planning Act. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. In this case, planning permission was granted on 6 November 2019. Therefore, I am satisfied the Council has determined the correct deemed commencement date.

Formal decision

5. For the reasons given above, the appeal is dismissed on both grounds and the surcharges totalling [REDACTED] each are upheld.

K McEntee

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