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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: 22 February 2021

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**Appeal ref: APP/V1260/L/20/1200417**

**Land at** [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bournemouth, Christchurch and Poole Council.
- The relevant planning permission to which the surcharge relates is [REDACTED] for reserved matters in relation to [REDACTED]
- Reserved matters approval was granted on 29 January 2020.
- A Liability Notice was served on 3 February 2020.
- A Demand Notice was served on 27 May 2020.
- The description of the development is: "[REDACTED]"  
[REDACTED]
- The alleged breach of planning control is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date stated in the Demand Notice is 17 February 2020.

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

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## Procedural matters

1. Although the appellant has ticked the box for an appeal under Regulation 118 – *that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date*, it appears clear that most of his arguments are more relevant to an appeal under Regulation 117(1)(a) – *that the alleged breach which led to the surcharge did not occur*, as he insists that he did submit a Commencement Notice (CN) before starting works on the chargeable development. In view of this, the appellant was asked by the Inspectorate to clarify whether he wished an appeal under Regulation 117(1)(a) to be considered but no response was received.
2. However, in view of the fact that the Council have also mainly focussed their response to the appeal on the arguments in relation to the alleged breach, I

consider it would be fair and reasonable for me to determine the appeal on ground 117(1)(a) as well as 118 without causing prejudice to either party.

### **Reasons for the decision**

3. Regulation 67(1) of the CIL regulations explains that a CN must be submitted to the Council no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant contends that a CN was submitted on 31 January 2020, stating a commencement date of 3 February 2020 and has provided a copy. He also contends that he submitted a further CN on 27 May 2020, with a commencement date of 29 February 2020, although the copy he has provided actually states a commencement date of 29 May 2020. With regards to the first CN, although it is dated 31 January 2020, the Council have provided evidence to demonstrate that it was actually created on 23 June 2020, the same date the appeal was submitted. I consider it significant that the appellant has not taken the opportunity to respond to the Council's assertions. Furthermore, the appellant states that he submitted the original CN by post but has not produced any proof of postage. I also note that the Council's Building Control Team confirmed that demolition works began on 17 February 2020, but the appellant has not provided any evidence to refute this.
4. With regards to the second CN of 27 May 2020 with a commencement date of 29 May 2020, notwithstanding Building Control's confirmation that works commenced on 17 February 2020, the Council also received photographic evidence of 20 May 2020 that demolition works had been carried out. Therefore, the CN of 27 May 2020 was clearly submitted too late to be valid.
5. On the evidence before me I cannot be satisfied a CN was submitted before works began on the chargeable development. Therefore, I conclude that the alleged breach occurred. I also cannot be satisfied the Council issued a Demand Notice with an incorrectly determined deemed commencement date. In these circumstances, I have no option but to dismiss the appeal on both grounds made.

### **Formal decision**

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

*K McEntee*