



Appeal Decision

by **Ken McEntee**

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

Decision date: 4 March 2021

Appeal ref: APP/Y9507/L/20/1200441

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by South Downs National Park Authority.
- The relevant planning permission to which the surcharges relate is [REDACTED]
- Planning permission was granted on 4 March 2019.
- A Liability Notice was served on 11 March 2019.
- A Demand Notice was served on 18 June 2020.
- The description of the development is: [REDACTED]
- The alleged breach that led to the surcharge 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]
- The determined deemed commencement date given in the Demand Notice is 3 December 2019.

Summary of decision: The appeal under Regulation 117(1)(a) is dismissed and the surcharge is upheld, but the appeal under Regulation 118 is allowed.

The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the alleged breach that led to the surcharge did not occur. The appellant does not dispute that a Liability Notice was sent by the Council and he has not appealed under Regulation 117(1)(b). However, the main basis of the appellant's case is that he did not receive the Liability Notice as he considers it is likely that the e-mail sent by the Council with the notice attached, went into his junk mail-box as that is where he found the subsequent e-mail attaching the Demand Notice. Consequently, he was unaware of the need to submit a Commencement Notice before starting works on the development. While I have every sympathy if the appellant did not see the relevant e-mail and if the e-mail found its way into his junk mail-box, I can only consider the appeal on its facts and cannot take into account mitigating circumstances. With that in mind, it is clearly a matter of fact that a Commencement Notice was not submitted by the appellant before starting works on the chargeable development and therefore the alleged breach occurred. Consequently, the appeal under this ground must fail accordingly.

2. The appellant questions why the Council did not use a "read receipt" for the e-mail and why they did not send a reminder for the Commencement Notice. I can only suggest that if the appellant is unhappy with the Council's conduct or their adopted procedures, he may wish to make a complaint to the Council in line with their established complaints process in accordance with local government accountability.

The appeal under Regulation 118

3. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council determined that date to be 3 December 2019 from building control records. However, the appellant contends that works actually commenced on 2 December 2019 and has provided photographic evidence to support his claim. As the Council have decided not to exercise their right to withdraw the granted Annex Relief due to a the disqualifying event of failing to submit a Commencement Notice, the correct date of commencement is somewhat academic as its purpose is to establish the starting point for CIL liability. Nevertheless, as the appellant has produced a photograph dated 2 December 2019 clearly showing works having begun, I have to conclude that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal under this ground therefore succeeds accordingly.
4. Consequently, in accordance with Regulation 118(4) the Demand Notice ceases to have effect. If the Council are to continue to pursue the CIL surcharge, they must now issue a revised Demand Notice with a revised deemed commencement date of 2 December 2019.

Formal decision

5. For the reasons given above, the appeal is dismissed under Regulation 117(1)(a) and the surcharge is upheld, but the appeal under Regulation 118 is allowed.

K McEntee