



Appeal Decision

by Ken McEntee

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

Decision date: 18 March 2021

Appeal ref: APP/PO119/L/20/1200433

Land at [REDACTED]

- 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 surcharges imposed by South Gloucestershire Council.
- The relevant planning permission is to which the surcharge relates is [REDACTED]
- Planning permission was granted on 23 February 2018.
- The description of the development is [REDACTED]
- A Liability Notice was issued on 7 March 2018.
- A Demand Notice was issued on 15 June 2020.
- The alleged breaches to which the surcharges relate is the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date stated in the Demand Notice is 23 February 2018.

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

The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the claimed breaches which led to the imposition of the surcharges did not occur. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice (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, it appears the Council found from a site visit made that development had commenced on site in the form of demolition works but they had not received a CN. The appellant does not refute that she did not submit a CN, but contends that "*No works has been done on site of planning application [REDACTED] except for the garage being demolished in 2019 due to work carried out against planning application [REDACTED] in January 2019*".

¹ Demolition of existing conservatory and erection of single storey rear/side extension to form additional living accommodation (Amendment to previously approved scheme PK16/1426/F)

2. It is clear from the description of planning permission [REDACTED] that it includes demolition of the existing garage. Despite the appellant's assertions, planning permission [REDACTED] does not include demolition of the existing garage. Section 56(2) of the Town and Country Planning Act 1990 explains that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) lists examples of what 'material operation' means and includes in section 56(4)(aa) "*any work of demolition of a building*". Therefore, I am satisfied the demolition works that were carried out amount to a material operation and consequently development in relation to [REDACTED] commenced. I conclude that the alleged breach of failing to submit a CN before starting works on the chargeable development occurred.
3. There is also no dispute that the appellant did not assume liability by way of submission of an Assumption of Liability Notice as required by Regulation 31(1). I am therefore satisfied that this breach also occurred. In these circumstances, the appeal under this ground fails accordingly.

The appeal under Regulation 118

4. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. Although the appellant has appealed this ground, her argument is not so much that the Council have determined the wrong date for commencement of the works, but more that works have not actually commenced. However, I have addressed this issue in relation to ground of appeal 117(1)(a) above. Nevertheless, the appellant states that demolition of the garage took place in 2019 (albeit in relation to another permission) but has not given a specific date. Regulation 68 explains that the Council must determine the day on which a chargeable development was commenced if it has not received a CN but has reason to believe it has commenced. Without knowledge of an exact date, the Council determined the commencement date to be when planning permission first permits development, which is when planning permission was granted. In the absence of an alternative date, I am not satisfied the Council has issued a Demand Notice with an incorrectly determined deemed commencement date.

Formal decision

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

K McEntee