



Appeal Decision

by Ken McEntee

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

Decision date: 20 April 2021

Appeal ref: APP/K3415/L/20/1200446

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Lichfield District Council.
- Planning permission was granted on 3 July 2020.
- A Liability Notice served on 6 July 2020.
- A revised Liability Notice was served on 8 July 2020.
- A Demand Notice was served on 22 September 2020.

The relevant planning permission to which the CIL surcharges relates is [REDACTED]

[REDACTED] The description of the development is: [REDACTED]

- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a commencement Notice is [REDACTED]

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

1. Procedural matters
2. Although the appellant has ticked the box for an appeal under Regulation 117(c) - *the surcharge has been calculated incorrectly*, I note that all his supporting arguments concern his contention that a Commencement Notice was submitted before development began and therefore the surcharge should not have been imposed. However, these arguments are clearly more relevant to an appeal under Regulation 117(1)(a) - *the claimed breach which led to the surcharge did not occur*. As the Council have responded to the appellant's arguments, I consider it appropriate to determine the appeal under Regulation 117(1)(a) without causing prejudice to either party.
3. The appellant has also ticked the box for an appeal under Regulation 118 - *the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date*. However, as it is clear from the evidence that the appellant actually agrees with the Council's deemed commencement date of 22 September 2020, it is reasonable to assume that this ground was also ticked in error. I shall therefore restrict my determination to the appeal under Regulation 117(1)(a) alone.

4. Reasons for the decision
5. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (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 insists that his mother posted a CN through the letter box of the Council's offices on 21 September 2020. However, the notice is dated 22 September 2020 and also states a commencement date of 22 September 2020. Therefore, the Council considered the CN to be invalid as it did not meet the requirement of regulation 67(1). However, the appellant insists that the CN was dated 22 September 2020 in error and the form was actually completed on 20 September 2020. While I have sympathy with the appellant if he simply made a genuine error, I can only determine the appeal on the documentary evidence before me. With that in mind, I cannot be satisfied a valid CN was submitted before works commenced on the chargeable development.
6. However, my conclusion is not solely based on the dates given in the CN. For a CN to be valid it must also identify the Liability Notice as required by Regulation 67(2)(b). This is normally done by stating the Liability Notice reference in box 'c' under 'Details of Development'. Unfortunately, in the CN submitted, instead of the Liability Notice reference, "SELF BUILD" has been input in the relevant box, thus rendering the CN invalid. In the circumstances described, the appeal fails accordingly.

Formal decision

7. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.
- 8.
9. K McEntee