# **Appeal Decision**

#### by Ken McEntee

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

**Decision 20 June 2017** 

## Appeal ref: APP/D3315/L/17/1200094

- The appeal is made under Regulation 117(a) and (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by \_\_\_\_\_ against a surcharge imposed by Taunton Deane Borough Council.
- A Liability Notice was issued on 22 December 2015.
- A revised Liability Notice was issued on 20 January 2017.
- A Demand Notice was issued on 20 January 2017.
- The relevant planning permission for which the CIL surcharge relates is
- The description of the development is
- The deemed commencement date given in the Demand Notice is 19 January 2017.
- The outstanding surcharge payable for failure to submit a valid Commencement Notice is

Summary of decision: The appeal on Regulation 117 (a) is allowed and the surcharge of is quashed. The appeal on Regulation 117 (c) is not considered and the appeal on Regulation 118 is dismissed.

# The appeal on ground 117(a)1

1. CIL Regulation 67 (1) explains that a Commencement Notice must be submitted to the Collecting Authority no later than the day on which the chargeable development is to be commenced. In this case, the appellant submitted a Commencement Notice dated 29 June 2016 stating a commencement date of 4 July 2016. Although the notice was dated 29 June 2016, the appellant contends that it was posted on 28 June 2016. Nevertheless, the Council (Collecting Authority) insist it was not received until 4 July 2016, which is the same day as the commencement date stated in the notice. Consequently, the Council considered the notice to be invalid. However, Regulation 67 (1) only requires a Commencement Notice to be "submitted" (not received) no later than one day before the day on which the chargeable development is to be commenced. Therefore, as the Commencement Notice was received by the Council on 4 July 2016 and dated 29 June 2016, I consider it reasonable to conclude on the balance of probabilities that the requirement of Regulation 67 (1) has been met.

<sup>&</sup>lt;sup>1</sup> The claimed breach which led to the surcharge did not occur.

Appeal Decision: APP/D3315/L/17/1200094

2. In these circumstances, I am not satisfied that the alleged breach which led to the surcharge occurred. Therefore, the appeal on Regulation 117(a) succeeds accordingly and the surcharge is being quashed.

# The appeal on Regulation 117(c)<sup>2</sup>

3. As I am quashing the surcharge it follows that the appeal on Regulation 117 (c) does not fall to be considered.

### The appeal on Regulation 1183

- 4. The Council deemed the commencement date in the Demand Notice to be 19 January 2017. I consider it was reasonable for the Council to have decided on this date as that is when they conducted a site visit and could see for themselves that works on the development had begun. Therefore, I am not satisfied the Council have issued a Demand Notice with an incorrectly deemed commencement date. The appeal on this ground fails accordingly.
- 5. While I am dismissing the appeal on this ground, I should point out that if I had found the Council had issued a Demand Notice with an incorrectly deemed commencement date and allowed the appeal, I would then be required by CIL Regulation 118 (5) to determine a revised commencement date. If I determined that date to be 4 July 2016 as stated in the Commencement Notice or 8 July 2016 as later argued by the appellant, it would have resulted in him being liable to pay a larger CIL as the purpose of the commencement date is to determine the starting point for CIL liability.

#### Formal decision

6. For the reasons given above, the appeal on Regulation 117 (a) is allowed and the surcharge of surcharge is quashed. The appeal on Regulation 117 (c) is not considered and the appeal on Regulation 118 is dismissed.

K McEntee

<sup>2</sup> The surcharge has been calculated incorrectly.

<sup>&</sup>lt;sup>3</sup> The collecting authority has issued a demand notice with an incorrectly deemed commencement date.