# **Appeal Decision**

## by Ken McEntee

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

Decision Date: 27 March 2018

## Appeal ref: APP/H1840/L/17/1200148

- 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
- A Liability Notice was served by Wychavon District Council on 21 June 2017.
- A Demand Notice was served on 12 October 2017.
- The relevant planning permission to which the CIL relates is
- Planning permission was granted on 21 June 2017.
- The alleged breaches are the failure to assume liability and failure to submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is
- The outstanding surcharge for failure to submit a Commencement Notice is
- The deemed commencement date determined by the Collecting Authority (Council) is 31 July 2017.

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

#### **Procedural matters**

- 1. It appears clear that the primary basis of the appeal concerns the fact that the Council failed to determine the planning application before CIL was implemented. The 8 week determination date was 25 May 2017 but the appellants agreed to the Council's request of an extension of time to 1 June 2017. However, the application was not determined until 21 June 2017, without the appellants agreeing a further extension of time. In the meantime, CIL was implemented by Wychavon on 5 June 2017 and this resulted in the development becoming CIL liable.
- 2. On the face of it, the Council's actions would appear to be perverse and unjust, but whether or not the development is/should be CIL liable is not a matter within my remit to consider. I can only determine the appeal on the grounds made (Regulations 117(1)(a)<sup>1</sup> and 118)<sup>2</sup>. However, should the appellants be unhappy with the Council's conduct in this matter or their adopted procedures, it is open to

<sup>&</sup>lt;sup>1</sup> The alleged breach that led to the surcharge did not occur

<sup>&</sup>lt;sup>2</sup> The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date

them to submit a complaint through the Council's established complaints process in the context of local government accountability.

# The appeal under Regulation 117(1)(a)

3. Regulation 80 explains that a Council may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if the chargeable development has commenced and nobody has assumed liability. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has a received a valid Commencement Notice, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or £2,500, whichever is the lower amount. While I accept there are understandable mitigating reasons for not doing so, the inescapable fact is that the appellants did not assume liability or submit a Commencement Notice before starting works for on the chargeable development. Therefore, I have no option but to dismiss the appeal on this ground.

# The appeal under Regulation 118

4. Regulation 68 explains that a Collecting Authority must determine the day on which a chargeable development was commenced if it has not received a Commencement Notice. The Council contend they have determined the commencement date in this case to be 31 July 2017 as this was the date given by the appellants in a telephone conversation. The appellants have not disputed this and neither have they given an alternative commencement date. In the absence of any contrary evidence, I have no reason to conclude that the Council have issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground also fails accordingly.

#### Formal decision

5. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharges are upheld.

K McEntee