



Appeal Decision

by **Ken McEntee**

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

Decision date: 20 August 2019

Appeal ref: APP/P3610/L/19/1200266

- The appeal is made under Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge issued by Epsom & Ewell Borough Council.
- The relevant planning permission to which the surcharge relates was granted is [REDACTED].
- Planning permission was granted on 20 March 2018.
- A Liability Notice was served on 22 March 2018.
- A Demand Notice was served on 30 January 2019.
- A revised Demand Notice was served on 22 February 2019.
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The surcharge for the failure to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date stated in the Demand Notice is 25 January 2019.

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

Procedural matters

1. The appellants have made an application for costs against the Council. This is the subject of a separate decision accompanying this one.

The appeal under Regulation 117(1)(a)

2. An appeal under this ground is that the alleged breach that led to the surcharge did not occur. The surcharge was imposed by the Collecting Authority (Council) as demolition works took place without a Commencement Notice having been submitted. However, the appellant argues that 'demolition' did not form part of the planning permission and therefore works had not commenced on the chargeable development. 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) gives examples of what 'material operation' means and includes in section 56(4)(aa) "*any work of demolition of a building*". Demolition does not have to form part of the planning permission for it to constitute commencement of development. There is no suggestion that the demolition works were carried out under another form of permission, such as prior approval or permitted developments rights. In fact, the appellant makes clear that demolition took place simply to avoid incurring unnecessary business rates. Therefore, as there is no evidence that the demolition works were carried out under any other form of permission, it is a reasonable assumption that, although not intentionally, works commenced on the chargeable development.

3. The appellant points out that the Council were notified of the intended demolition by way of a Demolition Notice in accordance with section 80 of the Building Act 1984. This is required in order for the Building Control Officer to consider whether any precautions or conditions are needed for the protection of public and property. However, the building control system is a separate statutory regime to that of CIL and a Demolition Notice does not act as a substitute for a Commencement Notice. Unfortunately, a Commencement Notice was not submitted until 28 January 2019, which was after demolition works had taken place.
4. It is important to note that the CIL regime is not concerned with whether or not development is lawful, it is only concerned with whether it has commenced. There is nothing in the CIL Regulations which requires the commencement to be lawful. The trigger for CIL is the carrying out of a material operation. The date of commencement of development is a separate matter from the date upon which development could be said to be authorised.
5. In the circumstances described above, I have no option but to conclude that the alleged breach that led to the surcharge occurred. The appeal under this ground fails accordingly.

The appeal under Regulation 118

6. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement notice. The appellants informed the Council by e-mail that the existing building had been demolished on 25 January 2019. As this is the date given in the Demand Notice, I am satisfied the Council has not issued a Demand Notice with an incorrectly determined deemed commencement date.
7. In these circumstances, the appeal under this ground also fails accordingly.

Formal decision

8. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld

K McEntee