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# Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 23 May 2023

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**Appeal ref: APP/R3650/L/23/3318146**

**Land at** [REDACTED]

- 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 surcharges imposed by Waverley Borough Council.
- Retrospective planning permission was granted on 25 November 2022.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on 7 February 2023.
- A Demand Notice was served on 7 February 2023.
- The alleged breaches are the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The surcharge for failure to assume liability is [REDACTED].
- The surcharge for failure to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 29 November 2022.

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

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## The appeal under Regulation 117(1)(a)<sup>1</sup>

1. Regulation 80 explains that where nobody has assumed liability to pay CIL and the chargeable development has commenced, the Collecting Authority (Council) may impose a surcharge of [REDACTED]. Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, they may impose a surcharge equal to 20% of the chargeable amount payable or [REDACTED], whichever is the lower amount. In this case, it is clear, and not disputed, that demolition of the extension has taken place on the site. However, the appellant contends that the demolition did not form part of the chargeable development and instead formed part of separate refurbishment works to the site before planning permission was granted. It appears that it was decided to demolish the extension due to its poor condition.
2. As the works took place before permission was granted, it follows that permission was effectively granted retrospectively. While I note the appellant's arguments, I

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

would point out that the CIL regime is not concerned with whether or not a development has begun with other purposes in mind, it is only concerned with whether it has commenced as a matter of fact. There is nothing in the CIL Regulations which requires the commencement to be intentional. The trigger for CIL is the carrying out of a material operation as defined in section 56(4) of the Town & Country Planning Act 1990. It is not disputed that a material operation has taken place in this case, intentionally or otherwise, in the form of the demolition works. The carrying out of demolition due to the decaying condition of the extension, does not detract from the fact that the result of such works was the commencement of the chargeable development, particularly given that demolition formed part of what was applied for and subsequently approved. Therefore, while I have sympathy with the appellant if it was not his intention to commence works on the chargeable development, I am satisfied that he did so in the form of the demolition works.

3. As liability was not assumed and a Commencement Notice submitted, I have no option but to conclude that the alleged breaches which led to the surcharges have occurred as a matter of fact. The appeal on this ground fails accordingly.

### **The appeal under Regulation 118<sup>2</sup>**

4. The deemed commencement date stated in the Demand Notice is 29 November 2022, but the appellant contends that the demolition works took place in October 2022. As the 29 November 2022 favours the appellant and the Council are clearly content with that date, I consider it expedient to accept it. Otherwise, the earlier date could potentially result in the appellant being liable to pay late payment surcharges and interest as the purpose of the commencement date is to establish the starting point for CIL liability. Consequently, the appeal on this ground also fails.

### **Formal decision**

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

*K McEntee*

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