



Appeal Decision

by Ken McEntee

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

Decision date: 12 October 2023

Appeal ref: APP/Z1775/L/23/3327175

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against Portsmouth City Council's determined deemed commencement date.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 14 November 2022.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on the applicant for planning permission [REDACTED] on 29 November 2022
- A Demand Notice was served on the appellant on 6 July 2023.
- The determined deemed commencement date given in the Demand Notice is 4 April 2023.

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

Procedural matters

1. Although an appeal has been made under ground 117(1)(c) – *that the surcharge has been incorrectly calculated*, as no surcharge has been imposed, I can only assume that this ground was appealed in error. Therefore, I shall determine the appeal under Regulation 118 only – *that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date*.

Reasons for the decision

2. It appears clear the basis of the appellant's case is not that the Council has determined the wrong date of commencement, but that works have not actually commenced on the development at all. He concedes that the shop front has been removed but contends that this was done to carry out emergency repairs to the upper floors due to rotten floorboards. However, I should 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. It is clear that as the permission granted included removal of the shopfront, it follows that development has commenced on the development. Therefore, while I have sympathy with the appellant if he

removed the shopfront for safety reasons, unfortunately this has resulted in the commencement of the development. Once this happened, the appellant became liable for CIL with immediate effect. It is unfortunate that the appellant did not consult with the Council before deciding to press ahead with the remedial works.

3. On the evidence before me, I have no reason to believe the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal fails accordingly.

Formal decision

4. For the reasons given above, the appeal is dismissed.

K McEntee