



Appeal Decision

by **Ken McEntee**

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

Decision date: 26 October 2023

Appeal ref: APP/U1105/L/23/3329432

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(a) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by East Devon District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 21 August 2020.
- The description of the development is "[REDACTED]".
- [REDACTED].
- A Demand Notice was served on 15 August 2023.
- The alleged breaches that led to the surcharges are the failure to assume liability and submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date given in the Demand Notice is 8 August 2023.

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

Procedural matters

1. For the avoidance of doubt, I have no authority to grant or reinstate a CIL exemption and can only determine this appeal solely in relation to the surcharges.
2. It appears clear that the appellants are unhappy with the way the Collecting Authority (Council) has dealt with this matter. That being the case, it is open to them to make a complaint through the Council's established complaints process in accordance with local government accountability.

The appeal under Regulation 117(1)(a)

3. An appeal on this ground is that the alleged breach did not occur. However, there is no evidence that either an Assumption of Liability Notice or a valid Commencement Notice (CN) was submitted before works commenced on the development. While a CN was submitted, it was dated 10 August 2023 but also stated a commencement date of the 10 August 2023. Therefore, it was not submitted in accordance with CIL Regulation 67(1) which requires a CN to be submitted no later than the day before the day on which the chargeable development is to be commenced. The appellants explain the difficult times they have been through with their business, not least during the COVID

period. However, while I have sympathy with the appellants and in no way wish to appear dismissive of the challenging times they have experienced in recent years, I'm afraid I can only determine the appeal on its facts in relation to the CIL process and have no authority to consider mitigation. The CIL system is a very rigid and formulaic process and the necessary forms needed to be submitted in accordance with the Regulations. This was clearly explained in the Liability Notice of 29 September 2020.

4. The appellants argue that they did inform Building Control of the intended commencement. However, the Liability Notice also explained that notifying the Building Control Department is not the same as submitting the required CN (Form 6) to the Collecting Authority. A copy of the form was also attached. In these circumstances, the appeal on this ground fails accordingly.

The appeal under Regulation 117(1)(c)

5. An appeal on this ground is that the surcharges have been calculated incorrectly. However, the appellants have not explained why they consider the surcharges have been miscalculated. Nevertheless, Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, a surcharge of 20% of the chargeable amount may be imposed or [REDACTED], whichever is the lowest amount. The CIL amount in this case is [REDACTED]. As 20% of this sum = [REDACTED], it follows that [REDACTED] is clearly the lower amount. Therefore, I am satisfied the Council have not miscalculated this surcharge. Regulation 80 explains that as nobody has assumed liability and the chargeable development has commenced, the Collecting Authority may impose a surcharge of [REDACTED], which they have done in this case, and consequently have not miscalculated this surcharge either. Therefore, 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 date. In this case, the date given in the Demand Notice is 8 August 2023, which the Council established from a site visit conducted on that date. However, the appellants contend that the correct date is 10 August 2023 as they consider that the digging of holes does not constitute development. The trigger for CIL is the carrying out of a material operation. Section 56(4) of the Town & Country Planning Act 1990 lists examples of material operations and 56(4)(b) lists "the digging of a trench which is to contain the foundations, or part of the foundations, of a building". That would appear to me to be a reasonable description of what the Council found the situation to be on site on 8 August 2023. Therefore, I am not satisfied the Collecting Authority has incorrectly determined the deemed commencement date. The appeal on this ground also fails accordingly.

Formal Decision

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

K McEntee