



Appeal Decision

by Ken McEntee

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

Decision date: 6 December 2023

Appeal ref: APP/H1705/L/23/3330297

Land at [REDACTED]

- The appeal is made under Regulation 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Basingstoke & Deane Borough Council.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 15 September 2023.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on 18 September 2023.
- A Demand Notice was served on the appellant on 18 September 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 15 September 2023.

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

Procedural matters

1. It appears that the appellant would like to appeal the CIL charge amount of [REDACTED]. For the avoidance of doubt, I can only determine appeals in relation to the surcharges alone and have no authority to quash the overall CIL charge. This can only be done by way of an appeal to the Valuation Office Agency.

The appeal under Regulation 117 (1)(a)

2. An appeal under this ground is that the alleged breaches that led to the surcharges did not occur. It is clear, that demolition of a lean-to/conservatory formed part of the approved plans and the appellant does not deny that this structure has been demolished. However, he contends that such works were only undertaken for safety reasons due to the dilapidated condition of the lean-to/conservatory and not to commence works on the planning permission. While I note the appellant's assertions, for the purposes of CIL the important point to consider is not whether there was an intention for works to be implemented pursuant to a planning permission, but whether works have commenced. 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. Section 56(4)(aa) states "any work of demolition of a building" as an example of a material operation. While

demolition works may have been carried out for safety reasons in mind, unfortunately the result of such works was to cause the commencement of the chargeable development. The prior demolition of existing structures on the site is part of the total works necessary to undertake the development permitted. Those works of demolition are taken as the starting point at which development had begun.

3. The CIL regime is not concerned with whether or not a development was 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 or for commencement to progress to implementation.
4. Therefore, while I have sympathy with the appellant if it was not his intention to commence works on the chargeable development, I conclude that the demolition works amounted to such a commencement. As the appellant did not assume liability or submit a Commencement Notice before starting works, I am satisfied that the alleged breaches that led to the surcharges occurred as a matter of fact. The appeal on this ground fails accordingly.

The appeal under Regulation 118

5. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. However, it appears clear that the appellant's purpose of appealing on this ground is not that he disagrees with the deemed commencement date, but more that he doesn't believe that commencement has occurred at all. In view of my findings on this above, it follows that 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