



Appeal Decision

by Ken McEntee

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

Decision date: 21 December 2023

Appeal ref: APP/R0335/L/23/3330866

Land at [REDACTED]

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bracknell Forest Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 19 August 2022.
- The description of the development is: "[REDACTED]".
- A Liability Notice was served on 31 August 2022.
- A Demand Notice was served on 28 June 2023.
- A revised Demand Notice was served on 6 September 2023.
- A revised Demand Notice was served on 22 September 2023.
- A revised Liability Notice and Demand Notice were served on 6 October 2023.
- The alleged breaches that led to the surcharges is the failure to assume liability, to submit a Commencement Notice before starting works on the chargeable development, and to pay the CIL charge on time.
- The surcharge for the failure to assume liability is [REDACTED].
- The surcharge for the failure to submit a Commencement Notice is [REDACTED].
- The surcharge for late payment of the CIL is [REDACTED].
- The determined deemed commencement date stated in the Demand Notice is 21 August 2023.

Summary of decision: The appeal is allowed but the surcharges are upheld.

Reasons for the decision

1. An appeal under Regulation 118 is that the Collecting Authority (Council) issued a Demand Notice with an incorrectly determined deemed commencement date. However, it appears clear from the appellant's supporting arguments that the appeal is more a case that development has simply not commenced, rather than the Council have deemed an incorrect date of commencement. It is not disputed that demolition works have taken place on the appeal site, but the appellant contends that works on the chargeable development can only be deemed to have commenced once construction of the build begins. He refers to the description of the approval where it stipulates "following the demolition of the existing building". He also

argues that as pre commencement conditions have not been discharged, the development cannot be said to have commenced.

2. However, 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.
3. With regards to the appellant's point about pre commencement conditions not being discharged, it may be that he is suggesting that the demolition works can be deemed to be unlawful due to the conditions not being met, and therefore works have not lawfully commenced. However, there is nothing in the CIL Regulations which requires the commencement to be lawful. Regulation 6 lists a set of exclusions that are not to be treated as development for the purposes of section 208 of the Planning Act 2008; unlawful development is not listed as one of them. Development is defined in section 32 of the Act, as referenced by section 55 of the Town and Country Planning Act 1990. The definition is not limited to development carried out in accordance with a planning permission. In essence, planning permission is required for a material operation because it constitutes development, but a material operation does not have to be in accordance with a planning permission. Consequently, the fact that pre commencement conditions were not discharged, does not mean a material operation has not been carried out and consequently the chargeable development not commenced.
4. Therefore, on the evidence before me, I conclude that works have commenced on the chargeable development due to the demolition that has taken place.
5. Although the deemed commencement date given in the Demand Notice is 21 August 2023, the Council have since provided evidence in the form of a newspaper article with pictures, that the correct date is in fact 15 August 2023. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. Should the Council wish to continue to pursue the CIL they must now serve a revised Demand Notice with a revised deemed commencement date of 15 August 2023 as required by Regulation 69(4).
6. For the avoidance of doubt, while I am allowing the appeal, it does not affect the surcharges, which I am upholding for the reasons explained above.
7. I note that the appellant also claims that the Liability Notice is invalid as he feels it is ambiguous as it refers to payment being due by commencement but does not stipulate commencement of development. However, there is no ground of appeal available against the validity of a Liability Notice and I have no authority to consider this issue in an appeal under Regulation 118. The only way to challenge the validity of a Liability Notice is by way of Judicial Review.

Formal decision

8. For the reasons given above, the appeal on the ground made is allowed, but the surcharges of [REDACTED], [REDACTED] and [REDACTED] are upheld.

K McEntee