



Appeal Decision

by Ken McEntee

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

Decision date: 2 April 2024

Appeal ref: APP/H1705/L/24/3336338

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Basingstoke & Deane Borough Council.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted by appeal [REDACTED] on 21 March 2023.
- A Liability Notice served on 9 November 2023.
- A Demand Notice was served on 5 December 2023.
- The alleged breach to which the surcharge relates is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date given in the Demand Notice is 27 November 2023.

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

The appeal under Regulation 117(1)(a)

1. An appeal under Regulation 117(1)(a) is that the alleged breach that led to the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant sent a CN on the 5 December 2023, stating an intended commencement date of 27 November 2023. The appellant insists that this was done in error as the date of commencement was in fact 5 December 2023. While I have sympathy with the appellant if he made a genuine mistake, I'm afraid I can only determine the appeal based on the documentary evidence before me. With that in mind, I have to accept the commencement date to be 27 November 2023.
2. In any event, as the Council point out, even if the date of 5 December 2023 were to be accepted as the correct date of commencement, as it is the same date as the CN, it renders the CN invalid as it was not submitted no later than the day before the day commencement of the chargeable development took place as required by Regulation 67(1). On the evidence before me therefore, I can only conclude that the alleged breach occurred. The appeal on this ground fails accordingly.

The appeal under Regulation 118

3. In view of my findings above, I am not satisfied that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. Therefore, the appeal on this ground also fails.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee