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# Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 20 August 2024

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## Appeal ref: APP/M3645/L/24/3342702

- 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 a surcharge imposed by Tandridge District Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 26 October 2017.
- A Liability Notice was served on 31 October 2017.
- A Demand Notice was served 19 March 2024.
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].
- The determined deemed commencement date given in the Demand Notice is 24 October 2020.

**Summary of decision: The appeal under Regulation 117(1)(c) dismissed, but the appeal under Regulation 118 is allowed.**

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## Procedural matters

1. It appears clear that the appellant is unhappy with the way the Collecting Authority (Council) has dealt with this matter. If the appellant has concerns about the Council's conduct or their adopted procedures, she may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.
2. For the avoidance of doubt, I have no powers to determine whether or not the calculation of the overall CIL charge is correct. That is a matter for the Valuation Office Agency on receipt of an appeal in accordance with Regulation 114. There is also no ground of appeal available against the imposition or calculation of interest. Therefore, I can only determine this appeal solely in relation to the surcharge imposed. I shall address the appeal under Regulation 118 first.

## The appeal under Regulation 118

3. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. However, it appears clear in this case that the appellant is asserting that works were not commenced

at all. Her agent points out that the appellant was having difficulty starting the approved development within the required time period due to the unfortunate serious illness of her husband and the COVID lockdown. He points out that the development plots have since been sold and the development is now being carried out for open market housing rather than self-build. While I acknowledge this, I note that the Council have provided a screenshot of the 'Application for approval of details reserved by condition' (██████████/Cond2) dated 14 July 2021, which states in section 4 that the development commenced on 26 April 2021. Added to this, in the supporting arguments on the appeal form it states "...only limited self-build work had been undertaken for garage foundations...".

4. 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 "any work of construction in the course of the erection of a building" and "the digging of a trench which is to contain the foundations, or part of the foundations of a building". Therefore, on the evidence before me, I can only conclude that works did commence on the chargeable development. There is no suggestion that the works described above were carried out by the new site owners.
5. However, in view of the above, it is not clear why the Council have determined the commencement date to be 24 October 2020 when they had evidence before them that it began on 26 April 2021. Therefore, the appeal on this ground succeeds and the Demand Notice ceases to have effect. If the Council are to continue to pursue the CIL, they must now issue a revised Demand Notice in accordance with Regulation 69(4).

### **The appeal under Regulation 117(1)(c)**

6. An appeal under this ground is that the surcharge has been calculated incorrectly. The appellant does not refute that she did not submit a Commencement Notice. Consequently, in view of my findings above, the Council were entitled to impose a surcharge. Regulation 83 explains that in these circumstances the Council may impose a surcharge equal to 20% of the chargeable amount or £██████████, whichever is the lower amount. As 20% of the CIL amount of £██████████ equals £██████████, the sum of £██████████ is clearly the lower amount. Therefore, I am satisfied that the surcharge has been calculated correctly. The appeal on this ground fails accordingly.

### **Formal decision**

7. For the reasons given above, the appeal under Regulation 118 is allowed, but the appeal under Regulation 117(1)(c) is dismissed and the surcharge of £██████████ is upheld.

*K McEntee*