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# Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 4 September 2024

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**Appeal ref: APP/D1590/L/24/3346925**

**Land between** [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by Andrew Kinder against surcharges imposed by Southend-on-Sea City Council.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED].
- The description of the development approved is: "[REDACTED]".
- Planning permission was granted on 14 May 2024.
- A Liability Notice was served on 24 May 2024.
- A Demand Notice was served on 24 May 2024.
- The alleged breach to which the surcharges relate is the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for the failure to assume liability is £[REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is £[REDACTED].
- The determined deemed commencement date given in the Demand Notice is 15 May 2024.

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

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## The appeal under Regulation 117(1)(a)

1. An appeal under Regulation 117(1)(a) is that the alleged breach which led to the surcharges did not occur. The appellant has submitted extensive arguments in support of his grounds of appeal. The main thrust of his case is that he contends the demolition of the garages took place under previous planning permission [REDACTED], granted on 10 June 2020. Consequently, the appeal proposal should not have been classed as part-retrospective and therefore is not liable to CIL and CIL surcharges. The appellant points out that the description of the proposal in the appeal application is stated as "[REDACTED]", but "(demolished to date)" was taken out by the Council. He contends that the reference to the garages was merely to inform the Council that they had already been demolished. However, the Council point out, that a site visit conducted on 3 August 2023 showed the garages had not yet been demolished. I note that the appellant has not responded to refute this. As planning permission [REDACTED] expired on 10 June 2023, it follows that the demolition works were carried out since then, so not in relation to application [REDACTED]. The appeal application is therefore correctly described as part-retrospective.

2. In such circumstances, the development became CIL liable with immediate effect. Regulations 31(1) and 67(1) explain that an Assumption of Liability Notice and a Commencement Notice must be submitted before works are commenced on the chargeable development. As the application is part-retrospective, it follows that it was simply not possible for the appellant to carry out these requirements. However, by pressing ahead with the demolition of the garages before obtaining planning permission, this was effectively a situation of the appellant's own making. On the evidence before me therefore, I am satisfied that the alleged breaches occurred as a matter of fact. The appeal on this ground fails accordingly.

### **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. Regulation 7(5)(a) explains that where development has already been carried out and then granted planning permission under section 73A of the Town & Country Planning Act, it is to be treated as commencing on the day planning permission for that development is granted or modified. As planning permission in this case was granted on 14 May 2024, the deemed commencement date of 15 May 2024 given in the Demand Notice is clearly incorrect. Therefore, the appeal on this ground succeeds and the Demand Notice ceases to have effect.
4. However, should the Council wish to continue to pursue the CIL and CIL surcharges, they must now issue a revised Demand Notice in accordance with Regulation 69(4).
5. It appears clear that the appellant is not happy with the way the Council has dealt with this matter. If he has concerns about the Council's conduct or their adopted procedures, I can only advise that he may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

### **Formal decision**

6. For the reasons given above, the appeal is dismissed under Regulation 117(1)(a) and the surcharges of £[REDACTED] and £[REDACTED] are upheld, but the appeal under Regulation 118 is allowed.

*K McEntee*