



# Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 4 April 2025

**Appeal ref: APP/D1590/L/24/3352484**

- 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 [REDACTED] 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.
- A revised Demand Notice was served on 13 September 2024.
- The alleged breach to which the surcharges relate is the failure to assume liability and submit a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL with 30 days.
- The outstanding surcharge for the failure to assume liability is £[REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is £[REDACTED].
- The outstanding surcharge of late payment of the CIL is £[REDACTED].
- The determined deemed commencement date given in the Demand Notice is 14 May 2024.

**Summary of decision: The appeal is dismissed on both grounds made and the surcharges are upheld.**

## Procedural matters

1. As the Charging Authority (Council), point out, the grounds of appeal made have already been tested on appeal APP/D1590/L/24/3346925. However, the appellant has raised a new issue concerning the site visit made by the Council on 3 August 2023. Therefore, I shall address this issue below. My findings in this decision should be read in conjunction with my decision on appeal APP/D1590/L/24/3346925.

## The appeal under Regulation 117(1)(a)<sup>1</sup>

2. The Council point out that the garages were still in place on the date of the site visit of 3 August 2023 and have provided photographic evidence. This evidence had a significant bearing on my previous decision, particularly as it was not contested by the appellant at the time. However, in this appeal, the appellant points out that the Council's photograph was taken from the street and therefore does not reveal the level of work that had taken place such as demolition of the rear wall and metal roof as well other works that would equally constitute a

<sup>1</sup> That the alleged breaches which led to the surcharges did not occur

material operation. The Council concede that they did not actually enter the site but explain that the purpose of the inclusion of the photograph was to demonstrate that works could not have taken place in relation to planning permission [REDACTED] as the appellant claims.

3. I acknowledge the appellant's point about the Council not entering the appeal site. I also note the appellant submitted a Commencement Notice for permission [REDACTED] on 8 June 2023 stating a Commencement date of 10 June 2023. However, he has not provided any supporting evidence to collaborate his claim that works had actually commenced, such as dated photographs of the rear of the property showing what works have taken place and demonstrating that they took place on 10 June 2023. Without such evidence, I cannot be satisfied that demolition works, or any other works constituting a material operation, occurred on the site in relation to permission [REDACTED] before it expired on 10 June 2023. Therefore, based on the evidence before me and on the balance of probabilities, I can only conclude that the alleged breaches occurred. The appeal on this ground fails accordingly.

### **The appeal under Regulation 118<sup>2</sup>**

4. This ground of appeal was also tested in my previous decision, and I concluded that the correct determined deemed commencement date should be 14 July 2024, rather than 15 July 2014. The Council has duly rectified that by including 14 July 2024 in the revised Demand Notice of 13 September 2024. Therefore, it follows that the Council has not issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground also fails accordingly.

### **Formal decision**

5. For the reasons given above, the appeal is dismissed on both grounds made and the surcharges of £[REDACTED], £[REDACTED] and £[REDACTED] are upheld.

*K McEntee*

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<sup>2</sup> That the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed Commencement Notice