

Appeal Decision

by Ken McEntee

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

Decision date: 21 May 2025

Appeal ref: APP/E3335/L/24/3350068

- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Somerset Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 11 October 2022.
- The description of the development is "[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was served on 8 December 2022.
- A Demand Notice was served on 31 July 2024.
- The alleged breaches that led to the surcharges are: the failure to assume liability and to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is £[REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].

Summary of decision: The appeal is allowed and the surcharges are quashed.

Procedural matters

1. Although [REDACTED] is the appellant in this case, she has provided written permission for [REDACTED] to act on her behalf. It appears clear that [REDACTED] believes the development is exempt from CIL. For the avoidance of doubt, I have no powers to determine whether or not a development is exempt from CIL. This is a matter the [REDACTED]/appellant may wish to take up further with the Council. I can only determine the appeal solely in relation to the surcharges.
2. While the appeal was initially made under Regulation 118 (that the Collecting Authority (Council) issued a Demand Notice with an incorrectly determined deemed commencement date), it appears clear that the supporting arguments are more suited to an appeal under Regulation 117(1)(a) (that the alleged breaches which led to the surcharges did not occur). Therefore, both parties have agreed for the appeal to be determined on that basis.

Reasons for the decision

3. The Council contend that [REDACTED] informed them in a telephone conversation that works on the development commenced, and that a Building Inspector was not happy with the existing foundations which had begun to be dug out and concrete

poured. Therefore, as the appellant had not assumed liability or submitted a Commencement Notice, the Council issued a Demand Notice imposing the relevant surcharges. However, [REDACTED] refutes this and insists that works had not commenced on the chargeable development. He explains what has actually taken place on the site is work that was carried out by Western Power to take down an electric cable post which was deemed to be in danger of collapsing and was replaced by underground cable. Sperate to this, work was carried out by [REDACTED] [REDACTED] in relation to the foundations, but for investigation purposes only in order to establish their condition to assess the extent of the work needed to be carried out so that accurate quotes could be obtained.

4. The Council contend that these works constitute a material operation in accordance with section 56(4) of the Town & Country Planning Act. However, I consider it reasonable to assume that Western Power is a Statutory Undertaker and will have carried out the cable works as permitted development under Class B of Part 15 of the General Permitted Development Order (GPDO) 2015 as amended. With regards to the works carried out in relation to the foundations, it is often necessary in conversion works to dig holes that amount to inspection pits, in order to ascertain the extent of the foundations on the existing building and the extent of the of works required on those foundations for the resultant development.
5. In view of the supporting documentary evidence provided by the appellant from Western Power and [REDACTED] confirming the purpose of the respective works, I consider it reasonable to conclude on the balance of probabilities, that this is what has taken place. Therefore, I cannot be satisfied that the works described amount to a material operation, and consequently I cannot be satisfied that works on the chargeable development had commenced at the time the Demand Notice was issued. In view my findings, it follows that I conclude the alleged breaches of failing to assume liability and to submit a Commencement Notice before starting works on the chargeable development did not occur. The appeal succeeds accordingly.

Formal Decision

6. For the reasons given above, the appeal is allowed the surcharges of £[REDACTED], £[REDACTED] are quashed.

K McEntee