



Appeal Decision

by Ken McEntee

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

Decision date: 27 November 2024

Appeal ref: APP/H1705/L/24/3350652

- The appeal is made under Regulations 117(1)(a) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Basingstoke & Deane Borough Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 2 August 2024.
- A Liability Notice was served on 6 August 2024.
- A Demand Notice was served on 6 August 2024.
- A Surcharge Notice was served on 6 August 2024.
- The alleged breaches that led to the surcharges are: the failure to assume liability and the failure 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].
- The determined deemed commencement date given in the Demand Notice is 2 August 2024.

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

Procedural matters

1. I note that the appellant disagrees with the calculation of the CIL charge of £[REDACTED]. For the avoidance of doubt, I have no powers to determine whether or not the CIL charge is correct. The only way this can be done is by submitting an appeal to the Valuation Office Agency in accordance with Regulation 114. I can only consider the appeal solely in relation to the surcharges imposed.

The appeal under Regulation 117(1)(a)

2. An appeal under this ground is that the alleged breach which led to the surcharges did not occur. The basis of the appellant's case is that he did not commence works on the development in relation to planning permission [REDACTED], which he points out was a stand-alone application under section 73 of the Town & Country Planning Act. However, it became clear to the Council that the original permission [REDACTED], which was not CIL liable, was not carried out in accordance with the approved plans. Therefore, in order to address these

irregularities, the Council recommended (and the appellant agreed by e-mail of 10 July 2024) that an application be made for the variation of condition 1 of the original permission. In these circumstances, the new proposal automatically included the works already carried out on the original, and this meant that the application was part-retrospective. When added together, the two proposals now took the overall floor space calculation to over 100 sqm and consequently the development became CIL liable. As works had begun and no Assumption of Liability Notice or Commencement Notice had been submitted, it follows that the alleged breaches which led to the surcharges occurred. The appeal under 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. However, it appears clear that rather than the commencement date, the appellant is appealing that the works did not commence at all. As I have already addressed this matter above, it follows that there is nothing for me to consider under this ground.

Formal decision

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

K McEntee