



# Appeal Decision

by Ken McEntee

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

Decision date: 25<sup>th</sup> August 2026

**Appeal ref: APP/D1590/L/25/3371980**

- The appeal is made under section 218 of the Planning Act 2008 and 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 Southend-on-Sea City Council.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]"  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- A Liability Notice was served on 31 July 2025.
- A Demand Notice was issued on 31 July 2025.
- A revised Demand Notice was served on 11 September 2025.
- The alleged breaches to which the surcharges relate is the failure to submit a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL within 30 days of the due date.
- 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 15 July 2025.

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

## Procedural matters

1. An application for costs has been made by the appellant against the Collecting Authority (Council). This is the subject of a separate decision attached to this one.
2. It is noted that since the appeal was submitted, the Council issued a revised Demand Notice (DN) on 11 September 2025. As this automatically means that any earlier DN ceases to have effect, as explained in CIL Regulation 69(5), I consider it reasonable to determine the appeal in relation to this DN without it causing prejudice to either party.
3. For the avoidance of doubt, I can only consider the appeal in relation to the surcharges imposed. I have no authority to determine whether a CIL self-build exemption should be granted or consider if the CIL charge is correct. In this respect, I note that the appellant is pursuing an appeal to the Valuation Office Agency in accordance with Regulation 114.

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

4. An appeal on this ground is that the alleged breach which led to the surcharges did not occur. It appears clear that the main issue of contention is whether it was correct for the permission granted in relation to [REDACTED] to be considered as a part retrospective permission. The Council take the view that it was correct to do so as the description of the development applied for included [REDACTED] [REDACTED] which had already been carried out. They also point out that the applicant selected "yes" to the question in the application form "Has the work or change of use already started?".
5. However, the appellant points out that demolition works were granted by permission [REDACTED] on 6 December 2023. He contends that such works were lawfully carried out in relation to the 2023 permission and states that the reason why demolition was included in the application description for [REDACTED], was on the advice of the Council's planning case officer.
6. I note that other than demolition, the Council do not suggest that any other works in relation to the planning permission has begun. Therefore, I take the view that as demolition works were lawfully carried out in relation to a separate previous planning permission, application [REDACTED] should have been considered as prospective, rather than part retrospective. I note the point made by the Council that the appellant answered "yes" to the question in the application asking if work or change of use had been carried out. However, while this has not been explained by the appellant, the Council have not argued that any non-demolition works have been carried out.
7. Also, it is not clear why the planning department advised the appellant to include demolition in the application description. While it was ultimately for the appellant to decide on the description, I consider it reasonable that he would feel compelled to place considerable weight on the advice and guidance given by the Council's planning department. Nevertheless, whatever the description of the appeal application, the fact remains that the demolition works were carried out under a separate previous planning permission.
8. Therefore, on the evidence before me, I am not satisfied that a material operation has occurred in accordance with section 56(4) of the Town & County Planning 1990 Act, in relation to [REDACTED]. Consequently, I cannot conclude that works have commenced on the chargeable development.
9. That being the case, the appellant was not required to submit a Commencement Notice and therefore the surcharge for failing to do so is quashed.
10. I also quash the late payment surcharge as the Liability Notice informs that it was reliant on the commencement of development, which I have concluded did not occur.

### **The appeal under Regulation 118**

11. An appeal on this ground is that the Council has issued a DN with an incorrectly determined deemed commencement date. However, in view of my findings above, it follows that this ground does not fall to be considered.

**Formal decision**

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

*K McEntee*