



# Appeal Decision

by **Ken McEntee**

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

Decision date: 30 May 2017

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## Appeal refs: APP/P5870/L/16/1200066 & 68

- The appeals are made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeals are made by [REDACTED].
- The relevant planning permission to which the CIL relates is [REDACTED].
- The description of the development is: "[REDACTED]  
[REDACTED]  
[REDACTED]".
- A Demand Notice was issued on 13 October 2016.
- The deemed commencement date stated on the Demand Notice is 14 August 2015.

**Summary of decision: The appeals under Regulation 118 are dismissed and the Demand notice is upheld.**

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## Procedural matters

1. Much of the appellants' arguments relate to their belief that they are not liable for paying the CIL or the surcharges and that liability lies with either the previous owner of the land or the developer. However, these are not matters I have the power to make a judgement on. I can only consider the appeals on the ground made - *that the collecting authority has issued a demand notice with an incorrectly deemed commencement date.*

## Reasons for the decision

2. The deemed commencement date given in the Demand Notice is 14 August 2015. However, the appellants insist the development must have begun some time in 2014 before they became the owners of the land. In response, the Council (Collecting Authority) concede "*this is probably true*", but they chose 14 August 2015 as that was the date of the site inspection that alerted them to the fact that works had begun. As this was when the evidence came to light they decided not to guess at a commencement date. However, the appellants point to the fact that the planning permission for the chargeable development includes conditions that require the Council's approval before works can be carried out. Therefore, they contend that the Council would have been aware of works commencing in at least 2014.

3. The Council have confirmed that certain conditions requiring Council's approval were met in September and November 2014. However, while I appreciate the appellants' point, the fact that these conditions were complied with in 2014 does not necessarily demonstrate when the works on the actual development began as the conditions in question were all pre-commencement conditions. While I accept it may be likely works began in 2014, there is no definitive evidence before me to prove that to be the case. Therefore, on the evidence available, I cannot be satisfied that the Council have issued a Demand Notice with an incorrectly deemed commencement date. The appeals on the ground made therefore fail.
4. However, while I am dismissing the appeals I consider it important to point out that if I had found the Council had issued a Demand Notice with an incorrectly deemed commencement date and allowed the appeals, I would then be required by CIL Regulation 118 (5) to determine a revised commencement date. If I determined that date to be sometime in 2014 as argued by the appellants, it would have resulted in them being liable to pay a larger CIL payment as the purpose of the commencement date is to determine the starting point for CIL liability.

**Formal decision**

5. For the reasons given above, I hereby dismiss the appeals on the ground made.

*K McEntee*