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# Appeal Decision

**by Ken McEntee**

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

Decision date: 6 June 2018

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**Appeal ref: APP/L3245/L/17/1200160**

- 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]
- A Liability Notice was initially served by Shropshire Council on 8 October 2013.
- A revised Liability Notice was served on 14 April 2014.
- A further revised Liability Notice was served on 22 November 2017.
- A Demand Notice was served on 22 November 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- [REDACTED]
- Planning permission was granted on 7 October 2013.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

**Summary of decision: The appeal is dismissed and the surcharge [REDACTED] is upheld.**

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## Procedural matters

1. For the avoidance of doubt, this decision relates solely to the surcharge imposed as a result of the alleged breach and not the Council's (Collecting Authority) decision to withdraw the self-build exemption. There is no ground of appeal available to overturn such a decision and I have no powers to do so. All that is before me to determine is the appeal on the grounds made.

## Appeal under Regulation 117(1)(a)

2. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant contends that he submitted a CN by e-mail of 23 April 2014 stating a commencement date of 12 May 2014 and has enclosed a copy with his appeal. However, the Council (Collecting Authority) insist they have no record of having received the CN. Unfortunately,

although the appellant has provided evidence to show that he fully intended to submit a CN and comply with the CIL procedures, he has been unable to provide any supporting documentary evidence to demonstrate that he actually did so.

3. Ultimately, the onus was on the appellant to ensure a CN was received by the Council at least one day before works began on the chargeable development. The Liability Notice makes clear *"If a valid Commencement Notice has not been submitted before development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced. Shropshire Council will also impose a surcharge of 20% of the total amount due up to a max of £2,500"*. Given the importance of the notice and the fact that the appellant could potentially be facing a surcharge, it is not unreasonable to expect him to have contacted the Council before starting works to check they were in safe receipt of the notice and to obtain written confirmation. I take the view that to press ahead with development without taking such steps was a risky strategy to take. Although I have no reason to believe that the appellant did not fully intend to submit a CN and, indeed, he believed that he had done so, unfortunately he has been unable to provide any documentary evidence to demonstrate that a CN was actually submitted to the Council before works on the chargeable development commenced.
4. While I have sympathy with the appellant if he has simply made a genuine mistake, in these circumstances I cannot allow the appeal on the evidence available. The appeal on this ground fails accordingly.

### **Appeal under Regulation 118**

5. An appeal under this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. The Council have deemed the date to be 22 November 2017 as that is the date they became aware of the development. However, the appellant contends that although the intended date of commencement was 12 May 2014, work did not actually begin until 5 January 2015. However, given that the date of 22 November 2017 favours the appellant I consider it expedient to accept it. If not, I would be required by CIL Regulation 118 (5) to determine a revised commencement date. If I determined that date to be 5 January 2015 it could potentially result in the appellant being liable to pay late payment surcharges as the purpose of the commencement date is to determine the starting point for CIL liability. Therefore, as the Council are content with 22 November 2017, I see no good reason to change it. Consequently, the appeal on this ground also fails.

### **Formal decision**

6. For the reasons given above, the appeal is dismissed on the grounds made and the CIL surcharge is upheld.

*K McEntee*