



# Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 6 July 2023

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**Appeal ref: APP/H1840/L/23/3321149**

**Land at** [REDACTED]

- The appeal is made under Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Wychavon District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 10 December 2020.
- A Liability Notice was served on 17 March 2023.
- A Demand Notice was served on 28 March 2023.
- A revised Demand Notice was later served but also dated 28 March 2023.
- The description of the development is [REDACTED].
- The alleged breaches to which the surcharges relate is the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date given in the revised Demand Notice is 10 December 2020.

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

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## The appeal under Regulation 117(1)(b)

1. An appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharges relate. In this case, the Council contend that they originally issued a LN on 22 December 2020 and sent it by post to the appellant and by e-mail to the appellant's agent, [REDACTED] of Highbury Design. However, the appellant contends that neither he nor his agent received any such correspondence. The Council do not say what method of postage was used for submission to the appellant, so I can only reasonably assume it was sent by standard post. However, while the Council were perfectly entitled to use this method of service, it unfortunately does not provide for proof of postage, unlike recorded delivery or registered post for example, which requires a signature of receipt. Without such

documentary evidence before me, I cannot be satisfied the appellant received the LN.

2. With regards to submission to the appellant's agent, it appears from the evidence that the e-mail address used by the Council was [REDACTED]. However, as the appellant points out, the e-mail address given in the planning application form of 15 August 2020 was in fact [info@highburydesign.com](mailto:info@highburydesign.com). Consequently, it would appear the Council used an incorrect e-mail address.
3. Contrary to the Council's assertions in their response to the appeal, it is not possible for a valid Commencement Notice to be submitted until a LN has been issued. However, there is no doubt that the appellant did receive the LN of 17 March 2023. It is important to note that the permission granted in this case was part retrospective, and therefore it would not have made any difference if the Council had correctly issued a LN any earlier in the process as it was simply not possible for a Commencement Notice to be submitted in advance of starting works due to the retrospectivity of the permission. Consequently, it was not possible for the appellant to prevent the subsequent surcharges being imposed. It is envisaged by the CIL guidance that the issue of a LN will be followed by submission of a Commencement Notice by the relevant person. However, by carrying out the works before obtaining the required planning permission, the appellant effectively prevented the normal sequence of events from taking place and immediately became liable for CIL and CIL surcharges.
4. In these circumstances, the appeal on this ground fails accordingly.

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

5. An appeal was made on this ground as the original Demand Notice failed to stipulate a determined deemed commencement date, as opposed to stating an incorrect date. However, the Council rectified this in the revised notice of the same date by correctly determining the deemed commencement date to be the date planning permission was granted (10 December 2020) in accordance with Regulation 7(5).
6. The appeal on this ground also fails accordingly.

### **Formal decision**

7. For the reasons given above, the appeal is dismissed on the grounds made and the surcharges of [REDACTED] and [REDACTED] are upheld.

*K McEntee*