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# Appeal Decision

by **Ken McEntee**

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

Decision date: 20 July 2023

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**Appeal ref: APP/F0114/L/23/3317455**

**Land to the rear of** [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bath & North East Somerset Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: [REDACTED]  
[REDACTED]
- Planning permission was granted on 25 March 2021.
- A Liability Notice was served on the applicants for planning permission ([REDACTED]) on 27 April 2021.
- A Demand Notice was served on the applicants on 19 January 2023.
- A revised Liability Notice was served on the appellant on 23 January 2023.
- A revised Demand Notice was served on the appellant on 23 January 2023.
- A revised Demand Notice was served on the appellant on 3 February 2023.
- The alleged breaches to which the surcharges relate is the failure to assume liability and submit a Commencement Notice before starting works on the chargeable development, and the late payment of the CIL charge after 30 days.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding late payment surcharge is [REDACTED].

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

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## Reasons for the decision

1. An appeal under Regulation 117(1)(a) is that the alleged breaches which led to the surcharges did not occur. CIL Regulation 67(1) 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 argues that he informed the Building Control Dept by e-mail of 22 November 2022 of his intention to commence work on the development. However, the Building Control Dept is not part of the CIL Collecting Authority, and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. A CN needed to be submitted in the correct format direct to the CIL

Collecting Authority for the requirements of Regulation 67(1)(a) to be met. This clearly did not happen in this case and therefore the surcharge for failing to do so is justified.

2. The appellant contends that he did not fail to assume liability as he still had control over CIL as he was working with the architect of the previous landowners. I am unsure of the point the appellant is making here, but Regulation 31(7) explains that a person may not assume liability to pay CIL in respect of a chargeable development after that development has been commenced. Therefore, it is too late to assume liability and the surcharge for failing to do so is justified.
3. With regards to the late payment surcharge, the appellant argues that the Council failed to contact him or his architect concerning payment instalments. However, as a valid CN was not submitted, the CIL payment immediately became due in full on the date of commencement in accordance with Regulation 71(2). Responsibility to pay the CIL was very much with the appellant and there was no obligation on the Council to send reminders. Therefore, the late payment surcharge is also justified.
4. The appellant also makes the point that as the Demand Notice of 19 January 2023 was addressed to the previous landowners and was issued 2 days too early within the 60-day period for payment, it is not valid. However, the Council issued revised notices, the most recent being the one of 3 February 2023, as they were entitled to do under Regulation 69(3). The 3 February 2023 notice, which is the relevant one, was correctly addressed to the appellant and was not issued too early for the reasons explained in paragraph 3 above.

### **Formal decision**

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

*K McEntee*