

Conclusions

3. Section 83 of the CIL regulations states that where a chargeable development (D) is commenced before the collecting authority has received a valid commencement notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable of D or £2500, whichever is the lower amount. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur.
4. There was clearly a mix up with regards to payment of the CIL in this case as the appellants actually paid the levy by telephone on 8 September 2014. However, it appears the payment got mislaid by the Council and consequently they incorrectly issued a Demand Notice on 8 October 2014. Although the matter was resolved the following day, the Council issued an invoice for a surcharge of [REDACTED] for the appellants' failure to submit a valid Commencement Notice (Form 6).
5. The appellants argue that when they paid the CIL on 8 September 2014 they asked if there was anything else they needed to do but were informed that there wasn't. The Council point out that the appellants would have spoken to someone in their Customer Services section and to someone in their Building Control Team instead of a member of the Development Control section. The Council are clearly implying that the appellants would have been given the correct information if they had contacted the Development Control section. However, I find the Council's point difficult to accept and consider they have a corporate responsibility to ensure correct information is given out. When submitting their query, it was reasonable for the appellants to expect to have been given the correct information, or at least have been referred to the relevant section of the Council if they were talking to the wrong one. Had their query been answered correctly, they would then have had the opportunity to submit the required Commencement Notice (Form 6) before beginning development, thus avoiding the need for a surcharge to be imposed. Therefore, I have sympathy with the appellants in this regard.
6. That said, I accept the Council's point that the relevant information regarding CIL procedures could be found on their website. The Council also refer to the information given in the Demand Notice concerning the consequences of failing to submit a Commencement Notice. However, as the Demand Notice was issued after the event I do not consider this to be relevant. What is more relevant is the Liability Notice that was issued on 2 May 2014. This clearly states that the Council's payment procedure requires the applicant/developer to notify the CIL Collecting Authority before development commences of "the date on which you intend to commence development by submitting a valid CIL Form 6 Commencement Notice". There is no disputing that this did not happen.
7. Therefore, while I have some sympathy with the appellants in this case and consider they have mitigating circumstances for not submitting a valid Commencement Notice before beginning development as required, the inescapable fact is that they did not do so. Therefore, I can reach no other conclusion than the breach which led to the surcharge occurred as a matter of fact and degree. Consequently it follows that the appeal cannot succeed on the ground made.

Formal decision

8. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the surcharge.

K McEntee