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# Appeal Decision

by **Ken McEntee**

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

Decision date:

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**Appeal ref: APP/Q4245/L/15/1200032**

**Land at** [REDACTED]

- The appeal is made under Regulation 117(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought [REDACTED] against a surcharge imposed by Trafford Metropolitan District Council.
- A liability Notice was issued on 9 October 2014.
- A Demand Notice was issued on 29 October 2015.
- The relevant planning permission for which the CIL surcharge relates is 78138/FULL/2012.
- The description of the development is "Erection of 2 x pairs of three storey dwellinghouses (4 dwellings in total), formation of vehicular access and associated landscaping".
- The outstanding surcharge payable for failure to submit a Commencement Notice is [REDACTED].

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

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## Procedural matters

1. It is noted that the Council refer to the fact that they failed to include a 'late payment interest charge' and a 'late payment surcharge' in their calculations. It is also noted that the appellant complains about having to pay the CIL in full rather than instalments. However, these are not matters that are before me to consider. For the avoidance of doubt, all that is before me to consider is whether or not the surcharge of [REDACTED] for failure to submit a commencement notice has been correctly calculated.

## Reasons for the decision

2. It is noted that the appellant accepts that he is liable to pay the CIL but contests the surcharge imposed. From reading the appellant's grounds of appeal, he seems to be making a request that the surcharge be reduced, due to the financial impact it would have on the viability of the development and on his company's finances, rather than on the grounds that the surcharge has actually been miscalculated. However, I have no powers to reduce a surcharge in these circumstances and can only do so if the surcharge has been miscalculated.
3. With that in mind, Regulation 83(1) 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 in respect of D or £2,500, whichever is the lower amount".* The appellant accepts that he failed to submit a commencement notice to the Council before starting works on the development. The CIL that the appellant is liable to pay, and is not disputed, amounts to [REDACTED]. 20% of this sum amounts to [REDACTED]. Therefore, [REDACTED] is the lower amount and consequently it is clear that the surcharge has been correctly calculated as a matter of fact and degree. Therefore, while I have sympathy if the appellant's business is experiencing financial difficulties, the appeal cannot succeed on the ground made.

### **Formal decision**

4. 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*