



## Appeal Decision

by **Ken McEntee**

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

Decision date: 5 November 2015

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**Appeal ref: APP/D1780/L/15/1200028**

**Land at** [REDACTED]

- The appeal is made under Regulation 117(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharge imposed by Southampton City Council.
- The alleged breach which led to the imposition of the surcharge is failure to submit a Commencement Notice.
- A Liability Notice was issued on 31 October 2013.
- A Demand Notice was issued on 17 June 2015.
- The outstanding surcharge for failure to submit a commencement notice is [REDACTED].
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is "Erection of a detached 2-bedroom two storey dwelling with associated parking, refuse store with access from Willis Road".

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

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### Basis for the appeal

1. The appeal is made on the basis that the Council failed to serve a Liability Notice on the appellant. Consequently, he was not aware of the need to notify the Council of when he would be commencing the work on the approved development and therefore does not consider he is liable to pay the surcharge imposed by the Council.

### Reasons for the decision

2. Regulation 83 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 £2,500, whichever is the lower amount. An appeal under section 117(b) states that the collecting authority did not serve a liability notice in respect of the chargeable development to which the surcharge relates.

3. It is sufficiently clear from the evidence that a Liability Notice was actually served by the Council on 31 October 2013, but the appellant points out that it was served on the previous owner of the land and not on him. However, as the Council point out (and have provided documentary evidence), that the Liability Notice was registered as a local land charge at the time it was served, which the Council are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land and any purchaser and owner of the property is deemed to have full knowledge of any burden attached to the land by virtue of the registration. The wording of Regulation 117 (b) is not personalised for this reason. Therefore, I am satisfied that a Liability Notice was correctly served by the Council and consequently the appellant should have been aware of the CIL procedures as explained in the notice.
4. The appellant points out that he had contact with the Council before the works commenced and had submitted all the related pre-commencement paperwork, such as "...applications/forms/fees etc...". He also contends that he notified the Council of his intention to commence the works on submission of his application for reserved matters on 2 December 2014 and argues out that it would have been appropriate on any of these occasions for the Council to have raised the issue of CIL obligations. It appears they did not do so until an e-mail exchange of 15 June 2015.
5. Regulation 67 (1) of the CIL regulations explains that where a planning permission is granted for a chargeable development, a commencement notice must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced. Regulation 67 (2) (a) states that a commencement notice must be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect). Regulation 67 (2) (c) states that the form must state the intended commencement date of the chargeable development. I accept it would have been helpful had the Council raised the issue of the appellant's CIL obligations sooner than they did. Nevertheless, the inescapable fact is that the appellant failed to submit the relevant form stipulating the intended commencement date of the chargeable development before the works commenced as required by the Regulations and explained in the Liability Notice.
6. The overall conclusion reached therefore, is that while I have some sympathy with the appellant in this matter and his mitigating reasons for not submitting a commencement notice before beginning works, I am satisfied that a Liability notice was correctly served by the Council. In these circumstances, an appeal on ground 117 (b) of the CIL Regulations cannot succeed.

#### **Formal decision**

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

*K McEntee*