



Appeal Decision

by Ken McEntee

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

Decision date: 8 July 2016

Appeal ref: APP/Q1255/L/16/1200036

- The appeal is made under Regulations 117(a), (b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharge imposed by Poole Borough Council.
- The alleged breach which led to the imposition of the surcharge is failure to submit a Commencement Notice.
- 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 "Variation of condition 11 of permission [REDACTED] to remove integral garage and provide study room from unit A, increase size of detached garage to rear and the addition of two rooflights in the west elevation of Unit A."

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

The appeal on ground (a)¹

1. The claimed breach is that the appellant failed to submit a Commencement Notice before starting works on the approved development as required by CIL Regulation 67. The appellant does not refute that he did not submit a Commencement Notice before works began. He contends that the Liability Notice did not make it clear that the onus was on him to submit a Commencement Notice. He refers to the opening line under the heading "*When will this CIL amount be due for payment*", which states that "*The Council's procedure is to notify the CIL Collecting Authority (Borough of Poole) before development commences of:*". However, it goes on to state "*b. The date on which you intend to commence development, by submitting a valid CIL FORM 6 'Commencement Notice'.*" Therefore, while I accept that when read in isolation, the opening line could be open to interpretation, I am satisfied that when the section is read in the whole, it is sufficiently clear that it is the responsibility of the recipient of the notice (who has assumed liability) to submit a Commencement Notice.
2. The appellant also questions the Council's calculations of the Gross Internal Area (GIA). He claims that at the time of the Commencement Notice (21 January 2016), the build was at a fairly early stage and the GIA was less than the original

¹ The claimed breach which led to the surcharge did not occur

sq m of the pre-existing buildings. Therefore, he contends that at that point there had been no increase in the GIA and consequently no chargeable development had occurred. However, if the appellant disagreed with the calculation of the chargeable amount of CIL payable, it was open to him under Regulation 113 to request that the Council review it, which in theory could have resulted in a nil calculation. If after receiving a decision on the review, he was still aggrieved, he could have exercised his right of appeal under Regulation 114 to the Valuation Office Agency within 60 days from the date of the Liability Notice. Such a matter cannot now be revisited on a surcharge appeal. Therefore, as there is no evidence before me of any such review or subsequent appeal having been made, the CIL chargeable amount of [REDACTED] is taken to be correct, and I note has been paid.

3. In view of the above, I am satisfied that the claimed breach occurred as a matter of fact and degree. The appeal on ground (a) fails accordingly.

The appeal on ground (b)²

4. It is clear from the evidence that the original Liability Notice was served by the Council on 12 June 2014 on the previous owner [REDACTED]. Another Liability Notice was served on [REDACTED] on 17 November 2015 in relation to permission [REDACTED] to vary condition 11 of the original permission, although the property was now in the ownership of the appellant. A Liability Notice was eventually served on the appellant on 15 February 2016 after he had submitted an Assumption of Liability on 21 January 2016. Nevertheless, the original Liability Notice of 12 June 2014 to [REDACTED] 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. Any purchaser and owner of the property are 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.
5. The Appellant also questions the validity of the Liability Notice as it incorrectly refers to the Valuation Office Agency to direct a surcharge appeal. While this error is unfortunate, it does not make the notice invalid. The error did not cause prejudice or injustice to the appellant as he was clearly still able to make a timely appeal to the Planning Inspectorate.
6. In view of the above, I am satisfied that the Council correctly served a Liability Notice. The appeal on ground (b) fails accordingly.

The appeal of on ground (c)³

7. 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 [REDACTED], whichever is the lower amount. As 20% of [REDACTED] it is clear that [REDACTED] is the lower amount.

² The collecting authority failed to serve a liability notice in respect of the development to which the surcharge relates

³ The surcharge has been calculated incorrectly

Therefore, I am satisfied that the surcharge has been calculated correctly as a matter of fact and degree.

8. The appellant feels that the surcharge is disproportionate to the error made. However, there is no provision for a surcharge sliding scale. The Council can only either impose the [REDACTED] surcharge or waive it. The appeal on ground (c) fails accordingly.

Formal decision

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

K McEntee