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# Appeal Decision

by Ken McEntee

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

Decision date: 19 August 2016

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**Appeal ref: APP/T5720/L/16/120043**

**Land at 136-138 Park Road, Timperley, Altrincham, Cheshire WA15 6QQ**

- The appeal is made under Regulation 117(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by the London Borough of Merton and the Mayor of London.
- A liability Notice was issued on 19 January 2015.
- A Demand Notice was issued on 8 April 2016.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is "The Division of an existing five bedroom house into two houses. The extension of each new house into the loft and erection of a rear roof dormer extension. The extension of each new house on the ground floor including extension on the west Barnes Lane elevation, the division of an existing double garage into two separate single garages".
- The outstanding surcharge is [REDACTED].

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

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## Procedural matters

1. I note that the surcharge imposed by the Council is not for the failure to submit a Commencement Notice (CN), but is imposed for late payment of the CIL, which stemmed from the failure to submit a CN before works had commenced on the approved chargeable development, which begun on 1 June 2015.
2. I also note that the Council state that they made an error in that they failed to impose a further surcharge for non-payment within 6 months and therefore suggest that 2 late payment surcharges should be imposed. However, I can only consider the surcharge that is the subject of this appeal and stipulated in the Demand Notice of 8 April 2016. Any further surcharges that the Council consider should be imposed are matters outside of this appeal process.

## Reasons for the decision

3. 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 64 (4) explains that

on receiving a valid commencement notice the collecting authority must send an acknowledgement of its receipt to the person who submitted it.

4. The appellant contends that he submitted a CN on 10 April 2015, and has enclosed a copy of completed Form 6 with the appeal, but the Council insist that they did not receive it. The matter came to light on 18 March 2016 when the appellant's Architect contacted the Council about the procedure for paying the CIL, some 11 months after the date of the CN. The appellant suggests that the CN may have failed to be delivered by the Post Office, but it is not clear why he did not contact the Council sooner having not heard back from them in the form of an acknowledgement or a Demand Notice, as explained in the Liability Notice issued to the appellant on 19 January 2015. The appellant suggests that the Council could just as easily have contacted him. However, they would have no reason to chase the appellant for a CN as it is a matter for the recipient of a planning permission to decide when to implement that permission at any time within 3 years of its issue. Therefore, the onus is on the recipient to notify the Council of when they intend to begin the works by submitting a CN. At the time the appellant began implementing the permission in this case it was still valid for another two and a half years.
5. In any event, while I have sympathy with the appellant if the CN went astray in the post, I have no documentary evidence before me to demonstrate that a CN was sent to the Council, in the form of proof of postage for example. While the copy of Form 6 dated 10 April 2015 enclosed with the appeal shows that a CN was completed, it does not demonstrate that that one was actually sent. I also note that in the copy of that form, which was completed by the appellant's representative at the time, the section headed "Details of collecting authority to whom the notice is being sent", the name and address of the appellant is stated instead of that of the Council's. This contributes to casting doubt on whether the CN was sent to the London Borough of Merton. Therefore, on the evidence before me, I cannot be satisfied that a CN was submitted to the collecting authority before works commenced on the chargeable development as required by CIL Regulation 67. The appeal on the ground made fails accordingly.

### **Formal decision**

6. 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*