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# Appeal Decision

by Ken McEntee

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

Decision date: 15 September 2016

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**Appeal ref: APP/D3315/L/16/120045**

- The appeal is made under Regulation 117(a) & (b) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Taunton Deane Borough Council.
- A liability Notice was issued on 7 December 2015.
- A Demand Notice was issued on 7 December 2015.
- A second Demand Notice was issued on 7 January 2016.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- The outstanding surcharge payable for failure to assume liability is [REDACTED]
- The outstanding surcharge payable for failure to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for late payment of the CIL is [REDACTED].

**Summary of decision: The appeal is dismissed and the surcharge of [REDACTED] for the failure to assume liability, the surcharge of [REDACTED] for failure to submit a Commencement Notice and the surcharge of [REDACTED] for late payment of the CIL are upheld.**

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## Procedural matters

1. Most of the arguments put forward by the appellants are asserting that they did not receive a Demand Notice (DN) and this prevented them from being able to appeal the surcharge. They also question the authenticity of the Recorded Delivery despatch receipt provided by the Council in relation to the revised DN dated 7 January 2016. However, there is no relevant ground of appeal in which to contest whether the collecting authority served a DN and I can only determine the grounds of appeal before me. Therefore, the authenticity of the Recorded Delivery despatch receipt dated 7 January 2016 is not before me to consider. Nevertheless, whether or not a DN was received by the appellants, they have evidently not been prevented from being able to exercise their right of appeal and have the imposed surcharges considered.

### **The appeal on ground (a) of Regulation 117<sup>1</sup>**

2. The breaches of planning control alleged to which the surcharges relate, are that the appellants failed to assume liability (Regulation 80), failed to submit a Commencement Notice (CN) (Regulation 83) and failed to pay the CIL in full within 30 days of commencement (Regulation 85). With regards to the first alleged breach, the appellants, who are the land owners, claim that [REDACTED] *did not apply or instruct for planning permission for this development*". However, as the Council point out, Regulation 33 explains that where a chargeable development is commenced and nobody has assumed liability to pay CIL in respect of that development, liability to pay the CIL defaults to the person who has entered on or taken possession of the land. In any event, it is noted that the appellants eventually decided to pay the CIL on 23 February 2016.
3. Turning to the second and third alleged breaches, the appellants have not offered any arguments to support their case. They do not contend that a CN was submitted and neither do they contend that the CIL was paid on time. On the evidence before me therefore, the appeal on Regulation 117(a) fails accordingly.

### **The appeal on ground (b) of CIL Regulation 117<sup>2</sup>**

4. The appellants assert that they did not receive a Liability Notice. However, the Council contend that a Liability Notice was sent to the appellants last known address on 7 December 2015 and have submitted documentary evidence in the form of a Recorded Delivery despatch receipt. It appears that the posted item was returned as not collected by the addressee from the Royal Mail. I agree with the Council that they cannot be held responsible for the fact that the item was not collected and I am satisfied they correctly served the Liability Notice in keeping with Regulation 126. The appeal on Regulation 117 (b) fails accordingly.

### **The appeal under Regulation 118<sup>3</sup>**

5. The appellants have not offered any arguments or evidence to demonstrate that the Council have issued a Demand Notice with an incorrectly deemed commencement date. On the evidence before me therefore, the appeal under this ground 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 surcharges.

*K McEntee*

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<sup>1</sup> The claimed breach which led to the surcharge did not occur

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

<sup>3</sup> The collecting authority has issued a demand notice with an incorrectly determined deemed commencement date