



Appeal Decision

by Ken McEntee

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

Decision date: 2 December 2016

Appeal ref: APP/Q1255/L/16/1200058

- The appeal is made under Regulation 117(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by Mr and Mrs Noble.
- A Liability Notice was served on the appellant on 16 November 2015.
- A Demand Notice was served on the appellant on 12 September 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "Demolish existing & new build of single dwelling".
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal under Regulation 117(a) is dismissed and the surcharge of [REDACTED] is upheld.

Reasons for the decision

1. Regulation 67 (1) of the CIL regulations explains that 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 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 in respect of D or £2,500, whichever is the lower amount. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur.
2. In this case, the appellants contend that they hand delivered a completed Form 6 Commencement Notice to the Council office post box on the weekend of 30/31 July 2016. It seems the appellants' intention was to begin demolition works in the week beginning 1 August 2016, although it is noticed the Council have determined the deemed commencement date to be 25 August 2016. Nevertheless, the appellants consider that the Council were correctly notified in advance of the works beginning. However, the Council contend that they can find no record of receipt of the Form 6 within its offices. The onus was on the appellants to ensure a Commencement Notice was submitted at least one day before works were due to commence. Given its importance and the fact that the appellants could potentially be facing a £2,500 surcharge, it is not unreasonable to expect them to

have contacted the Council on the following Monday, before starting works, to check that the Council were in safe receipt of the Commencement Notice and to obtain written confirmation. I take the view that to begin works without taking such steps, was a risky strategy for the appellants to take.

3. While I acknowledge it is very unfortunate if the appellants did take the trouble to hand deliver a Commencement Notice to the Council's offices, in the absence of any documentary evidence to support the appellants' claim, it is not possible for me to reach a decision in their favour. Therefore, on the evidence before me, I cannot be satisfied that a Commencement Notice was submitted to the Council before works began on the chargeable development as required by Regulation 67(1). In these circumstances, the appeal on the ground made fails accordingly.

Formal decision

4. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharge.

K McEntee