



Appeal Decision

by **Ken McEntee**

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

Decision 10/03/2017

Appeal ref: APP/X4725/L/16/1200077

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was served on 9 August 2016.
- A Demand Notice was served on 7 December 2016.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- The alleged breaches of planning control are the failure to assume liability and the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- 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 surcharges of [REDACTED] and [REDACTED] are upheld.

Reasons for the decision

1. It is noted that the CIL is not in dispute, with the appellant conceding that he is happy to pay the required amount, but is unhappy with the surcharges. An appeal under Regulation 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. In this case, the appellant does not refute that he did not submit a Commencement Notice but insists that he submitted an Assumption of Liability Notice (Form 1) to the Council as the Collecting Authority on 13 August 2016, but did not hear back from them. He contends that in a telephone conversation with an officer from the Council, he was told that he should have been sent a Commencement Notice (Form 6) by the Council. Therefore, the appellant considers that he followed the correct procedures and should not be held responsible for a document being misplaced by the Council or the Post Office.
2. While it is unfortunate if an Assumption of Liability Notice was submitted but mislaid in the post, the onus was on the appellant to have contacted the Council when time had passed without hearing anything back from them. I appreciate that the appellant is busy running a business, but to commence works on the chargeable development without having received an acknowledgement of safe receipt of the Assumption of Liability Notice was a risky strategy to take.

Although it was not a requirement to submit the notice by registered post, without any proof of postage before me I have no choice but to conclude on the balance of probabilities that the Council did not receive the Assumption of Liability Notice.

3. With regards to the failure to submit a Commencement Notice, a Liability Notice was served on the appellant 9 August 2016 and made clear that the onus was on the appellant to notify the Council of the date on which he intends to commence development by submitting a valid Commencement Notice. It also clearly explained that failure to do so could result in interest and surcharges being applied. The appellant has not claimed that he did not receive the Liability Notice and hasn't appealed on ground 117 (b). Therefore, while I have sympathy that this is the first time he has been involved in the CIL process, I am satisfied that he should have been aware from the Liability Notice, the process involved and what was required.
4. Therefore, I am satisfied that the breaches of planning control that led to the surcharges, occurred as a matter of fact. In these circumstances, the appeal cannot succeed on the ground made.

Formal decision

5. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharges.

K McEntee