



Appeal Decision

by Ken McEntee

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

Decision 19 June 2017

Appeal ref: APP/F0114/L/17/1200096

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) and (b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Demand Notice was served on 31 January 2017.
- A revised Demand Notice was served on 8 March 2017.
- 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 on Regulations 117 (a) and (b) is allowed and the surcharges of [REDACTED] and [REDACTED] are quashed.

Reasons for the decision

1. As well as the failure to submit a Commencement Notice, as required by Regulation 67, the other alleged breach of planning control which led to the surcharges is the failure to submit an Assumption of Liability Notice, as required by Regulation 31. An appeal under Regulation 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 explains that a Commencement Notice must be submitted no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant contends that she did not receive a Liability Notice so was not aware she had to send either an Assumption of Liability Notice or a Commencement Notice before beginning works on the development. She argues that instead of being sent to her home address, the Liability Notice was sent to the appeal site address, which is tenanted. The tenant insists that no Liability Notice was received.
2. However, the Council (Collecting Authority) took the address from the appellant's planning application form. They point out that as they were not informed of a change of address by the appellant, they correctly sent the Liability Notice to the last known address. As CIL Regulation 126(c) explains, a notice may be served by sending it by post, addressed to that person at that person's usual or last

known place of abode, or, in the case where an address for service has been given by that person, at that address.

3. Nevertheless, responsibility lies with the Council to ensure a Liability Notice is served. While the Council were within their rights to serve the notice by standard post, the result of doing so has meant there is no proof of postage where there would have been had the Council chosen to serve it by registered post, which provides for a signature of receipt. In the absence of any proof of postage before me, I take the view that I have no option but to give the benefit of the doubt to the appellant in view of the contention of the tenant of the appeal site address that a liability notice was not received. Consequently, I cannot be satisfied on the evidence before me that a Liability Notice was correctly served by the Council. As such, the appellant would not have been aware of the need to assume liability or to submit a Commencement Notice before starting work on the approved development. In these circumstances, I will allow the appeal and quash the surcharges.
4. I note that the Council point out that they also sent a copy of the notice by e-mail to the appellant's agent, [REDACTED], on 31 March 2016 and received a copy of a 'read receipt' of the same date, which they have provided in evidence. However, as the Council also point out, Regulation 65 (3) (a) explains that a Liability Notice must be served on the relevant person. Regulation 65 (12) (c) explains that the relevant person is the person who applied for planning permission, which in this case was the appellant [REDACTED].

Formal decision

5. For the reasons given above, the appeal on Regulations 117 (a) and (b) is allowed and the CIL surcharges of [REDACTED] and [REDACTED] are quashed.

K McEntee