



Appeal Decision

by Ken McEntee

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

Decision 5 December 2017

Appeal ref: APP/W0340/L/17/1200121

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued by West Berkshire Council on 8 March 2016.
- A Demand Notice was issued on 20 June 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED]
- [REDACTED]
- Planning permission was granted on 8 March 2016.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal is dismissed and the surcharge of [REDACTED] is upheld.

Reasons for the decision

1. An appeal under Regulation 117(1)(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67(1) explains that a Commencement Notice (CN) must be submitted to the Council (Collecting Authority) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant does not dispute that he failed to submit a CN before starting works on the chargeable development but contends he was not to blame for this as the Council failed to enclose a copy of a CN form (Form 6) with the Liability Notice (LN), despite the notice stating one was enclosed.
2. Paragraph **b)** under “**What happens next?**” on page 2 of the LN, makes clear that “The payment procedure is to notify the Council before development commences, of: the date on which you intend to commence development, by submitting a valid *Commencement Notice* (enclosed)”. While the relevant form was not enclosed, I do not accept this exonerated the appellant from his responsibility to ensure he submitted a CN before starting works on the chargeable development. Upon realising that a form was not enclosed, it is not clear why the appellant did not simply contact the Council to point out this

omission and to ask them to send him a form by post or by e-mail. Instead, it appears he was content to proceed with the development without seeking to clarify the situation first.

3. The appellant refers to a telephone conversation with the Council's Building Control department where he contends he was advised there was nothing further he needed to do. However, while I have some sympathy with the appellant if this was the case, the building control system is a separate statutory regime to that of CIL, which is a very formulaic process and makes clear, as explained in the Liability Notice, that a valid CN must be submitted before development commences. Therefore, the onus was very much on the appellant to ensure that was the case. Nevertheless, if he is unhappy about the Council's conduct in this matter or their adopted procedures, it is open to him to submit a complaint through the Council's established complaints process in the context of local government accountability.

Formal decision

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

K McEntee