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# Appeal Decision

by **Ken McEntee**

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

Decision date: 18 December 2017

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**Appeal ref: APP/E0345/L/17/1200120**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued by Reading Borough 26 October 2016.
- A revised Liability Notice was issued on 30 May 2017.
- A Demand Notice was issued on 30 May 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 13 July 2016.
- The alleged breach of the CIL Regulations is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is £2,500

**Summary of decision: The appeal is allowed the surcharge of £2,500 is quashed.**

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## Reasons for the decision

1. An appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. In this case, the appellant contends that he was not served with the original LN of 26 October 2016 as required by Regulation 65(3)(a). It was served on his architects instead and the appellant only received a copy of the revised LN of 30 May 2017. As the planning application stated [REDACTED] to be the appellant's agents, I consider it reasonable that the Council considered the architects were representing the appellant and consequently to decide to submit correspondence, including a copy of the LN, to them. However, Regulation 65(3)(a) makes clear that a LN must be served on the "relevant person" as defined in Regulation 65(12) – essentially, the person who applied for planning permission. Therefore, while it was reasonable for the Council to serve a LN on the appellant's architects, they were required to also serve a LN on the appellant as the "relevant person", not only as the person who applied for planning permission (Regulation 65(12)(c)), but also as the owner of the land (Regulation 65(3)(c)). It appears clear from the evidence that the Council failed to do this.

2. The Council point out that the appellant will have been aware of the requirement to submit a Commencement Notice (CN), and the consequences of failing to do so, from other related correspondence, such as the Form 7 (Self-build Exemption Claim Form Part 1) and links on the Council's website. However, while I accept this to be the case, for the purposes of an appeal under Regulation 117(1)(b), the issue is not whether the appellant was warned of the need to submit a CN, but whether he was actually served with a LN. The inescapable fact, which the Council do not refute, is that they did not serve a LN on the appellant as the "relevant person" as required by the Regulations. That being the case, I have no option but to allow the appeal.
3. For the avoidance of doubt, while I am allowing the appeal I have no powers to re-instate the self-build relief granted to the appellant on 26 October 2016. This is a matter that he may now wish to take up with the Council.

**Formal decision**

4. For the reasons given above, I hereby allow the appeal on the ground made and quash the surcharge of £2,500.

*K McEntee*