



# Appeal Decision

by **Ken McEntee**

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

Decision date: 11 January 2018

Appeal ref: **APP/N5660/L/17/1200122**

- The appeal is made under Regulations 117(1)(a),(b) and (c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the London Borough of Lambeth.
- A Liability Notice was served on [REDACTED] on 5 July 2012.
- A Liability Notice was served on [REDACTED] on 29 June 2017.
- A Demand Notice was served on [REDACTED] on 29 June 2017.
- The relevant planning permission for which the CIL surcharges relate is [REDACTED].
- The description of the development is "[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]".
- Planning permission was granted on 17 May 2012.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The outstanding late payment interest is [REDACTED].

**Summary of decision: The appeal on all grounds is dismissed and the surcharges of [REDACTED], plus the late payment interest charge of [REDACTED] are upheld.**

## The appeal on Regulation 117(1)(a)<sup>1</sup> and 117(1)(b)<sup>2</sup>

1. The main basis of the appellant's case is that she contends she was not aware of the CIL as she and/or Zash Properties Ltd never received a Liability Notice (LN). Therefore, she was not aware of the need to assume liability or submit a Commencement Notice (CN). In these circumstances, she does not consider she is liable to pay the surcharges imposed by the Council (Collecting Authority) and contends that the previous owner of the land should be liable as it was him who applied for planning permission and was served with a LN. However, the original LN of 5 July 2012 to [REDACTED] will have been registered as a local land charge at the time it was served, which the Council are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land. Any purchaser and owner of the property are deemed to have full knowledge of any burden attached

<sup>1</sup> The claimed breach which led to the surcharge did not occur

<sup>2</sup> The collecting authority failed to serve a liability notice in respect of the development to which the surcharge relates

to the land by virtue of the registration. The wording of Regulation 117(1)(b) is not personalised for this reason. That being the case, I am satisfied that a LN was correctly served and consequently the appellant should have been aware of the requirement to assume liability and to submit a CN before commencing works on the chargeable development.

2. I appreciate the appellant's extenuating circumstances in that her late husband was dealing with all planning matters before he sadly passed away, and I also have sympathy that it has inexplicably taken the Council some 5 years to pursue the matter of CIL. However, I can only determine the appeal in accordance with the regulations. Therefore, in the circumstances described above, I have no option but to dismiss the appeal on Regulation 117(1)(a) and (b) as liability was not assumed and neither was a CN submitted before works began on the chargeable development.

### **The appeal on Regulation 117(1)(c)<sup>3</sup>**

3. 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 of D or ██████, whichever is the lower amount. As ██████ is clearly lower than ██████, I am satisfied the Council have correctly calculated the surcharge.
4. With regards to the surcharge for failing to assume liability, Regulation 80 explains that a collecting authority may impose a surcharge of ██████ on each person liable to pay CIL in respect of a chargeable development if nobody has assumed liability to pay CIL and the chargeable development has commenced. Therefore, I am satisfied that this surcharge has also been calculated correctly.
5. The appellant does not actually dispute the calculation of the late payment interest but disagrees with the period of time it covers. She argues that she should not be charged late payment interest for the last 5 years as neither she nor ██████ received a LN. However, this matter has already been dealt with in paragraph 1 above. I am therefore satisfied that the late payment interest has been calculated correctly in relation to the correct time period. In these circumstances, the appeal on ground 117(1)(c) fails accordingly.

### **Appeal on Regulation 118<sup>4</sup>**

6. The deemed commencement date determined by the Council is 1 September 2012. They explain that this is the date according to the London Development Database, which also states a completion date of 20 January 2014. However, the appellant disputes these dates and refers to a completion notice appeal determined by a Valuation Tribunal where a completion date of 30 November 2014 was agreed. However, the date development was completed is not relevant in my consideration of an appeal on this ground. The relevant date for me to consider is the deemed commencement date. With that in mind, the appellant has not offered an alternative commencement date and neither has she produced any evidence to demonstrate that the date decided on by the Council is not correct. Therefore, on

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<sup>3</sup> The surcharge has been calculated incorrectly

<sup>4</sup> The Collecting authority has issued a demand notice with an incorrectly determined deemed commencement date

the evidence before me, I am not satisfied the Council has issued a Demand Notice with an incorrectly deemed commencement date. In these circumstances, the appeal on Regulation 118 fails accordingly.

**Formal Decision**

7. For the reasons given above, the appeal on the grounds made is dismissed and the surcharges are upheld.

*K McEntee*