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# Appeal Decision

by Ken McEntee

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

Decision date: 24 January 2018

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**Appeal ref: APP/U5360/L/17/1200134**

- 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 served by the London Borough of Hackney on 13 June 2016.
- A Demand Notice was served on 14 August 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Planning permission was granted on 22 January 2016.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The outstanding late payment interest is [REDACTED].

**Summary of decision: The appeal is dismissed and the surcharge of [REDACTED] plus late payment interest of [REDACTED] is upheld.**

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## Reasons for the decision

1. An appeal under section 117(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67 (1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant contends that he submitted a CN on 26 June 2016 stating a commencement date of 25 July 2016 and has enclosed a copy with his appeal. However, the Council (Collecting Authority) insist they have no record of having received one.
2. Ultimately, the onus was on the appellant to ensure a CN was received by the Council at least one day before works began on the chargeable development. The Liability Notice makes clear the possible consequences of failing to do so. Given the importance of the notice and the fact that the appellant could potentially be facing a surcharge, it is not unreasonable to expect him to have contacted the Council before starting works to check they were in safe receipt of the notice and

to obtain written confirmation. I take the view that to press ahead with development without taking such steps was a risky strategy to take. While the appellant is correct to say there is no obligation for documents to be submitted by Recorded Delivery, the result of choosing not to do so has resulted in there being no proof of postage. Therefore, although a CN was submitted with the appeal documents, there is no evidence before me to demonstrate that one was actually submitted to the Council before works on the chargeable development commenced. Therefore, while I have some sympathy with the appellant in these circumstances, I cannot allow the appeal on the evidence available.

**Formal decision**

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

*K McEntee*