



the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has received a valid Commencement Notice, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or [REDACTED], whichever is the lower amount. In this case, the appellant argues that he did not submit the required CN as he contends he was told in telephone conversations with the Council not to issue any further notices as the CIL was being looked into. However, the Council assert that the appellants have misunderstood the situation as the Council would not have told the appellants not to submit a CN.

3. Where there is no documentary evidence before me it is not possible to conclude on exactly what was said in telephone conversations between the parties. While I have sympathy if the appellants got/were given the wrong impression, the fact remains that the onus was on them to ensure a CN was submitted before starting works on the chargeable developments. The appellants will have been aware of this from the original Liability Notice (LN) of 29 September 2016. However, it seems they commenced works on permission [REDACTED] on 24 April 2017 and 20 June 2017 on permission [REDACTED], according to their belated CNs, although the Council consider development was commenced on 23 March 2017 in relation to the former. However, as there is no appeal under Regulation 118<sup>2</sup> before me, this is not something for me to decide upon.
4. It is noted that the Council stated in their letter of 6 June 2017 in relation to permission [REDACTED] that "*The Council will serve a Liability Notice (or a revised Liability Notice where necessary)...*". However, it appears clear that this was put on hold while investigations were taking place into a potential fraud after the Council received Form 7 – Self Build Exemption Claim Form Part 1 dated 1 June 2017. There is no explanation from the Council as to the reason for the delay from the grant of approval of planning permission on 10 March 2017 until the fraud investigation. Nevertheless, there is no evidence before me to suggest that the appellants chased the Council to find out when a LN or revised LN would be issued, particularly as they needed the LN reference numbers in order to complete the CNs. It seems they simply grew impatient as they were concerned about abortive costs and decided to press ahead with the development. While I have sympathy with the appellants in view of the misunderstanding between the parties about submission of forms, I take the view that this was a risky strategy for the appellants to take, given the potential consequences explained in the original LN of 29 September 2016 and the Council's letter of 6 June 2017.
5. The appellants eventually submitted CN's after the event on 1 August 2017 stating commencement dates of 24 April 2017 for [REDACTED] and 20 June 2017 for [REDACTED]. Therefore, the inescapable fact is that CN's were not submitted before works commenced on the chargeable developments as required by Regulation 67(1). Consequently, I am satisfied that the alleged breach that led to the surcharges occurred. The appeal on this ground fails accordingly.

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<sup>2</sup> The Collecting Authority has issued a Demand Notice with an incorrectly determined commencement date

### **The appeal under Regulation 117(1)(b)<sup>3</sup>**

6. It is clear from the evidence that, although there was a delay in doing so in regards to planning permission [REDACTED], the Council served LNs in relation to both planning permissions. Unfortunately, the appellants pressed ahead with development before receiving a LN in relation to [REDACTED] and a revised LN in relation to [REDACTED]. The appeal on this ground also fails accordingly.

### **Formal decision**

7. For the reasons given above, the appeal on the grounds made is dismissed and the CIL surcharges are upheld.
8. While I am dismissing the appeal, if the appellants are unhappy with the Council's conduct in this matter or their adopted procedures, it is open to them to submit a complaint through the Council's established complaints process in the context of local government accountability.

*K McEntee*

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<sup>3</sup> The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates