



Appeal Decision

by **Ken McEntee**

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

Decision 26 April 2018

Appeal ref: APP/W0340/L/17/1200146

- The appeal is made under Regulation 117(1)(a),(b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by West Berkshire Council.
- A Liability Notice was served on the previous site owner, [REDACTED] on 29 September 2016.
- A Liability Notice was served on the appellant on 17 February 2017.
- A Demand Notice was served on 9 March 2017.
- A revised Demand Notice was served on 18 October 2017.
- The description of the development is [REDACTED].
- The relevant planning permission for which the CIL surcharges relate is [REDACTED].
- The surcharges concern late payment of the CIL and late payment interest.
- The outstanding surcharge for late payment of the CIL is [REDACTED].
- The outstanding late payment interest surcharge is [REDACTED].

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

Procedural matters

1. It is clear that the appellant is unhappy with the Council's decision (Collecting Authority) to refuse self-build exemption as well as their conduct. However, as the appellant is clearly aware, I have no power to consider either of these matters and can only determine the appeal on the grounds made. Any complaints concerning the Council's adopted procedures or their conduct should be made through their established complaints procedures and I note the appellant has done so with regards to the self-build exemption decision. As the Council have already advised him, if he is not satisfied with the outcome of his complaint it is open to him to seek judicial review. If he is not satisfied with the outcome of any complaint concerning the Council's conduct, it is open to him to make a case to the Local Government Ombudsman.

The appeal under Regulation 117 (1)(a)¹

2. The original Demand Notice of 9 March 2017 required the CIL payment of [REDACTED] to be paid in two instalments – one instalment of [REDACTED] by 24

¹ The claimed breach which led to the surcharge did not occur

April 2017 and one of [REDACTED] to be paid by 22 August 2017. The appellant submitted a complaint on 21 February 2017 concerning the Council's decision to refuse his self-build exemption application. The Council responded to the complaint on 10 March 2017 and the appellant subsequently made a Stage 2 complaint on 14 March 2017. It appears the matter of CIL was put on hold while the complaint was being considered. The Council responded to the Stage 2 complaint on 19 May 2017. The Council then wrote to the appellant on 22 June 2017 stating that "*We have kept the account on hold whilst the Council was dealing with your complaint*". The letter goes on to explain that as a result, the first CIL instalment was now overdue and requested payment be made. The appellant argues that he should have received a revised Demand Notice and he did not receive any formal reminder that the original notice was now active again. However, there was no requirement for the Council to issue a revised Demand Notice at that stage as the original notice was still extant. I consider the Council's e-mail of 22 June 2017 makes clear that as the complaints process was now complete the CIL payment process was back in operation.

3. In view of this, it is reasonable to expect the appellant to have taken steps to at least pay the first instalment, which was now overdue. However, by the time of the Council's chase up e-mail of 29 August 2017, which also warned of the possible late payment surcharge, neither of the two instalments had been paid and both were now overdue. It would appear that the appellant was more concerned with continuing the argument of the self-build exemption issue than settling the outstanding payments. I take the view that this was a risky strategy for the appellant to take, given the warning of a late payment surcharge being imposed.
4. Having said that, I note from the Council's final chase up e-mail of 27 September 2017 they state "*I am now writing to advise you that I will be applying a 30 day late payment surcharge and late payment interest to the outstanding liability **unless** [my emphasis] the CIL Charging Authority receives payment in full by 28 September 2017*". As the Council received payment in full on 28 September 2017, as shown by transaction print outs submitted by the appellant and confirmed in the Council's response to the appeal, it is not clear why they have gone on to impose the late payment surcharge. Indeed, the late payment interest has been calculated up to 28 September 2017. However, in conflict with this the Council appear to be taking the relevant date as 2 October 2017 as that is when the funds were cleared. Regulation 85 only states that a surcharge may be imposed if full payment is not received, it does not stipulate that payment must be cleared. Nevertheless, while the Council's decision may seem somewhat perverse in view of their e-mail of 27 September 2017, the fact remains that the CIL payment was paid late in relation to the original Demand Notice and therefore the Council were entitled to use their discretionary powers to impose the late payment surcharge and late payment interest. Therefore, I have no option but to dismiss the appeal under Regulation 117(1)(a) as I am satisfied the breach which led to the surcharge occurred as a matter of fact.

The appeal under Regulation 117(1)(b)²

5. Although the relevant box was ticked for this ground of appeal, the appellant has not offered any supporting argument on this issue and has included a copy of the

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

Liability Notice issued on 17 February 2017 with his appeal documents. Therefore, it is not clear why an appeal on this ground has been made. It is also evident from the Council's e-mail of the same date that a Liability Notice was served electronically. In these circumstances, the appeal under Regulation 117(1)(b) fails accordingly.

The appeal on Regulation 117 (1)(c)³

6. Regulation 85 explains that where full payment is not received in full after the end of the period of 30 days beginning with the day payment was due, the Council may impose a surcharge equal to 5% of the amount or £200, whichever is the greater amount. It is clear that the Council chose only to impose a surcharge in relation to the first instalment of [REDACTED] that was due to be paid by 24 April 2017. 5% of [REDACTED]. I am satisfied the late payment surcharge has been calculated correctly.
7. With regards to the late payment interest, Regulation 87(2)(b) explains that such interest must be calculated at 2.5 percentage points above the Bank of England base rate, which at the time stood at 0.25%, the correct percentage charge of the CIL is 2.75%. The Council have chosen to only charge interest on the first instalment, to run from 22 July to 28 September 2017 (68 days). That being the case, 2.75% of [REDACTED], which amounts to a daily rate of [REDACTED]. Therefore, I am satisfied that the Council has also calculated the late payment interest correctly. In these circumstances, the appeal under Regulation 117(1)(c) fails accordingly.
8. The Council state "*the Inspector is also respectfully requested to consider whether late payment interest should have been applied to the late payment of the second instalment*". However, while the Council would have been entitled to do so in accordance with Regulation 87 as the second instalment was also paid late, as they chose not to impose a late payment surcharge, it would seem perverse to have imposed late payment interest.

Formal Decision

9. For the reasons given above, the appeal on the grounds made is dismissed and the surcharge and late payment interest are upheld.

K McEntee

³ The surcharge has been calculated incorrectly