



Appeal Decision

by **Ken McEntee**

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

Decision date: 15 May 2018

Appeal ref: APP/U5930/L/17/1200147

- The appeal is made under Regulations 117(1)(b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was served on [REDACTED] on 16 March 2017.
- A Demand Notice was served on [REDACTED] on 16 March 2017.
- A Demand Notice was served on the appellant on 8 August 2017.
- A revised Demand Notice was served on 24 August 2017.
- A further revised Demand Notice was served on 2 October 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breaches are: the failure to assume liability and the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The outstanding surcharges for late payment of the CIL are [REDACTED] and [REDACTED].
- The outstanding late payment interest is [REDACTED].

Summary of decision: The appeal on Regulation 117(1)(b) is allowed and all surcharges are quashed. The appeal under Regulation 117(1)(c) does not fall to be considered.

Procedural matters

1. I note that the appellant states the appeal relates to the amount of CIL applied and the surcharges. For the avoidance of doubt, it is not within my remit to consider whether or not the CIL amount is correct. I can only consider the appeal on the grounds made – Regulation 117(1)(b) and (c) in relation to the surcharges only. The correct process for a review of the chargeable amount is by requesting a review in accordance with Regulation 113 followed by an appeal under Regulation 114 to the Valuations Office Agency, if aggrieved by the decision of the review.

Appeal under Regulation 117 (1)(b)¹

2. In this case, the appellant contends that he never received a Liability Notice (LN). However, the Council (Charging Authority) state that they served a LN on the appellant on 28 September 2017 and refer to the 'Exacom' system which, like many other local authorities, they use to generate all CIL documents and have submitted a screenshot. I note from that screenshot that it lists the date of when documents were 'Last Generated' in one column and the date of 'Last sent' in another. With regards to the LN it states the date of 28 September 2017 under 'Last Generated' but unlike the other documents listed, there is no date given under 'Last Sent'. Therefore, there would only appear to be evidence that a LN was generated but not that it was actually posted.
3. As the Council is aware, it is ultimately their responsibility to ensure a Liability Notice is correctly served. Regulation 126 (1) explains the options open to the Council for serving documents. The Council have not stated which option they chose, but it is reasonable to assume it was not sent by Registered post as per Regulation 126(1)(d), which requires a signature of receipt. If the Council chose to send the LN by standard post, while they would have been entitled to do so, it entails an element of risk as it provides no proof of postage. On the evidence before me and on the balance of probabilities, I cannot be satisfied that a LN was correctly served on the appellant so have no option but to give the appellant the benefit of the doubt in this case.
4. The Council point to the fact that even if the appellant did not receive the LN, he was informed on several occasions of the need to submit an Assumption of Liability and a Commencement Notice before commencing works on the chargeable development. They also point out that an informative was included with the planning permission of 19 February 2016, which clearly refers the appellant to the CIL guidance procedures and their responsibilities to submit an Assumption of Liability Notice and a Commencement Notice. Therefore, they contend the appellant would not have been prejudiced by not receiving a LN. The Council cite a previous appeal decision² to support their argument. However, that decision has since been reviewed and while my comments within it that decision that the appellant was not prejudiced by not receiving a LN due to receipt of the informative may have been correct, they were effectively irrelevant. All that is before me to decide in an appeal on this ground is whether or not the requirements of the Regulations have been met by the service of a LN - the appellant having knowledge through other means of correspondence does not serve as a substitute for the required CIL notice. Regulation 65(3)(a) requires a LN to be served on the relevant person, but on the evidence before me I cannot be satisfied that was done in this case.
5. It is also worth noting that as well as not being aware of the amount of CIL payable, the absence of a LN also meant the appellant would not have been able to submit a valid Commencement Notice as he would not have been able to identify the LN as required by Regulation 67(2)(b).

¹ The collecting authority failed to serve a liability notice in respect of the development to which the surcharge relates

² APP/G5750/L/17/1200092

6. In these circumstances, I have no option but to allow the appeal and quash the surcharges.

Appeal on ground 117 (1)(C)³

7. In view of my findings on the appeal under Regulation 117(1)(b), it follows that the appeal under Regulation 117(1)(c) does not fall to be considered.

Formal decision

8. For the reasons given above, the appeal under on Regulation 117(1)(b) is allowed and the surcharges are quashed.

K McEntee

³ The surcharge has been calculated incorrectly