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# Appeal Decision

by **Ken McEntee**

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

Decision date: 16 May 2018

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**Appeal ref: APP/U5360/L/17/1200150**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(C) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served on the appellant by the London Borough of Hackney on 25 October 2017.
- A Demand Notice was served on the appellant on 25 October 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Planning permission was granted on 6 February 2017.
- The alleged breaches which led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

**Summary of decision: The appeal is dismissed and the surcharges of [REDACTED] are upheld.**

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## Reasons for the decision

1. An appeal under Regulation 117(1)(c) states that the surcharge has been calculated incorrectly. However, the appellant's supporting arguments are more suited to an appeal under Regulation 117(1)(a) - that the claimed breach which led to the surcharge did not occur. It appears he thought he had submitted an Assumption of Liability Notice and a Commencement Notice (with a commencement date of 1 June 2016) by e-mail of 23 May 2016 and has provided a screenshot as evidence. Unfortunately, by the appellant's own admission the e-mail was sent to an incorrect address and consequently the Council (Collecting Authority) did not receive it. While I have sympathy with the appellant for this unfortunate mistake, it means he did not submit an Assumption of Liability Notice or a Commencement Notice before commencing works on the chargeable

development as a matter of fact. That being the case, the Council were entitled to impose appropriate surcharges in line with Regulations 80 and 83.

2. Regulation 80 explains that a collecting authority may impose a surcharge of £50 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.
3. Regulation 83 explains 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 £2,500, whichever is the lower amount. [REDACTED]  
[REDACTED] Therefore, I am satisfied the Council have also correctly calculated this surcharge.
4. In these circumstances, the appeal must fail accordingly.

### **Formal decision**

5. For the reasons given above, the appeal is dismissed on the ground made and the CIL surcharges are upheld.

*K McEntee*