



Appeal Decision

by **Ken McEntee**

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

Decision date: 13 June 2018

Appeal ref: **APP/L3815/L/17/1200149**

- The appeal is made under Regulations 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 Chichester District Council.
- A Liability Notice was served on the previous land owners [REDACTED] on 13 December 2016.
- A Liability Notice was served on [REDACTED] on 20 October 2017.
- A Demand Notice was served on [REDACTED] on 20 October 2017.
- The relevant planning permission for which the CIL surcharges relate is [REDACTED].
- The description of the development is [REDACTED].
- Planning permission was granted on 21 November 2016.
- The alleged breaches which led to the surcharges are failure to assume liability and 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].

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

Appeal under Regulation 117(1)(a)¹

1. The main basis of the appellants' case is that they contend they were not liable for the payment of CIL as it was agreed with the previous site owners, [REDACTED], that they would be responsible for paying the CIL. However, after assuming liability on 12 December 2016, [REDACTED] subsequently withdrew the assumption of liability on 4 January 2017. The appellants contend that neither they nor the Council (Collecting Authority) informed them of this withdrawal. The appellants point to an e-mail exchange between the Council and [REDACTED] where the Council state that they will contact the appellants to obtain a fresh Assumption of Liability form but this did not happen. Consequently, it appears the appellants pressed ahead with the development without submitting an Assumption of Liability Notice or a Commencement Notice in the belief that all the necessary CIL

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

procedures were being taken care of by [REDACTED]. In these circumstances, they do not consider they are liable to pay the surcharges imposed.

2. While I have sympathy with the appellants in the circumstances of this case, particularly if they reached a verbal agreement on CIL liability with the previous site owners, unfortunately they have been unable to provide evidence to demonstrate that any such agreement was contractually secured. This is a matter for the appellants to take up with [REDACTED] and I note they have taken legal steps to do so aside from this appeal. I also have sympathy if they were not notified of the withdrawal of the assumption of liability and of the need for them to assume liability instead. However, it is noted from the Withdrawal of Liability - Form 3 that [REDACTED] stated, by ticking the relevant box, that the landowners were informed of the withdrawal. It is also clear in an e-mail exchange of 9 January 2017 with [REDACTED] that the Council asked to be informed of whom the new landowners were so they could notify them of the need to assume liability, but they did not receive a reply. The Council then carried out a Land Registry search which unfortunately was not updated at the time to show [REDACTED] as the new land owners.
3. It appears it was not until they visited the site after being alerted that development may have begun that the Council became aware that the landowners were now [REDACTED]. It is unfortunate the Council were not in a position to notify the appellants of the situation as it would have given them the opportunity to take steps to comply with the procedures and avoid the surcharges. However, it appears clear that despite their efforts the Council were unaware of who the new landowners were. Added to this, they would have had no reason to believe that the appellants were not aware of the withdrawal of the assumption of liability in view of the declaration given by [REDACTED] in Form 3. Nevertheless, should the appellants be unhappy with the Council's conduct in this matter or their adopted procedures, it is open to them to make a complaint through the Council's established complaints process in the context of local government accountability.
4. Irrespective of the above events, the fact is that Regulation 33 explains that where a chargeable development has commenced in reliance on planning permission and nobody has assumed liability to pay CIL in respect of that development, liability must be apportioned between each material interest in the relevant land. In this case, the only material interest is that of the appellants. As the appellants did not submit an Assumption of Liability form or a Commencement Notice before starting works on the chargeable development, it follows that the alleged breaches occurred as a matter of fact.
5. The appeal on this ground fails accordingly.

Appeal under Regulation 117(1)(b)²

6. The Council served a Liability Notice on [REDACTED] on 13 December 2016, which was registered as a local land charge as the Council are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land. Any purchaser and owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. The Council then served a revised Liability Notice on the appellants once they became aware from the site visit made on 22

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharges relate

September 2017 that they were the new landowners. Therefore, I am satisfied that a LN was correctly served as required by 65(1).

7. The appellants also contend that the Council should have served a Default of Liability Notice. This can occur under Regulation 36 when a Council have been unable to recover the outstanding CIL charge from the party(ies) who had assumed liability to pay the CIL and following all reasonable effort, the Council determined that liability is now transferred to the owners of the land on which the CIL development stands. However, this situation does not apply in this case as the assumption of liability was withdrawn by the previous landowners and consequently the appellants as the new landowners became liable for the CIL. Therefore, there was no requirement for the Council to serve a Default of Liability Notice and to apportion liability.
8. The appeal on this ground fails accordingly.

Appeal under Regulation 117(1)(c)³

9. Although the appellants have appealed on this ground, they have not provided any supporting evidence to demonstrate that the surcharges have been calculated incorrectly. However, for the avoidance doubt, 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 and the chargeable development has commenced. 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] Therefore, I am satisfied the Council have correctly calculated the surcharges.

10. The appeal on this ground fails accordingly.

Formal Decision

11. For the reasons given above, the appeal on the grounds made is dismissed and the surcharges are upheld.

K McEntee

³ The surcharge has been calculated incorrectly