



Appeal Decision

by Ken McEntee

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

Decision date: 3 August 2018

Appeal ref: APP/N5090/L/18/1200164

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was issued by the London Borough of Barnet on 13 September 2016.
- A Demand Notice was issued on 17 January 2018.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- [REDACTED]
- Planning permission was granted on appeal on 22 August 2016.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The outstanding late payment surcharges total [REDACTED]
- The outstanding late payment interest is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharges are upheld.

Reasons for the decision

1. An appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the chargeable development to which the surcharge relates. In this case, the appellant contends that he was not served with a copy of the LN as required by Regulation 65(3)(a). The Council served the notice on the appellant's agents/architects [REDACTED] instead. Regulation 65(3)(a) makes clear that a LN must be served on the relevant person as defined in Regulation 65(12). In support of his case, the appellant refers to a previous appeal decision¹ involving the same scenario where the appeal was allowed. However, that decision has since been reviewed in light of Regulation 126. This Regulation explains the options open to the Council for service of documents. Regulation 126(1)(e) states "*in a case where an address for service using electronic communications has been given by that person, by sending it to that person at that address...*". In this case, [REDACTED] is stated on the planning application form of 29 February 2016 as the appellant's agents and their e-mail address is given. There is no direct e-mail address stated

¹ APP/E0345/L/17/1200120

for the appellant. Consequently, the Council submitted the LN to [REDACTED] [REDACTED] as the appellant's representatives at the e-mail address given.

2. In view the above, I have to conclude that proper service of the LN has been served on the appellant in accordance with Regulation 126(1)(e). While I have sympathy with the appellant if it was not acted upon by his agents, I can only suggest that this is a matter he may wish to take up with them.
3. On a separate issue, the appellant's agent argues that the Regulations do not insist that an Assumption of Liability Notice is served. However, Regulation 31 clearly states that *A person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an assumption of liability notice to the collecting authority.* In any event, I note that the Demand Notice does not include a surcharge for failure to assume liability.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharges are upheld.

K McEntee