



Appeal Decision

by **Ken McEntee**

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

Decision date: 22 August 2018

Appeal ref: APP/U1105/L/18/1200175

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served by East Devon District Council on 21 September 2017.
- A Demand Notice was served on 5 October 2017.
- A revised Demand Notice was served on 10 February 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 9 February 2017.
- The alleged breaches which led to the surcharges are the failure to submit a Commencement Notice and late payment of the CIL.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for late payment is [REDACTED]

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

Reasons for the decision

1. With regards to the surcharge for failure to submit a Commencement Notice, the appellant does not dispute that he did not submit a Commencement Notice before commencing works on the chargeable development as required by Regulation 67(1). Therefore, I have no reason to believe that this breach did not occur. However, the appellant is challenging the late payment surcharge. He contends that as the original Demand Notice (DN) of 5 October 2017 ceased to have effect since the issue of the revised DN of 10 February 2018, payment of the CIL was not late as it was not required by the revised DN until 12 March 2018 (after the appeal was submitted). However, Regulation 69(3) explains that the Collecting Authority (Council) may at any time serve a revised DN on a person liable to pay a CIL amount. As the CIL was not paid by the deadline of 1 December 2017 as required by the original DN, the Council were entitled to impose a late payment surcharge in accordance with Regulation 85. In order to do this, a revised DN was required to be served detailing the surcharge, which the Council duly did. While the issue of the revised DN resulted in the original DN ceasing to have effect as per Regulation 69 (5), the new DN supersedes the original and has full effect, including its surcharges.

2. Therefore, I do not accept the appellant's argument and the appeal fails accordingly.
3. It is clear that the appellant is not happy with the timing of the issue of a DN as he was in discussions with the Council at the time to try and resolve the issue of the amount of CIL. However, it appears that no formal request for a review of the chargeable amount was made under Regulation 113. Therefore, the Council were entitled to issue a DN when they did. Nevertheless, any complaints concerning the Council's conduct or their adopted procedures should be made through their established complaints process in the context of local government accountability.

Formal decision

4. For the reasons given above, the appeal is dismissed on the ground made and the CIL surcharges of [REDACTED] are upheld.

K McEntee