



Appeal Decision

by **Ken McEntee**

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

Decision date: 4 October 2018

Appeal ref: APP/J1860/L/18/1200180

- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Malvern Hills District Council.
- Planning permission was granted on 26 June 2017.
- A Liability Notice was issued on 26 June 2017.
- A Demand Notice was issued on 20 March 2018.
- The relevant planning permission for 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].
- There is no outstanding surcharge for failure to submit a Commencement Notice.

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

Procedural matters

1. I note that although one of the alleged breaches is the failure to submit a Commencement Notice (CN), no surcharge has actually been imposed in relation to this breach. The Demand Notice is confusing as it gives the impression that the sum of [REDACTED] is a surcharge, but this sum is in fact the CIL chargeable amount which has been reinstated due to the alleged breach, which is a disqualifying event. The Council have not exercised their right to impose a surcharge of [REDACTED] in accordance with Regulations 83(1) and 84(2). The appellant's case is based on the contention that she submitted a CN. However, as no surcharge has been imposed, whether or not a CN was submitted before works began on the chargeable development is not before me to determine. The only surcharge that has been imposed is that of [REDACTED] for the alleged breach of failure to assume liability. Therefore, this is the only matter that is before me to consider. For the avoidance of doubt, I have no powers to overturn the Council's decision to withdraw the self-build exemption.

Reasons for the decision

2. Regulation 80 explains that a surcharge of [REDACTED] may be imposed on each person liable to pay CIL where the chargeable development has been commenced. In this case, the appellant does not dispute that an Assumption of Liability Notice

was not submitted before development commenced. Therefore, on the evidence before me, I am satisfied that the alleged breach which led to the surcharge occurred. In these circumstances, the appeal fails accordingly.

3. The appellant is clearly unhappy with the level of service she has received from the Council. However, this is not something within my remit to consider. Should the appellant wish to make a complaint about the Council's conduct or their adopted planning procedures, she can do so through their established complaints process in the context of local government accountability.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharge of ■■■ is upheld.

K McEntee