



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/L5240/L/18/1200186

- The appeal is made under Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by the London Borough of Croydon.
- Planning permission was granted on 4 December 2017.
- A Liability Notice was issued on 4 December 2017.
- A revised Liability Notice was issued on 12 March 2018.
- A Demand Notice was issued on 9 April 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
- [REDACTED]
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

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

Procedural matters

1. Although the appellant has ticked the box for an appeal under Regulation 117(1)(b) – *The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates*, his arguments are more suited to an appeal under Regulation 117(1)(a) – *The claimed breach which led to the surcharge did not occur*, as he appears to accept that he did receive both the original and revised Liability Notices. I consider I can determine the appeal on this basis without causing prejudice to either party.

Reasons for the decision

2. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, a CN was submitted on 13 March 2018 stating a development commencement date of 5 March 2018. The appellant accepts that he did not submit the CN in time but he argues that he has mitigating circumstances due to the Council's failure to respond promptly to e-mail correspondence. The appellant contacted the Council on 12 February 2018 to point out that the payable CIL in

the Liability Notice (LN) was calculated incorrectly, but did not receive a response confirming the error until 28 February 2018, and did not receive a revised LN until 12 March 2018. It appears that the appellant was waiting to receive the corrected LN before submitting the CN.

3. However, a blank CN was submitted to the appellant with the LN on 4 December 2017. The LN clearly states that a valid CN must be submitted before development commences. The CN makes the same stipulation and warns of the possibility of a surcharge being imposed if this procedure is not followed. Therefore, while I have sympathy with the appellant that he did not receive prompt responses from the Council, the onus was on him to submit a CN irrespective of whether or not the calculation in the LN was correct. To wait for a revised LN and to decide to press ahead with the development in the meantime without submitting a CN, was a risky strategy for the appellant to take, particularly given the warning of a possible surcharge.
4. In these circumstances, the appeal cannot succeed as the alleged breach which led to the surcharge occurred as a matter of fact. Therefore, the Council were entitled to submit a surcharge in accordance with Regulation 83. The appeal fails accordingly.
5. The appellant is clearly unhappy with the level of service he has received from the Council and it is noted the Council have not responded to any of the appellant's concerns on this matter. However, this is not something within my remit to consider. Should the appellant wish to make a complaint about the Council's conduct, he can do so in the first instance through the Council's established complaints procedures in accordance with local government accountability. If he is not satisfied with the outcome it will be open to him to make a case to the Local Government Ombudsman.

Formal decision

6. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee