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# Appeal Decision

by **Ken McEntee**

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

Decision date: 7 November 2018

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**Appeal ref: APP/H5960/L/18/1200196**

- 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 surcharges imposed by Wandsworth Council.
- Planning permission was granted on 9 December 2016.
- A Liability Notice was issued on 21 December 2016.
- A revised Liability Notice was issued on 29 June 20128.
- A Demand Notice was issued on 9 July 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 outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

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## Reasons for the decision

1. Regulation 31 explains 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 (Council). Regulation 80 explains that a surcharge of £50 may be imposed on each person liable to pay CIL where the chargeable development has been commenced and no one has assumed liability. 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. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has received a valid Commencement Notice, the Council may impose a surcharge equal to 20 percent of the chargeable amount payable or £2,500, whichever is the lower amount.
2. In this case, the appellants do 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 £50 surcharge occurred. With regards to the alleged failure to submit a Commencement Notice, the appellants contend that they were not aware of the need to do so. However,

page 3 of the original Liability Notice of 21 December 2016, clearly states the following:-

**“This payment procedure is to notify the CIL collecting authority before development commences of:**

- a. Who will pay the amount, by assuming liability using CIL Form 1 “Assumption of Liability”;**
- b. The date on which you intend to commence development, by submitting a valid Form 6 Commencement Notice”.**

3. I appreciate the appellants’ frustration that they submitted a cheque to cover the CIL payment on 29 December 2017, but it would appear the Council did not contact the appellants to explain that they would not be cashing the cheque and the reasons why. This is something the appellants may wish to pursue through the Council’s established complaints procedures. Nevertheless, the Council are correct to point out that this has no bearing on the appeal. The inescapable fact is that despite being informed of the requirement to do so in the Liability Notice, the appellants failed to submit an Assumption of Liability Notice and a Commencement Notice before commencing works on the chargeable development as required by Regulations 31(1) and 67(1).
4. In these circumstances, I can only conclude that the breaches that led to the surcharges occurred as a matter of fact.

#### **Formal decision**

5. For the reasons given above, the appeal is dismissed and the surcharges [REDACTED] [REDACTED] are upheld.

*K McEntee*