



Appeal Decision

by **Ken McEntee**

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

Decision date: 28 November 2018

Appeal ref: APP/X4725/L/18/1200208

- The appeal is made under Regulations 117(1)(a) and 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by Wakefield Council.
- Planning permission was granted on 20 January 2017.
- A Demand Notice was issued on 17 July 2018.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal on the grounds made is allowed and the surcharge is quashed.

Procedural matters

1. It appears clear from the evidence that the appellant is aggrieved by the Collecting Authority's (Council) decision to withdraw his self-build exemption. For the avoidance of doubt, there is no ground of appeal available to restore a self-build exemption and I have no powers to do so. This is a matter the appellant may wish to take up with the Council. I can only determine the appeal in relation to the surcharge and on the grounds made – Regulations 117(1)(a)¹ and 117(1)(b)².

Reasons for the decision

2. In this case, the appellant contends that he didn't receive a Liability Notice (LN). However, the Council state that they served a LN on 23 January 2017 to the same address given on the application form. The appellant points out that due to a fire he arranged for mail to be re-directed to an alternative address. The Council contend that they cannot be held responsible if any post was not correctly re-directed. While this is the case, the Council are responsible for

¹ The claimed breach which led to the surcharge did not occur.

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates.

ensuring a LN is correctly served on the relevant person. Regulation 126 (1) explains the options open to the Council for serving documents. The Council have not stated which option they chose, but it is reasonable to assume it was not sent by registered post or recorded delivery as per Regulation 126(1)(d), which requires a signature of receipt. If the Council chose to send the LN by standard post, while they would have been entitled to do so, it entails an element of risk as it provides no proof of postage. On the evidence before me and on the balance of probabilities, I cannot be satisfied that a LN was correctly served on the appellant so have no option but to give the appellant the benefit of the doubt in this case.

3. The Council point to the fact that even if the appellant did not receive the LN, he was aware of the need to submit a Commencement Notice before starting works on the chargeable development by way of the Assumption of Liability Notice, in which he ticked the relevant 'Declaration box' that he understood the consequences of failing to do so. They also reminded the appellant's agent by e-mail of 10 July 2018. However, while I appreciate the Council's point, knowledge through other means of correspondence does not serve as a substitute for the required CIL notice. CIL is a very formulaic process and Regulation 65(3)(a) requires a LN to be served on the relevant person. On the evidence before me, I cannot be satisfied that has been done in this case. It is also worth noting that in the absence of a LN, it was not possible for the appellant to have submitted a valid Commencement Notice in any event as he would not have been able to identify the LN as required by Regulation 67(2)(b), irrespective of whether he was aware through other means of the need to do so.
4. In these circumstances, it follows that as I cannot be satisfied a LN was served and cannot conclude that the alleged breach which led to the surcharge occurred. Therefore, I have no option but to allow the appeal and quash the surcharge.

Formal decision

5. For the reasons given above, the appeal under on Regulation 117(1)(a) and 117(1)(b) is allowed and the surcharge of [REDACTED] is quashed.

K McEntee