



Appeal Decision

by **Ken McEntee**

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

Decision date: 6 December 2018

Appeal ref: APP/L5810/L/18/1200197

- The appeal is made under Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by the London Borough of Richmond upon Thames.
- Planning permission was granted on appeal¹ on 22 June 2017.
- A Liability Notice was on 8 June 2018.
- A Demand Notice was issued on 8 June 2018.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
- The alleged breaches that led to the surcharges are the failure to assume liability and the failure to submit a Commencement Notice.
- The surcharge for failure to assume liability is [REDACTED]
- The surcharge for failure to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is allowed in part to the extent that the surcharge for failure to submit a Commencement Notice is quashed, but the surcharge for failure to assume liability is upheld.

Procedural matters

1. Although the relevant box was ticked for an appeal under Regulation 118², the appellant has since accepted that the determined deemed commencement date of 5 March 2018 given in the Demand Notice is correct. Therefore, all that is before me to determine is the appeal under Regulation 117(1)(a)³.

Reasons for the decision

2. 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.

¹ [REDACTED]

² The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date

³ The claimed breach which led to the surcharge did not occur

In this case, the appellant does not dispute that he failed to submit an Assumption Liability Notice (Form 1) before a Liability Notice was served by the Council (Collecting Authority). He submitted a Transfer of Assumed Liability Notice (Form 4) in error after works had commenced. Therefore, on the evidence before me I am satisfied that the alleged breach of failing to assume liability which led to the surcharge [REDACTED], occurred.

3. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority 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 CN they may impose a surcharge equal to 20% of the chargeable amount or £2,500, whichever is the lower. Again, the appellant does not deny that he did not do submit a CN before commencing works on the chargeable development, but argues there were mitigating circumstances in that the Council failed to respond to his agents' e-mail of 20 February 2018 advising them of the intended commencement date. While I accept it would have been helpful had the Council responded to that e-mail by pointing out the need to go through the formality of submitting a CN, the onus was nevertheless on the appellant to have submitted the required form before commencing works. Having said that, I consider there were extenuating circumstances in this case that prevented the appellant from being able to do so, as I explain below.
4. Regulation 65(1) explains that the Collecting Authority must issue a Liability Notice (LN) as soon as practical after the day on which a planning permission first permits development. In this case, I note that a LN was not served until 8 June 2018, some 12 months after planning permission was granted on appeal. Therefore, it is reasonable to conclude that the requirement of Regulation 65(1) has not been met. The Council have not explained the reason for such an excessive delay, but their failure to issue a LN more promptly effectively deprived the appellant of the opportunity to submit a valid CN. Regulation 67(2)(b) explains that a CN must identify the LN in respect of the chargeable development for it to be valid. As the appellant did not receive a LN until some 12 months after approval, it was simply not possible for him to have identified the LN so he would not have been able to submit a valid CN.
5. In these circumstances, I cannot be satisfied that the alleged breach which led to the surcharge occurred. Therefore, I have no option but to allow the appeal in this regard and to quash the surcharge.

Formal decision

6. For the reasons given above, the appeal is allowed in relation to the alleged breach of failing to submit a Commencement Notice and the surcharge [REDACTED] is quashed, but the appeal is dismissed in relation to the alleged breach of failing to assume liability and the surcharge [REDACTED] is upheld.

K McEntee