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# Appeal Decision

by **Ken McEntee**

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

Decision date: 5 December 2018

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**Appeal ref: APP/L3245/L/18/1200205**

- 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 Shropshire Council.
- Planning permission was granted on 28 October 2016.
- A Liability Notice was served on 7 November 2016.
- A revised Liability Notice Demand Notice was served on 31 July 2018.
- A Demand Notice was served on 31 July 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the permission 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.**

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## Procedural matters

1. For the avoidance of doubt, I have no powers to reinstate the CIL exemption granted to the appellants on 7 November 2016. This is not a matter within my remit to consider. I can only determine the appeal solely in relation to the surcharge and on the ground made – *the claimed breach which led to the surcharge did not occur.*

## 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. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has received a valid CN the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. In this case, the appellants contend that they submitted a CN on 7 May 2017 and have enclosed a copy with the appeal. However, the Council contend that they have no record of having received it. The appellants insist that they sent the notice by first class post as there was no obligation on

them to use registered post or recorded delivery. However, while the appellants are correct and were perfectly entitled to use first class post, it unfortunately entails an element of risk as it does not provide for proof of postage, whereas registered post or recorded delivery does so.

3. The appellants argue that they would have expected the Council to have contacted them to chase any outstanding matters. However, there is no obligation on the Council to do so. The onus was very much on the appellants to ensure a CN is received by the Council at least one day before works are due to commence on the chargeable development. The Liability Notice makes clear *"If a valid Commencement Notice has not been submitted before development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced. Shropshire Council will also impose a surcharge of 20% of the total amount due up to a max of £2,500"*. This was also listed as a disqualifying event in the decision notice granting the self-build exemption.
4. As the appellants refer, the second declaration of section 4 of the CN states that *I acknowledge I must receive a CIL Demand Notice*, and goes on to state *(including Acknowledgement of Receipt of CIL Form 6: Commencement Notice) prior to commencement of development*. The appellants contend that as they had already received a Demand Notice, they did not expect to receive any further correspondence. However, it is not clear why they reached this expectation, given the clear statement above that an acknowledgement of receipt of a CN must be received. Therefore, while they were under no obligation to do so, having received no such acknowledgement and given the importance of the CN and the potential consequences of the Council not being in timely receipt of one, it is not unreasonable to expect the appellants to have contacted the Council before starting works to check they were in safe receipt of the CN and to obtain written confirmation. To press ahead with the development without taking such steps was a risky strategy to take.
5. While I appreciate the appellants were new to the CIL process and I have sympathy if they genuinely posted a CN in good faith, in the absence of any documentary evidence before me to prove postage, I cannot be satisfied a CN was submitted before works began on the chargeable development as required by Regulation 67(1).
6. In these circumstances, I can only conclude that the alleged breach that led to the surcharge occurred. The appeal fails accordingly.

### **Formal decision**

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

*K McEntee*