



Appeal Decision

by **Ken McEntee**

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

Decision date: 30 January 2019

Appeal ref: APP/C3620/L/18/1200216

- The appeal is made under Regulations 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Mole Valley District Council.
- Planning permission was granted on 1 December 2016.
- A Liability Notice was served on 20 September 2017.
- A revised Liability Notice was served on 18 May 2018.
- A Demand Notice was served on 9 August 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].
- The outstanding surcharge for late payment of the CIL is [REDACTED].

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

Procedural matters

1. It appears clear that the appellant's main purpose for appealing is to have the CIL exemption that was granted but subsequently withdrawn by the Collecting Authority (Council) reinstated. However, for the avoidance of doubt, there is no ground of appeal available to reinstate a CIL exemption and I have no powers to do so. I can only determine the appeal solely on the grounds made - Regulations 117(1)(a)¹ and 117(1)(c)². Therefore, while I fully acknowledge the appellant's deep felt concerns about the potential impact the amount of CIL payable may have on his business and the livelihoods of others, I am afraid this is not something within my remit to address.

Appeal under Regulation 117(1)(a)

2. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Council no later than the day before the day on which the chargeable development is to be commenced. In this case, the

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

² The surcharge has been calculated incorrectly

appellant does not refute that he did not submit a CN before starting works on the chargeable development. Although I fully appreciate the appellant's mitigating circumstances as set out in his grounds of appeal and final comments, the inescapable fact is that he failed to submit a CN as required by Regulation 67(1). Therefore, the appeal on this ground cannot succeed.

Appeal under Regulation 117(1)(c)

3. An appeal under Regulation 117(1)(c) is that the surcharge has been calculated incorrectly. Regulation 83 explains that where a chargeable development is commenced before the Council 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. The chargeable amount in this case is [REDACTED] I am satisfied the surcharge has been calculated correctly.
4. The Council have also imposed a late payment surcharge of [REDACTED] Regulation 85(1) explains that where a chargeable amount is not received in full after the end of the period of 30 days, beginning with the day on which payment is due, the Council may impose a surcharge equal to 5% of the amount or £200, whichever is the greater. As more than 30 days lapsed since the chargeable amount became due (the date of the deemed commencement), the appellant became liable to pay a late payment surcharge. [REDACTED] I am satisfied the Council have correctly calculated this surcharge. In these circumstances, the appeal on this ground also cannot succeed.

Formal decision

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

K McEntee