



Appeal Decision

by **Ken McEntee**

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

Decision date: 21 February 2019

Appeal ref: APP/L3245/L/18/1200207

- The appeal is made under Regulations 117(1)(b) 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 14 October 2014.
- A Demand Notice was served on 11 July 2018.
- A revised Demand Notice was served on 6 August 2018.
- The relevant planning permission to which the CIL 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 failure to submit a Commencement Notice is [REDACTED]

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

Reasons for the decision

1. The appellant contends that he that he did not receive a Liability Notice (LN) as and therefore could not submit a valid Commencement Notice (CN). However, the Council (Collecting Authority) state that they posted a LN to the address provided in the planning application form and point out that other CIL documentation was also sent to that address and received safely by the appellant.
2. It is ultimately the Council's responsibility to ensure a Liability Notice is correctly served. Regulation 126 (1) explains the options open to the Council for serving documents. It appears the Council submitted the LN by standard post in line with Regulation 126(1)(c). While they were entitled to do so, this method of service entails an element of risk as it provides no proof of postage, unlike the option of registered post or recorded delivery, as per Regulation 126(1)(d), as it requires a signature of receipt. In the absence of any such documentary evidence before me, I cannot be satisfied that a LN was served on the appellant. Therefore, I have no option but to give the appellant the benefit of the doubt in this case.

3. The Council argue that as the LN was registered as a local land charge, the appellant will have been aware that a CN was required. However, this argument is only relevant where the appellant purchased the property since the LN was registered as a land charge. As there does not appear to have been a change in ownership in this case since planning permission was granted, the appellant will have had no reason to carry out any land searches in relation to the property in which the land charge would show up. In such cases, receipt of the LN acts as the trigger for the owner to submit a CN. CIL is a very rigid and formulaic process and Regulation 65(3)(a) makes clear the Council must serve a LN on the liable person. For the reasons explained, I cannot be satisfied this has happened here. In these circumstances, I have no option but to allow the appeal and quash the surcharge.

Formal decision

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

K McEntee