



Appeal Decision

by **Ken McEntee**

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

Decision date: 26 February 2019

Appeal ref: APP/H1840/L/18/1200218

- The appeal is made under Regulation 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Wychavon District Council.
- Planning permission was granted on 7 March 2018.
- A Liability Notice was served on 27 April 2018.
- A revised Liability Notice was served on 3 September 2018.
- Demand Notice was served on 13 September 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED]
- The description of the permission is [REDACTED]
[REDACTED]
[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.

Reasons for the decision

1. Although the appeal has been made under Regulation 117(1)(c) – that the surcharge has been calculated incorrectly, no evidence has been submitted in support of this ground. Instead, it appears clear that the appellants are appealing the surcharge in its entirety, rather than its calculation. They do not refute that they did not submit a Commencement Notice (CN) before commencing works on the chargeable development but offer mitigation as to why they failed to do so; mainly that they were awaiting the outcome of an appeal against the CIL liability. I appreciate the appellants' frustration in the time it took for a decision to be issued on their appeal and that they were keen to press ahead with the development. However, to do so before receiving a decision was a risky strategy for the appellants to take, given the clear warnings in both Liability Notices that a CN was required to be submitted and the potential penalties for failing to do so. Therefore, while I have some sympathy with the appellants, the inescapable fact is that they did not submit a CN before starting works on the chargeable development as required by Regulation 67(1). Therefore, I am satisfied that the alleged breach occurred as a matter of fact.

2. That being the case, the Council were entitled to impose a surcharge in accordance with Regulation 83. This Regulation explains that where a chargeable development is commenced before the Council has received a valid CN they may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. [REDACTED]
[REDACTED] I am satisfied the surcharge has been calculated correctly. In these circumstances, the appeal on the ground made fails accordingly.
3. It appears clear that the appellants are not happy with the way the Council has conducted matters in this situation. Should they wish to make a complaint about the Council's conduct or their adopted procedures, they can do so through the Council's established complaints process in the context of local government accountability.

Formal decision

4. For the reasons given above, the appeal on the ground made is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee