



Appeal Decision

by **Ken McEntee**

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

Decision date: 22 May 2019

Appeal ref: APP/L5240/L/18/1200237

- 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 Croydon Council.
- Planning permission was granted on 9 March 2018.
- A Liability Notice was served on 9 March 2018.
- A Demand Notice was served on 20 November 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the permission is [REDACTED].
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- 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. An appeal under Regulation 117(1)(a) is that the claimed breach which led to the surcharge did not occur. 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(1) explains that where a chargeable development is commenced before the Council has received a valid CN they may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2,500, whichever is the lower amount.
2. In this case, the appellant does not dispute that he did not submit a Commencement Notice before starting works on the chargeable development but contends there were mitigating circumstances for not doing so; namely, that his father was involved in a serious road accident. As a consequence, the appellant had to relocate to be near the hospital that was caring for him. During this time, it would appear the appellant understandably forgot to submit the required Commencement Notice. However, while I have every sympathy with the appellant and in no way wish to appear dismissive of the unfortunate and difficult situation he had to contend with, I have no powers to waive a surcharge on grounds of mitigation; I can only determine the appeal on its facts. With that in mind, it is a

fact that a Commencement Notice was not submitted before works began on the chargeable development. Therefore, on the evidence before me, I have no option but to conclude that the alleged breach which led to the surcharge occurred. Consequently, the appeal cannot succeed in these circumstances.

Formal decision

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

K McEntee