



Appeal Decision

by **Ken McEntee**

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

Decision date: 19 June 2019

Appeal ref: APP/G1250/L/19/1200250

- The appeal is made under Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bournemouth Borough Council.
- Planning permission was granted on 20 April 2018.
- A Demand Notice was served on 27 December 2018.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breaches are: the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The deemed commencement date stated in the Demand Notice is 20 December 2018.

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

The appeal under Regulation 117(1)(b)

1. An appeal on this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharges relate. Regulation 65(3)(a) explains that the Collecting Authority must serve a Liability Notice on the relevant person. In this case, it is sufficiently clear that the Council e-mailed the appellants on 25 April 2018, attaching a LN. The appellants confirm the e-mail was received but unfortunately it was marked "FAO [REDACTED]", which the Council have confirmed was done so in error. As a result, the appellants understandably assumed the email was sent to them in error and consequently disregarded it, particularly as it also stated that "This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed". Regulation 126(1)(e) explains that a LN can be served using electronic communications to that person at the address given. In view of the exceptional circumstances of this case, I cannot be satisfied that the LN was correctly served as although it was sent to the correct address (destination), it was not sent to the correct person.

2. Accordingly, the appeal under on this ground succeeds and the surcharges are quashed in accordance with Regulation 117(4).

The appeal under Regulation 118

3. An appeal on this ground is that the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council deemed that date to be 20 December 2018 as that was the date they visited the site and discovered works had begun. However, the appellants contend that works actually started on 24 September 2018. With no documentary evidence before me, it is difficult to determine the correct commencement date. However, given that the date of 20 December 2018 favours the appellants and the Council are content with it, I consider it expedient to accept it. If not, I would be required by CIL Regulation 118(5) to determine a revised commencement date. If I determined that date to be 24 September 2018 it could potentially result in the appellants being liable to pay late payment surcharges as the purpose of the commencement date is to determine the starting point for CIL liability. The appeal on this ground fails accordingly.

Formal decision

4. For the reasons given above, the appeal under Regulation 117(1)(b) is allowed and the surcharges of [REDACTED] are quashed, but the appeal under Regulation 118 is dismissed.

K McEntee