



Appeal Decision

by **Ken McEntee**

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

Decision date: 14 August 2019

Appeal ref: APP/E5900/L/19/1200265

- 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 CIL surcharges imposed by the London Borough of Tower Hamlets.
- Planning permission was granted on 22 May 2015.
- A Liability Notice was issued on 25 January 2019.
- A Demand Notice was issued on 25 January 2019.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- [REDACTED].
- [REDACTED].
- The alleged breaches are the failure to assume liability and the failure to submit a Commencement Notice.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].

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

Procedural matters

1. An application for costs has been made by the appellant. This is the subject of a separate letter accompanying this decision.

The appeal under Regulation 117(1)(b)

2. An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. In this case, the Council did not serve a LN until 25 January 2019. Regulation 65(1) explains that the Council must issue a LN as soon as practical after the day on which planning permission first permits development. To serve a LN nearly 4 years later cannot reasonably be interpreted as meeting this requirement. The Council point to the fact that the relevant CIL information was included in the Informative e-mail sent on 26 May 2015. However, CIL is a very rigid and formulaic process and Regulation 65(3)(a) requires a LN to be served on the relevant person. That person having knowledge by other means

does not act as a substitute for the required notice. The LN is the trigger for the recipient to submit the necessary forms before starting works on the chargeable development. In the absence of a LN, it was not possible for the appellants to submit a valid Commencement Notice as they would not have been able to identify the LN as required by Regulation 67(2)(b).

3. In these circumstances, I conclude that the alleged breaches that led to the surcharges did not occur. Therefore, I will quash the surcharges in accordance with Regulation 117(4).

The appeal under Regulation 118

4. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The date given in the Demand Notice is 1 July 2014. The Council concede that that this is clearly an incorrect date as it is 10 months before planning permission was granted. However, although the appellants have stated when works commenced for previous planning permission [REDACTED], they have not stated when works commenced for permission [REDACTED], the subject of the appeal. Therefore, in the absence of any alternative date, I shall deem the commencement date to be the date planning permission was granted (22 May 2015).
5. Therefore, the appeal under this ground also succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. If the Council are to continue to pursue the CIL they must now issue a revised Demand Notice in accordance with Regulation 118(5).

Formal decision

6. For the reasons given above, the appeal under both Regulations 117(1)(b) and 118 is allowed and the surcharges of [REDACTED] and [REDACTED] are quashed.

K McEntee