



Appeal Decision

by **Ken McEntee**

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

Decision date: 20 August 2019

Appeal ref: APP/Z2830/L/17/1200253

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by South Northamptonshire Council.
- Planning permission was granted on 6 September 2017.
- A Liability Notice served on 6 September 2017.
- A revised Liability Notice was served on 16 January 2019.
- A Demand Notice was served on 16 January 2019.
- 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 before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 12 December 2018.

Summary of decision: The appeal is dismissed and the surcharge is upheld.

Procedural matters

1. It is clear that much of the arguments put forward by the appellant is that the development should not have been considered as CIL liable as it measured under 100m². However, there is no ground of appeal available for this to be considered. I can only consider the appeal on the grounds made solely in relation to the surcharge. I have no powers to determine whether or not the development should be CIL liable. I also have no powers to reinstate a CIL exemption. These are matters for the appellant to take up with South Northamptonshire Council.

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. The LN makes clear the requirement to submit a Commencement Notice before starting works on the chargeable development and the consequences of failing to do so. In this case, the Council contend that they served a LN by e-mail to the appellant and his agent at the time, [REDACTED] on 6

September 2017. However, the appellant insists that he did not receive it and only became aware of the CIL and surcharge when he received the LN and Demand Notice of 16 January 2019. His agent also could not find record of having received a LN on 6 September 2017. In situations such as it is important that the Council produce documentary evidence of proof of postage. In this case, the Council contend that they issued the LN by e-mail as they were entitled to do in accordance Regulation 126(e). They have provided an 'Alert/Reminder Log' in support of their contention. The log shows that a LN was sent by e-mail to the appellant and his agent. Under the 'Comments' box next to both entries, it states "This email was sent successfully". The Council have confirmed that this message is automatically electronically generated when an e-mail has been successfully sent.

3. In view of this evidence, it is reasonable to reach the conclusion that a LN was correctly served. The appeal on this ground fails accordingly.

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. In this case, the stated date in the Demand Notice is 12 December 2018 but the appellant states that work commenced on 7 December 2018. However, as the 12 December 2018 favours the appellant and the Council are clearly content with that date, I consider it expedient to accept it. Otherwise, the earlier date could potentially result in the appellant being liable to pay late payment surcharges and interest as the purpose of the commencement date is to establish the starting point for CIL liability. Consequently, the appeal on this ground also fails.
5. It appears clear that the appellant is not happy with the way the Council has conducted the matter of CIL. If he has concerns about the Council's conduct or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

Formal decision

6. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee