



Appeal Decision

by **Ken McEntee**

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

Decision date: 9 October 2019

Appeal ref: APP/C1435/L/19/1200277

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Wealden District Council.
- Planning permission was granted on 7 July 2017.
- A Liability Notice was served on the appellants' agents on 7 July 2017.
- A Demand Notice was served on the appellants on 15 April 2019.
- The relevant planning permission to which the CIL surcharge relates 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 failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]

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

Reasons for the decision

1. 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 appellants insist they did not receive a LN and that the first they became aware of the CIL charge was upon receipt the Demand Notice on 15 April 2019. Regulation 65(3)(a) makes clear that a LN must be served on the relevant person as defined in Regulation 65(12). Regulation 126 explains the options open to the Council for service of documents. Regulation 126(1)(e) states "*in a case where an address for service using electronic communications has been given by that person, by sending it to that person at that address...*". In this case, [REDACTED] are stated on the planning application form of 14 July 2016 as the appellants' agents and their e-mail address is given as [REDACTED]. Therefore, the Council correctly submitted the LN to that address, along with the decision notice, and have provided a screenshot of the relevant e-mail. The appellants do not contend that their agents did not receive this correspondence.
2. The e-mail clearly states: "*Please ensure that you make the applicant aware of this Liability Notice and the importance of ensuring all the relevant documentation*

as stated within the guidance notes is submitted to the Council prior to any commencement of work, otherwise further surcharges may apply". If this was not acted upon by the appellants' agents, I can only suggest that they may wish to take the matter up with them.

3. The appellants point out that the Council submitted the Demand Notice to them directly by recorded delivery. They argue that had the LN also been served in this way there would have been no confusion. I appreciate the appellants' point and note the Council has not explained why they chose to send the Demand Notice directly to the appellant by post, rather than to the agents' e-mail address as they did with the LN. Nevertheless, the fact remains they were entitled to issue the LN in the way they did, in accordance with Regulation 126(1)(e).
4. If the appellants are not happy with the Council's conduct in this matter or their adopted procedures, they may wish to make a complaint through the Council's established complaints process in the context of local government accountability.
5. In view the above, I have to conclude that a LN has been correctly served on the appellants. In these circumstances, the appeal fails accordingly.

Formal decision

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

K McEntee