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# Appeal Decision

by **Ken McEntee**

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

Decision date: 9 October 2019

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**Appeal ref: APP/C1435/L/19/1200279**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) and (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 18 May 2017.
- A Liability Notice served on the appellant's agent on 18 May 2017.
- A Demand Notice was served on the appellant on 9 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.**

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## The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the alleged breach that 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. In this case, it appears that commencement took place on 13 February 2019. The appellant contends that he posted a CN to the Council on 5 February 2019 and has provided a copy with the appeal. However, the Council contend that they did not receive it. It would appear that the notice was sent by standard post. While the appellant was perfectly entitled to use this method of postage, it unfortunately entails an element of risk as it does not provide for proof of postage in the way recorded delivery or registered post does for example, as it requires a signature of receipt. Without any such proof of postage, I have no option but to dismiss the appeal on this ground.

## 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 appellant contends that he did not receive a LN. 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] is stated on the planning application form of 10 March 2017 as the appellant's agent and his 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 appellant does not contend that his agent did not receive this correspondence.

3. 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 appellant's agent, I can only suggest that he may wish to take the matter up with him. The fourth page of the LN also makes clear that: "*You must notify the Council of the date you intend to start work and wait until you have received the Council's acknowledgement*".
4. The appellant argues that given the importance of the LN, it should have been sent directly to him as well as his agent. While I can appreciate the appellant's point as there is no doubt it would have helped to prevent this situation arising, the Council were nevertheless entitled to submit a copy to the agent only, in accordance with Regulation 126(1)(e).
5. If the appellant is 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.
6. In view the above, I have to conclude that a LN has been correctly served on the appellant. In these circumstances, the appeal on this ground also fails.

### **Formal decision**

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

*K McEntee*