



Appeal Decision

by **Ken McEntee**

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

Decision date: 29 October 2019

Appeal ref: APP/G5750/L/19/1200288

[REDACTED]

- The appeal is made under Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the London Borough of Newham.
- Planning permission was granted on 5 April 2016.
- A Liability Notice was served on 25 May 2016.
- A revised Liability Notice was served on 1 May 2019.
- A Demand Notice was served on 1 May 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- [REDACTED]
- [REDACTED]
- The alleged breaches are: the failure to submit a Commencement Notice and late payment of the CIL.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].
- The outstanding surcharges for late payment of the CIL are [REDACTED].

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

Procedural matters

1. I note that much of the case put forward by the appellants concerns the way the Council has dealt with this matter and alleged administrative errors they have made. For the avoidance of doubt, I can only consider the appeal on the ground made (the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates). If the appellants are unhappy with the Council's conduct or their adopted procedures, it is open to them to make a complaint through the Council's established complains process in accordance with local government accountability.

Reasons for the decision

2. The basis of the appellants' case is not so much that the Council failed to serve a LN but more that they did not serve one as soon as practicable after the day

on which planning permission first permits development, in accordance with Regulation 65(1), thus preventing the appellants from being able to submit a valid Commencement Notice in accordance with Regulation 67(2)(b) by identifying the LN.

3. 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 in the application form of 1 December 2015 as the appellants' agents and their contact e-mail address is given as [REDACTED]. Therefore, the Council correctly submitted a LN, along with an acknowledgement of receipt of assumption of liability, to that address on 25 May 2016 and have provided a copy of the relevant e-mail. Therefore, on the documentary evidence before me, I am satisfied the Council submitted a LN as soon as practicable after the day on which planning permission first permitted development.
4. It is noted that the Council also sent a hard copy of the LN by first class post to the appellants address, which I can only assume they did not receive. While this is unfortunate, the Council had already met their obligations of service as set out in Regulation 126(1)(e).
5. A Commencement Notice was submitted on 24 November 2017 but without the LN being identified as required by Regulation 67(2)(b). However, as a LN was correctly served on 25 May 2016, the appellants should have been in a position at the time of submitting the Commencement Notice to identify the LN by its reference. In any event, it would appear from the Demand Notice that the Council consider that works commenced on 18 May 2017. This has not been challenged by the appellants by way of an appeal under Regulation 118.
6. In these circumstances, I have no option but to dismiss the appeal and uphold the surcharges.

Formal Decision

7. In view of my findings above, the appeal is dismissed and the surcharges of [REDACTED] are upheld.

K McEntee