



Appeal Decision

by **Ken McEntee**

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

Decision date: 15 January 2020

Appeal ref: APP/C1435/L/19/1200305

- The appeal is made under Regulation 117(1)(a) and (b) and Regulation 118 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 16 September 2016.
- A Demand Notice was served on 11 July 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
- The alleged breaches to which the surcharges relate 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 failure to assume liability is [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 2 April 2018.

Summary of decision: The appeal is allowed on all grounds made and the surcharges are quashed.

Procedural matters

1. I note that the appellant has had his self-build CIL exemption withdrawn. For the avoidance of doubt, I can only determine the appeal under the grounds made and have no powers to reinstate the CIL exemption. However, this is a matter the appellant may wish to take up further with the Council.

The appeal under Regulation 117(1)(a)¹ and (b)²

2. The appellant contends that he did not receive a Liability Notice (LN) and therefore could not submit a valid Commencement Notice (CN). The Council (Collecting Authority) contend that they sent a LN at the same time as the decision notice by e-mail on 16 September 2016 to the appellant's agents at the time at [REDACTED]. The Council have provided a screen shot and a copy of an e-mail log in support of their contention. In view of this, the appellant contacted his former agents to ask them to confirm if they received a

¹ The claimed breach which led to the surcharge did not occur

² The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates

LN. He has provided a copy of a response from [REDACTED] of [REDACTED] confirming that she did not receive a LN. The Inspectorate then wrote direct to [REDACTED] asking her to confirm whether she received the e-mail of 16 September 2016 to which the Council refer. She confirmed that she could find no record of that e-mail. It is ultimately the Council's responsibility to ensure a LN is correctly served. While the screenshot and e-mail log submitted by the Council may demonstrate that an e-mail may have been generated on 16 September 2016, it does not provide proof that such an e-mail was actually sent/delivered. In view of this and taking into account the agent's declarations, I cannot be satisfied on the evidence before me that a LN was served in this case.

3. The Council refer to other correspondence where it makes clear the need to submit a CN before starting works on the chargeable development. However, CIL is a very rigid and formulaic process; the appellant having knowledge by other means does not act as a substitute for the required LN. It follows that if the appellant did not receive a LN he could not submit a valid CN, as a CN requires the LN to be identified. In these circumstances, the appeal under grounds 117(1)(a) and (b) succeed accordingly.

The appeal under Regulation 118³

4. In this case, the deemed commencement date given in the Demand Notice is 2 April 2018, which the Council accept was an estimated date. However, the appellants have confirmed that works actually commenced on 31 August 2017 and it is clear the Council are now content to accept that date. Therefore, I shall determine the correct deemed commencement date to be 31 August 2017.
5. Consequently, 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 with a revised determined deemed commencement date in accordance with Regulation 118(5).

Formal decision

6. For the reasons given above, the appeal under the grounds made is allowed and the surcharges [REDACTED] are quashed.

K McEntee

³ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date