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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: 5 February 2020

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**Appeal ref: APP/F0114/L/19/1200325**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Bath & North East Somerset Council.
- Planning permission was granted on 26 June 2018.
- A Liability Notice was served on 11 July 2018.
- A Demand Notice was served on 6 August 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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## Reasons for the decision

1. An appeal under Regulation 117(1)(b) 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 contend that they did not receive a LN. However, the Council contend that they sent a LN by e-mail to the appellants' agent on 11 July 2018, but also posted a copy to the appellants. They argue that even if the appellants didn't receive the original LN, they did receive a copy by e-mail of 27 August 2019 and therefore the appeal cannot succeed. However, Regulation 67(1) explains that the Council must issue a LN as soon as practicable after the day on which a planning permission is granted. Issuing a LN some 14 months after planning permission was granted cannot reasonably be interpreted as meeting this requirement. Therefore, I do not accept the Council's argument.
2. Nevertheless, 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

15 May 2018 as the appellants' agent and his e-mail address is given as [REDACTED]. Therefore, the Council correctly submitted the LN to that address on 11 July 2018. The appellants do not contend that their agent did not receive this correspondence. In these circumstances, I have to conclude that a LN was correctly served.

3. I note the appellants' argument that the LN that was sent to them was posted to the wrong address in any event as it gave the incorrect postcode of BS39 5XG. However, as that was the postcode stated in the application form, the Council were entitled to take that to be correct. I also appreciate the appellants' point that they had been communicating with the planning case officer by e-mail and therefore their updated contact details could have been passed on to the CIL Officer. While I have some sympathy with this argument, the CIL Collecting Authority is a separate regime to that of the planning department and the onus was very much on the appellants to inform the Collecting Authority direct of any change in contact details. Nevertheless, if the appellants are unhappy 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.

### **Formal decision**

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

*K McEntee*