



Appeal Decision

by **Ken McEntee**

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

Decision date: 6 February 2020

Appeal ref: APP/K0235/L/19/1200322

- The appeal is made under Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Bedford Borough Council.
- Planning permission was granted on 28 January 2015.
- A Demand Notice was served on 1 March 2019.
- A revised Demand Notice was served on 4 July 2019.
- A further revised Demand Notice was issued on 5 August 2019 but dated 4 July 2019.
- A final revised Demand Notice was issued on 5 September 2019.
- The relevant planning permission to which the surcharges relate 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]
- The determined deemed commencement date given in the Demand Notice is 30 January 2018.

Summary of decision: The appeal is allowed under Regulation 117(1)(b) and the surcharges are quashed, but the appeal under Regulation 118 is dismissed.

Procedural matters

1. Much of the submissions made by the appellant concern matters involving the issuing of Demand Notices. However, these are not matters before me to consider. I can only determine the appeal on the grounds made as listed above.

The appeal under Regulation 117(1)(b)¹

2. The Collecting Authority (Council) contend that they issued a Liability Notice (LN), along with the Decision Notice by e-mail of 28 January 2015 to the applicant, [REDACTED], by post and to their agents, [REDACTED], by e-mail. However, the appellant insists that she [REDACTED] did not receive a LN and that one was not attached to the e-mail to her agents. She also contends that her agents contacted the Council to inform them of this on more than one occasion, but no

¹ The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates

Liability Notice was subsequently issued. I note that the Council have not responded to the appellant's latter assertion. I also note that the Council have not provided any documentary evidence to demonstrate that a LN was issued, such as proof of postage to the appellant or a copy of the relevant e-mail to the agent. They have provided a copy of a LN but that only demonstrates that one was generated, not that one was actually sent. On the evidence before me therefore, I cannot be satisfied that a LN was correctly served, the result of which deprived the appellants of the opportunity to submit the relevant forms and to prevent the imposition of the surcharges. The appeal on this ground succeeds accordingly.

The appeal under Regulation 118²

3. The determined deemed commencement date given in the DN of 5 September 2019 is 30 January 2018. Although the appellant appealed that the date is incorrect, she has not stated an alternative date of when the works on the chargeable development actually began. Therefore, on the evidence before me, I have no reason to believe that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground fails accordingly.

Formal Decision

4. For the reasons given above, the appeal under Regulation 117(1)(b) is allowed and the surcharges of [REDACTED] are quashed, but the appeal under Regulation 118 is dismissed.

K McEntee

² The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date