



Appeal Decision

by **Ken McEntee**

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

Decision date: 16 April 2020

Appeal ref: APP/N5090/L/19/1200338

Land at Hale Court, Hale Lane, Edgware, London, HA8 9RG

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a), (b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the London Borough of Barnet.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED]
- Planning permission was granted on 27 November 2015.
- A Liability Notice was served on 10 December 2015.
- A Demand Notice was served on 12 September 2019.
- The description of the permission is: [REDACTED]
[REDACTED]
[REDACTED]
- The alleged breaches are the late payment of the CIL chargeable amount and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding late payment surcharges total [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

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

Procedural matters

1. Since planning permission [REDACTED] was granted on 27 November 2015, planning permission [REDACTED] was granted for variation of condition 1 on 6 February 2017. For the avoidance of doubt, no surcharges exist in relation to that permission (as per relevant Demand Notice of 12 September 2019); all surcharges imposed relate solely to planning permission [REDACTED]. Therefore, I can only consider this of appeal in relation to that permission.
2. The appellant questions the amount of CIL being charged, and whether a charge is appropriate at all, given payments already made in relation to permission [REDACTED]. However, this is also something that is not within my remit to consider. If the appellant felt the CIL charge was not correct, it was open to him to request a review under Regulation 113 and subsequently to submit an appeal to the Valuation Office Agency (VOA) under Regulation 114. Although the appellant states relevant documentation for an appeal to the VOA was filled out, as there is no evidence before

me of any such appeal having been made, I have no option but to take the CIL chargeable amount of [REDACTED] as being correct. However, the appellant may wish to continue to pursue this matter with the Collecting Authority (Council).

The appeal under 117(1)(a)¹

3. The claimed breaches that led to the surcharges are the late payment of the CIL chargeable amount and the failure to submit a Commencement Notice before starting works on the chargeable development. The appellant contends that the development has been built in accordance with planning permission [REDACTED], rather than the original permission [REDACTED]. However, I note that the appellant submitted a retrospective Commencement Notice dated 20 December 2018 in relation to [REDACTED] stating that development commenced "On or around 15/11/16". Therefore, the CIL chargeable amount became payable in full with immediate effect as a valid Commencement Notice was not submitted before works began on the chargeable development as required by Regulation 67(1). Consequently, as no CIL had been paid the appellant automatically became liable for subsequent late payment surcharges and a surcharge for failing to submit a Commencement Notice, irrespective of whether he expected his builder to do so on his behalf. Therefore, on the evidence before me I am satisfied the alleged breaches occurred and therefore the appeal under this ground fails.

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

4. It is not clear if the appellant is asserting that he did not receive a Liability Notice in relation to both permissions or just one. For clarity, as explained above, it is not before me to consider whether this was the case in relation to permission [REDACTED] as there are no surcharges involved relevant to that permission. In relation to permission [REDACTED], the appellant claims the Liability Notice was sent to the wrong person. 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 9 August 2015 as the applicant's agent and his e-mail address is given as [REDACTED]. The Council correctly sent the Liability Notice to that address.
5. The notice will have been registered as a local land charge at the time it was served, which the Council are obliged to do under the Local Land Charges Act 1975. Such a charge binds the land and any purchaser and owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. Therefore, in these circumstances the appeal under this ground fails.

The appeal under Regulation 117(1)(c)³

6. The Council has imposed late payment surcharges totalling [REDACTED]. Regulation 85(1) explains that where payment has not been received within 30 days, and if any part of the amount is not paid within 6 months and 12 months from the day payment was due, the Council may impose a surcharge equal to

¹ The claimed breaches that led to the surcharges did not occur

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

³ The surcharges have been calculated incorrectly

5% or £200, whichever is the greater amount. [REDACTED] I am satisfied the Council has correctly calculated the late payment surcharges. Similarly, Regulation 83(1) explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, they may impose a surcharge equal to 20% or £2,500, whichever is the lower amount. [REDACTED]

[REDACTED]
Therefore, the appeal under this ground also fails.

7. I note that the appellant also challenges the interest imposed by the Council. However, there is no Regulation that allows for interest to be appealed and therefore I have no powers to consider it. Nevertheless, I note the Council have conceded that the interest of [REDACTED] is incorrect and that the correct amount should be [REDACTED]. No doubt they will now issue a revised Demand Notice accordingly.

Formal decision

8. For the reasons given above, the appeal on all grounds made is dismissed and the surcharges of [REDACTED] are upheld.

K McEntee