



Appeal Decision

by **Ken McEntee**

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

Decision date: 20 April 2020

Appeal ref: APP/U5360/L/19/1200349

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by the London Borough of Hackney.
- Planning permission was granted on 25 July 2017.
- A Liability Notice served on 31 July 2017.
- A Demand Notice was served on 25 October 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
[REDACTED]
[REDACTED]
- The alleged breach is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]

Summary of decision: The appeal is dismissed and the surcharge is upheld.

Reasons for the decision

1. The appeal is made under Regulation 117(1)(a) - that the alleged breach that led to the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, it appears that commencement began on 29 August 2017. The appellant has provided a copy of a CN dated 24 September 2017 that he contends was posted to the Council. It is not clear what method of postage the appellant used but it would appear that it may have been sent by standard post. While the appellant was perfectly entitled to use this method of postage, it unfortunately entails an element of risk as it does not provide for proof of postage in the way recorded delivery or registered post does for example, which requires a signature of receipt. While I have sympathy with the appellant if he genuinely submitted a CN, without any proof of postage I am afraid I have no option but to conclude that the alleged breach occurred. I should add that had the Council received the CN it could not have been considered as valid in any event as it did not state an intended commencement date as required by Regulation 67(2)(c). "ASAP" does not meet this requirement.

2. I understand the appellant's frustration that it inexplicably took the Council more than two years to act upon this matter, but on the evidence before me I have no option but to dismiss the appeal on the ground made. However, if the appellant is unhappy with the Council's conduct in this matter or their adopted procedures, he may wish to make a complaint through their established complaints process in the context of local government accountability.

Formal decision

3. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee