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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: 19 June 2020

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**Appeal ref: APP/C3620/L/20/1200391**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a), (b) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Mole Valley District Council.
- Planning permission was granted on 10 June 2019.
- A Liability Notice served on the appellant's agent on 14 June 2019.
- A Demand Notice was served on the appellant on 17 February 2020.
- The relevant planning permission to which the CIL surcharges relate is [REDACTED]
- The description of the development is: [REDACTED]  
[REDACTED]  
[REDACTED]  
[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 14 February 2020.

**Summary of decision: The appeal is dismissed and the surcharges are upheld.**

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## The appeal under Regulation 117(1)(a)<sup>1</sup>

1. The appellant does not refute that she did not assume liability or submit a Commencement Notice before starting works on the chargeable development but offers mitigation in that she was going through a stressful period [REDACTED]  
[REDACTED] While I have sympathy with the appellant and in no way wish to appear dismissive of what was clearly a difficult time for her, I can only determine the appeal on its facts and have no powers to consider personal circumstances. With that in mind, as the required forms were not submitted, I have no option but to conclude that the alleged breaches occurred as a matter of fact. The appeal under this ground fails accordingly.

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<sup>1</sup> The alleged breaches that led to the surcharges did not occur

### **The appeal under Regulation 117(1)(b)<sup>2</sup>**

2. The appellant contends that she did not receive a Liability Notice (LN) directly from the Collecting Authority (Council). 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 April 2019 as the appellant's agent. The Council therefore correctly sent the Liability Notice to him by e-mail. The appellant concedes that her agent did receive the e-mail and forwarded it onto her, but due to the unfortunate circumstances at the time, e-mails were being overlooked. As explained in paragraph 1 above, I can only consider the appeal on its facts and I am satisfied from the evidence that the Council did not fail to serve a Liability Notice. The appeal under this ground fails accordingly.

### **The appeal under Regulation 117(1)(c)<sup>3</sup>**

3. Although the appellant has appealed under this ground, she has not offered any supporting evidence that the surcharges have been calculated incorrectly. Nevertheless, Regulation 83 explains that where a chargeable development is commenced before the Council has received a valid Commencement Notice, the Council may impose a surcharge equal to 20% of the chargeable amount payable or £2,500, whichever is the lower amount. The chargeable amount in this case is [REDACTED] consequently I am satisfied the surcharge has been calculated correctly. Regulation 80 explains that the Council may impose a surcharge of £50 where nobody has assumed liability and the chargeable development has commenced, which is the case here. Therefore, I am satisfied that this surcharge has also been calculated correctly. The appeal under this ground fails accordingly.

### **The appeal under Regulation 118<sup>4</sup>**

4. The determined deemed commencement date given in the Demand Notice is 14 February 2020, but the appellant contends that works actually began on 6 January 2020. However, as the Council point out, the earlier date could potentially result in the appellant incurring further surcharges and interest as the purpose of this date is to establish a starting point for CIL liability. Therefore, as the later date favours the appellant and the Council are content with it, I shall dismiss the appeal under this ground too.
5. The appellant raises some issues about the communication policy between the different Council departments, plus incorrect addresses and conflicting information in Council correspondence. While I can understand the points raised, they are not ones for me to consider. I can only advise that if the appellant is unhappy with the Council's conduct or their adopted procedures, she may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

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

<sup>3</sup> The surcharges have been calculated incorrectly

<sup>4</sup> The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date

**Formal decision**

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

*K McEntee*