



Appeal Decision

by **Ken McEntee**

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

Decision date: 6 July 2020

Appeal ref: APP/C1435/L/20/1200381

- The appeal is made under Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Wealden District Council.
- Planning permission was granted on appeal [REDACTED] on 5 December 2016.
- A Demand Notice was served on 13 January 2020.
- The description of the development is [REDACTED].
- The alleged breaches to which the surcharges relate is the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

Summary of decision: The appeal is allowed and the surcharges are quashed.

Procedural matters

1. The appellant states that one of his reasons for appealing is that he believes the development qualifies for a self-build CIL exemption. He also contends that the floor plan measurements are incorrect and consequently the development is not CIL liable. For the avoidance of doubt, these are not matters within my remit to consider. I can only determine the appeal on the ground made in relation to the surcharges imposed.

Reasons for the decision

2. 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 surcharges relate. In this case, the appellant insists that he did not receive a Liability Notice. However, the Council contend that they issued a LN on 8 December 2016 and have provided a copy. The Council assert that they sent all CIL correspondence to [REDACTED] as this was the address provided in correspondence by [REDACTED].

the different agents that represented the appellant in the process. They also point out that the relevant CIL information was posted on the Council's website.

3. However, an appeal under Regulation 117(1)(b) is not concerned with any other correspondence or documents other than the LN. With that in mind, while I agree with the Council that the address referred to above was the correct address to send the LN, I note that although they have provided a covering letter dated 9 December 2016, they have not provided any supporting evidence to demonstrate that a LN was actually posted. That may be because it was sent by standard post. If that was the case, while the Council were entitled to use this method, unfortunately it does not provide for proof of postage, unlike recorded delivery or registered post for example, which requires a signature of receipt. It appears the Council did use recorded delivery for serving the Demand Notice. Without any proof of postage before me, I cannot be satisfied a LN was served on the appellant as required by Regulation 65(1). CIL is a very rigid and formulaic process and the LN acts as the trigger for a Commencement Notice to be submitted. The appellant having knowledge by other means does not act as a substitute for the LN.
4. In these circumstances and on the evidence before me, I have no option but to allow the appeal and quash the surcharges.

Formal decision

5. For the reasons given above, the appeal on the ground made is allowed and the surcharges of [REDACTED] are quashed.

K McEntee