



Appeal Decision

by **Ken McEntee**

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

Decision date: 8 July 2020

Appeal ref: APP/V3310/L/19/1200344

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Sedgemoor Council.
- Planning permission was granted on 18 April 2018.
- A Liability Notice was served on 18 January 2019.
- A revised Liability Notice was served on 8 February 2019.
- A Demand Notice was served on 25 September 2019.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [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. 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 surcharge relates. In this case, the appellant accepts that he received the original LN of 18 January 2019 but contends that he did not receive the revised notice of 8 February 2019. Although it is evident that the Council posted the revised notice to the appellant by recorded delivery as there is a signed Track & Trace receipt of delivery dated 9 February 2019, the appellant insists that he was away [REDACTED] on that date and so he could not have signed for the package. He points to the difference between the signatures on the two recorded delivery receipts for the LN of 18 January and the revised one of 8 February 2019. He also contends that his postcode had recently changed so the LN had been sent to the wrong address in any event.
2. I have sympathy with the appellant's case if he was away at the time the LN was delivered and the fact that although the two signatures of receipt are the appellant's name, they are entirely different. It is also clear that the incorrect postcode was used in the posting of the LN. Although [REDACTED] had been used in previous correspondence from the appellant, the most recent correspondence

(Assumption of Liability Notice) gave the new postcode of [REDACTED]. I take the view that although there is no doubt the LN was sent, the above circumstances casts considerable doubt on whether the appellant received it.

3. Nevertheless, there does not appear to be any doubt that a copy of the LN was received by the appellant's agent, [REDACTED]. Regulation 126 explains the options open to the Council for service of documents. Regulation 126(1)(d) states "*by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;*". As [REDACTED] was given in the application form as the appellant's agent, the Council correctly submitted a LN to him as well as the appellant. While it is unfortunate if [REDACTED] considered their part in the process was complete, as claimed by the appellant, I am satisfied the Council did not fail to serve a LN in respect the development to which the surcharge relates. The appeal fails accordingly.

Formal decision

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

K McEntee