



Appeal Decision

by **Ken McEntee**

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

Decision date 24 August 2020

Appeal ref: APP/W0340/L/19/1200393

- The appeal is made under Regulations 117(1)(a) and (b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by West Berkshire Council.
- Planning permission was granted on 23 August 2018.
- A Liability Notice was served on 24 May 2019.
- A revised Liability Notice was served on 20 February 2020.
- Separate Demand Notices were served on 28 February 2020.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The alleged breaches to which the surcharges relate 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], plus an apportionment of liability of [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

Reasons for the decision

1. CIL Regulation 31(1) explains that a person who wishes to assume liability to pay CIL in respect of a chargeable development must submit an Assumption of Liability Notice to the Collecting Authority (Council). Regulation 67(1) explains that a Commencement Notice (CN) must be submitted to the Council no later than the day before the day on which the chargeable development is to be commenced. The appellants contend that they submitted a CN on 2 May 2019 and have provided a copy, although they concede that they have no proof of postage. Notwithstanding that fact, I note that in any event, the CN does not identify the Liability Notice as required by Regulation 67(2)(b), thus rendering it invalid.

2. However, I also note that the Council did not serve a Liability Notice (LN) until 24 May 2019, some 9 months after planning permission was granted. Regulation 65(1) explains that the Council must issue a LN as soon as practicable after the day on which planning permission first permits development. The lack of resources and workload are reasons cited by the Council for this delay. Nevertheless, I take the view that to serve a LN some 9 months later cannot reasonably be interpreted as meeting the requirement of Regulation (65)(1). The LN is the trigger for the recipient to submit the necessary forms, such as a valid Commencement Notice, before starting works on the chargeable development. The Council's failure to issue a LN more promptly effectively deprived the appellants of the opportunity to do so. As the appellants did not receive a LN until some 9 months after approval, it was simply not possible for them to identify the LN and therefore to submit a valid Commencement Notice.
3. In these circumstances, I conclude that the alleged breaches that led to the surcharges did not occur. The appeal therefore succeeds and the surcharges are quashed in accordance with Regulation 117(4).

Formal decision

4. For the reasons given above, the appeal is allowed on the grounds made and the surcharges [REDACTED] are quashed.

K McEntee