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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: 18 November 2020**

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**Appeal ref: APP/U2235/L/20/1200425**

**Land at** [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Maidstone Borough Council.
- Planning permission was granted on 3 September 2019.
- A Liability Notice served on 10 October 2019.
- A Demand Notice was served on 19 June 2020.
- 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 failure to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 31 May 2020.

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

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## **The appeal under Regulation 117(1)(b)**

1. An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. The LN makes clear the requirement to submit a Commencement Notice before starting works on the chargeable development and the consequences of failing to do so. In this case, the appellant contends that although he did receive a LN, he has limited ability to read English and one was not sent to his agent at the time, [REDACTED] who had been dealing with all his paperwork. The Council assert that they sent a LN to the appellant by email of 10 October 2019, copying the agent in and have provided a copy of the email. As the email to the appellant bounced back, they sent the LN by post to the appellant's home address on the same day.
2. Regulation 65(3)(a) explains that a Liability Notice must be served on the relevant person. That 'relevant person' is normally taken to be the person who applied for planning permission, but it can also be the applicant's agent. In this case, it appears the Council e-mailed both, but the appellant seems to be asserting that the agent did not receive it, although he has not provided any supporting evidence from the agent to confirm this. Nevertheless, even if that were the case, the fact remains that a LN was successfully served on the appellant. While it is

unfortunate if the appellant has difficulty in reading English, it is not clear why he didn't contact his agent, or anyone else, such as a family member or friend, in order to clarify the content of the notice and what action he was required to take.

3. On the evidence before me, I am satisfied that a LN was correctly served. The appeal on this ground fails accordingly.

### **The appeal under Regulation 118**

4. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the stated date in the Demand Notice is 31 May 2020 but the appellant states that work actually commenced on 6 December 2019. However, as 31 May 2020 favours the appellant and the Council are clearly content with that date, I consider it expedient to accept it. Otherwise, the earlier date could potentially result in the appellant being liable to pay late payment surcharges and interest as the purpose of the commencement date is to establish the starting point for CIL liability. Consequently, the appeal on this ground also fails.

### **Formal decision**

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

*K McEntee*