



Appeal Decision

by Ken McEntee

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

Decision date: 24 November 2020

Appeal ref: APP/Y9507/L/20/1200403

- 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 a surcharge imposed by South Downs National Park Authority.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 26 November 2019.
- A Demand Notice was served on 8 April 2020.
- The description of the development is [REDACTED]
- The alleged breach to which the surcharge relates 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]

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 Council contend that they sent a LN by email of 3 December 2019 (copy provided) to the appellant and copied-in his agent, [REDACTED]. However, the appellant insists that although the Council have stated his correct e-mail address, he has no record of having received the said e-mail. He also points out that his agent also did not receive such an e-mail, but in the case of his agent the e-mail address used by the Council is incorrect.
2. Regulation 65(3)(a) explains that a LN must be served on the relevant person. The 'relevant person' normally being the person who applied for planning permission. However, Regulation 126 lists the different ways that are acceptable for documents to be served. Regulation 126(1)(e) explains that "*in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the*

condition set out in paragraph (2)¹, to that person at that address...". Such a person would normally be the applicant's agent and consequently service solely to the agent would suffice to meet the requirement of Regulation 65(3)(a). In this case, the agent's e-mail address given in the application form [REDACTED] [REDACTED]. No email or postal address is given for the applicant and, in fact, "C/O agent" is written in the address box. Therefore, it would appear clear that the appellant wanted all correspondence to be sent to his agent.

3. It is apparent that since submitting the application, the agent changed his e-mail address [REDACTED]. Although there is no evidence before me that the Council were formally notified of the new e-mail address, I note that it was evident from other correspondence in relation to the application. It is also reasonable to assume the Council were aware of the new address as they attempted to use it to copy the agent into the e-mail of 3 December 2019. Unfortunately, they incorrectly inserted [REDACTED] instead of [REDACTED]. Consequently, delivery was unsuccessful. The Council then decided to try the agent's previous e-mail address, which was also unsuccessful.
4. Nevertheless, the Council contend that they also sent the LN to the appellant's e-mail address, so the LN was still served on the relevant person. However, the appellant insists he did not receive the e-mail but concedes that the address given is his correct address. The Council point out that subsequent e-mails were successfully received by the appellant at that address and have provided examples. In a situation such as this I have no option but to make a judgement based mainly on the balance of probabilities. The Council have produced a copy of the e-mail of 3 December 2019 which attached the LN. While this does not necessarily serve as irrefutable proof of service, added to the fact that subsequent e-mails to the same address were evidently successfully received by the appellant, I cannot be satisfied on the evidence before me and on the balance of probabilities, that the Council failed to serve a LN in respect of the development to which the surcharge relates. The appeal must therefore fail.

Formal decision

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

K McEntee

¹ The notice or document must be – (a) capable of being accessed by the person mentioned in that provision; (b) legible in all material respects; and (c) in a form sufficiently permanent to be used for subsequent reference.