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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: 23 December 2020

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**Appeal ref: APP/U3935/L/19/1200394**

- [REDACTED]
- The appeal is made under Regulations 117(1)(a), (b) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
  - The appeal is brought by [REDACTED] against CIL surcharges imposed by Swindon Borough Council.
  - Prior Approval was granted on 17 November 2017.
  - A Notice of Chargeable Development was served on 3 March 2020.
  - A Liability Notice was served on 3 March 2020.
  - A Demand Notice was served on 3 March 2020.
  - The relevant Prior Approval to which the surcharges relate is [REDACTED].
  - The description of the development is "[REDACTED]".
  - The alleged breaches are the failure to submit a Notice of Chargeable Development and a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL on time.
  - The outstanding surcharge for failing to submit a Notice of Chargeable Development is £2,500.
  - The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
  - The outstanding surcharge for late payment of the CIL is [REDACTED].

**Summary of decision: The appeal is dismissed on all grounds made and the surcharges are upheld.**

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## The appeal under Regulation 117(1)(a)<sup>1</sup>

1. CIL Regulation 64(2) explains that before any development authorised by a general consent is commenced, a Notice of Chargeable Development (NCD) must be submitted to the Collecting Authority (Council) in respect of that development. 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. In this case, the appellant does not dispute that development has commenced but contends that "correct forms were submitted" and "The initial forms were submitted in good time". Unfortunately, he has been unable to specify precisely what forms he insists

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<sup>1</sup> The claimed breaches which led to the surcharges did not occur

were sent or to produce copies of them. Nevertheless, the Council contend that they did not receive either a NCD or a CN and consequently the relevant surcharges were imposed. As works commenced on 3 December 2019 without the correct procedures being followed, the development became liable to payment of CIL with immediate effect. As no CIL was paid within 30 days, the Council imposed a late payment surcharge as they were entitled to do in accordance with Regulation 85(1)(b).

2. There is no evidence before me to demonstrate that the appellant submitted either a NCD or a CN, or paid the CIL charge within 30 days. Therefore, I can only conclude that the alleged breaches that led to the surcharges occurred. The appeal on this ground fails accordingly.

### **The appeal under Regulation 117(1)(b)<sup>2</sup>**

3. Regulation 65(1) explains that the Council must issue a Liability Notice as soon as practicable after the day on which planning permission first permits development. However, Regulation 8(7) explains that in the case of a 'general consent' (which is the case here as it was granted as a Prior Approval under the General Permitted Development Order (GPDO) 2015), planning permission first permits development on the day on which the Council sends an acknowledgement of receipt of a NCD. As the Council did not receive a NCD, they could not issue a Liability Notice. They could only do so after they became aware of the situation and then completed their own investigations in order to be in a position to issue a NCD themselves. Once they were satisfied that they had all the necessary information, such as all the known owners of the land, they duly issued a Liability Notice on 3 March 2020.
4. On the evidence before me, I am satisfied that the Council did not fail to serve a Liability Notice in respect of the development to which the surcharge relates. The appeal under this ground fails accordingly.

### **The appeal under Regulation 117(1)(c)<sup>3</sup>**

5. Regulation 82 explains that where a chargeable development is commenced before the Council has received a NCD, the Council may impose a surcharge equal to [REDACTED] of the chargeable amount payable or [REDACTED], whichever is the lower amount. Regulation 83 says the same in relation to the failure to submit a valid CN. The chargeable amount in this case is [REDACTED] [REDACTED]. Therefore, [REDACTED] is obviously the lower amount and consequently I am satisfied the surcharges in relation to the breaches of failure to submit a NCD and CN have been calculated correctly.
6. Regulation 85(b) explains that if the amount payable is not received within 30 days, the Council may impose a surcharge of equal to 5% of the CIL amount or [REDACTED], whichever is the greater amount. The total amount payable, including surcharges, is [REDACTED] 5% of this amount = [REDACTED] which is clearly greater than [REDACTED]. Therefore, I am satisfied that this surcharge has also been calculated correctly. The appeal under this ground also fails accordingly.

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<sup>2</sup> The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharges relate

<sup>3</sup> The surcharges have been calculated incorrectly

### **Formal decision**

7. For the reasons given above, the appeal is dismissed and the surcharges totalling [REDACTED] are upheld.
8. It appears clear that the appellant is not happy with the way the Council has dealt with this matter, particularly with the long time periods between communication and the events at the site visit. However, this not something within my remit to consider. If the appellant has concerns about the Council's conduct or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

*K McEntee*