



Appeal Decision

by Ken McEntee

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

Decision date: 12 January 2021

Appeal ref: APP/U2235/L/20/1200435

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Maidstone Borough Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 28 November 2018.
- A Liability Notice was served on 16 January 2019.
- A Demand Notice was served on 31 July 2020.
- 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]

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

The appeal under Regulation 117(1)(a)

1. An appeal on this ground is that the alleged breach that led to the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellants accept that they did not to submit a CN but contend that they were not correctly advised by the architect they had employed to deal with such matters on their behalf.
2. I have sympathy with the appellants and consider it was not unreasonable for them to rely on their architect to help ensure the required procedures were correctly followed. However, while I accept that there are mitigating circumstances for failing to submit a CN before starting works on the chargeable development, I can only determine the appeal on the facts and evidence before me and have no discretionary powers to allow an appeal based on mitigation. Therefore, as it is clear that the alleged breach occurred as a matter of fact, I have no option but to dismiss the appeal.

Formal decision

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

K McEntee