



Appeal Decision

by **Ken McEntee**

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

Decision date 13 January 2021

Appeal ref: APP/L5240/L/20/1200423

Land at [REDACTED]

- 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 Croydon Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 6 August 2019.
- A Liability Notice was served on 8 June 2020.
- A Demand Notice was served on 26 June 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 allowed and the surcharge is quashed.

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. Regulation 65(1) states that the Council must issue a Liability Notice as soon as practicable after the day on which planning permission first permits development. In this case, the Council contend that they issued a LN at the same time as they granted planning permission on 6 August 2019 to [REDACTED] who applied for permission on behalf of the appellant. Although the Council contend that they served a LN on 6 August 2019, they have not provided a copy of that LN - they have only provided a copy of a LN dated 8 June 2020, addressed to the appellant. It is not clear what method of service the Council used to serve the LN of 6 August 2019, but they have not provided any documentary evidence, such as proof of postage. That may be because it was sent by standard post. If that is the case, while the Council were entitled to use this method of service, it unfortunately does not provide for proof of postage, unlike recorded delivery or registered post for example, which requires a signature of receipt. Without any such documentary evidence before me, I cannot be satisfied a LN was served as required by Regulation 65(1).

2. CIL is a very rigid and formulaic process and the LN acts as the trigger for a Commencement Notice to be submitted. Although a copy of a LN of 8 June 2020 has been provided, service of a LN some 10 months after planning permission was granted cannot reasonably be interpreted as being served as soon as practicable after the day on which planning permission first permits development.
3. In these circumstances and on the evidence before me, I have no option but to allow the appeal and quash the surcharge.

Formal decision

4. For the reasons given above, the appeal on the ground made is allowed and the surcharge of [REDACTED] is quashed.

K McEntee