



Appeal Decision

by **Ken McEntee**

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

Decision date: 29 January 2021

Appeal ref: APP/C1435/L/20/1200440

- [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 Wealden District Council.
 - The relevant planning permission to which the surcharge relates is [REDACTED]
 - Planning permission was granted on 20 January 2020.
 - A Liability Notice was served on 20 January 2020.
 - A Demand Notice was served on 19 August 2020.
 - The description of the development is: [REDACTED]
 - [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] plus interest.

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

Procedural matters

1. It appears clear that much of the case put forward by the appellant concerns communications he has had with the Council in relation to the question of whether the CIL would be deferred, and their lack of response. For the avoidance of doubt, this is not something within my remit to consider. I can only determine the appeal on the ground made in relation to the surcharge. If the appellant is not happy with the Council's conduct or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in accordance local government accountability.

Reasons for the decision

2. An appeal under Regulation 117(1)(a) 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 appellant accepts that a CN

was not submitted [REDACTED]
[REDACTED]

3. While I have sympathy with the appellant and fully understand the difficulties the COVID-19 pandemic has caused, it was ultimately his responsibility to ensure a CN was submitted before starting works on the chargeable development. The Liability Notice issued on 20 January 2020 makes clear that a CN must be submitted before works can begin on the chargeable development and warns of the potential consequences of failing to do. However, notwithstanding there was a problem with his agent's availability, the appellant chose to press ahead with the development without ensuring that a CN had been submitted. I take the view that this was a risky strategy for the appellant to take. In these circumstances, I have no option but to dismiss the appeal as it is clear the alleged breach occurred.

Formal decision

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

K McEntee