



Appeal Decision

by **Ken McEntee**

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

Decision date: 14 April 2021

Appeal ref: APP/U2235/L/20/1200444

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Maidstone Borough Council.
- The relevant planning permission to which the surcharge relates is [REDACTED]
- Planning permission was granted on 19 August 2020.
- A Liability Notice was served on 11 September 2020.
- A Demand Notice was served on 11 September 2020.
- The description of the development is: "[REDACTED]"
- The alleged breaches are the failure to assume liability and the failure submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED]
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]

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

Reasons for the decision

1. The appeal is made under Regulation 117(1)(b) – *that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharges relate*. However, the appellant does not refute that a LN was served but argues that it should have been served sooner and thus preventing her from incurring late payment surcharges. Regulation 65(1) requires a LN to be served as soon as practicable after the day on which a planning permission first permits development. In this case, a LN was served some three weeks after planning permission was granted. The Council contend that the reason for this was due to having to conduct a land search to identify the registered landowner as the appellant failed to submit an Assumption of Liability Notice.
2. However, there is no requirement in the CIL Regulations for the Council to wait for the receipt of an Assumption of Liability Notice before a LN can be served. Regulation 65(3) lists the people who must be served a LN. Regulation 65(3)(a) lists 'the relevant person', which in this case would be the appellant as she was

the applicant for planning permission. In these circumstances, I agree with the appellant that there does not appear to be any good reason why the LN could not have been served sooner. However, I do not agree that had it been so, it would have prevented late payment surcharges from being incurred as no such surcharges were actually imposed at the time the appeal was submitted, as confirmed by the Council. The only surcharges that were imposed concerned the failure to submit an assumption of Liability Notice and a Commencement Notice before starting works on the chargeable development. As planning permission was granted retrospectively, it was simply not possible for this to happen and consequently for the surcharges to be avoided. In other words, by carrying out development before obtaining the required planning permission, this was effectively a situation of the appellant's own making.

3. In these circumstances, the appeal fails accordingly.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharges of [REDACTED] [REDACTED] are upheld.

K McEntee