



Appeal Decision

by **Ken McEntee**

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

Decision date: 21 April 2021

Appeal ref: APP/J4423/L/20/1200456

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharge imposed by Sheffield City Council.
- Planning permission was granted on 25 June 2020.
- A Liability Notice served on 15 July 2020.
- A Demand Notice was served on 18 November 2020.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- 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 dismissed and the surcharge is upheld.

The appeal under Regulation 117(1)(a)

1. An appeal under 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 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, it appears that commencement took place on 28 September 2020. The appellant contends that she submitted a CN by post on 8 September 2020. However, the Council contend that they did not receive it and have referred to previous appeal decisions involving the same situation where the appeals were dismissed due to no proof of postage. As I pointed out in those decisions, while the appellant was perfectly entitled to use standard post, unfortunately it entails an element of risk as it does not provide for proof of postage in the way recorded delivery or registered post does for example, which requires a signature of receipt.
2. The Liability Notice clearly warns of the possible consequences of failing to submit a CN and explains that on receipt of a CN the Council will issue an acknowledgement. It specifically states "*If you submit any of the CIL forms and do not receive an acknowledgement of receipt, you must contact Planning Administration on 0114 2037642.*" I appreciate the appellant's point that she found it difficult to get through to the Council by phone during these difficult times

of the pandemic. Nevertheless, I consider that the appellant's decision to press ahead with development without having received an acknowledgement was a risky strategy to take.

3. The appellant argues that while she cannot prove that she posted a CN, by the same token the Council cannot prove that they didn't receive it. However, it was the appellant's responsibility to ensure the Council were in possession of a valid CN before commencing works on the chargeable development. Therefore, the onus was very much on her to have made sure the Council were in safe receipt of the CN. There is no onus on the Council, and it is clearly not possible for them to provide evidence to prove they have not received documents, but it is possible for evidence to be provided to show that documents have been posted, as explained in paragraph 1 above.
4. On the evidence before me, I cannot be satisfied that a CN was submitted before works began on the chargeable development. Therefore, I have no option but to conclude that the alleged breach occurred. The appeal fails accordingly.

Formal decision

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

K McEntee