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# Appeal Decision

by Ken McEntee

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

Decision date: 20 June 2018

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**Appeal ref: APP/L5240/L/18/1200162**

- The appeal is made under Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Demand Notice was served by Croydon Council on 13 December 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is [REDACTED]
- Planning permission was granted on 17 April 2017.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for late payment of the CIL is [REDACTED]
- The outstanding late payment interest is [REDACTED]

**Summary of decision: The appeal is allowed and the surcharges are quashed.**

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## 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. In this case, the applicant for planning permission was [REDACTED], who sadly died in 2015. Ownership of the property, and consequently CIL liability, transferred to the appellant [REDACTED], but she contends that she was completely unaware of the CIL and can find no record of [REDACTED] having received a LN. The outstanding CIL only came to light from searches made by a perspective buyer of the property. It is noted that the appellant subsequently paid the CIL but is challenging the surcharges.
2. In response to the appeal, the Council state that "A CIL Liability Notice was issued on the 13/5/13..." and have produced a copy. Unfortunately, this only demonstrates that a LN was generated. The Council have not provided any documentary evidence to demonstrate a LN was actually posted. It is ultimately the Council's responsibility to ensure a Liability Notice is served. Regulation 126 (1) explains the options open to the Council for serving documents. One of the options is by registered post or recorded delivery, which requires a signature of

receipt and another is electronic communications, where an e-mail address has been provided, which would provide the capability for a copy of the relevant e-mail being produced. In this case, the Council have not stated which form of postage they used but if they chose to send the LN by standard post, while they would have been entitled to do so as it is another option listed, it entails an element of risk as it provides no proof of postage. I can only determine the appeal on the evidence before me. With that in mind, I cannot be satisfied a LN was served as required by Regulation 65(1). In these circumstances, I have no option but to give the appellant the benefit of the doubt in this case.

3. It is reasonable to conclude that the result of a LN not being served meant the appellant would not have been aware of the CIL until receipt of the Demand Notice, or the requirement to submit a valid Commencement Notice before starting works on the chargeable development as required by Regulation 67(1).

### **Formal decision**

4. For the reasons given above, the appeal under on Regulation 117(1)(b) is allowed and the surcharges of [REDACTED] and late payment interest of [REDACTED] are quashed.

*K McEntee*