



Appeal Decision

by **Ken McEntee**

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

Decision date: 20/09/2018

Appeal ref: APP/L3245/L/18/1200178

- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Shropshire Council.
- Planning permission was granted on 12 August 2016.
- A Liability Notice was issued on 16 August 2016.
- A Demand Notice was issued on 21 February 2018.
- A revised Demand Notice was issued on 4 April 2018.
- The relevant planning permission for which the CIL surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- 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 is [REDACTED].

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

Procedural matters

1. A lot of the arguments put forward by the appellant concern the fact that the Council would not consider the possibility for CIL exemption/relief due to demolition works having already taken place, albeit in exceptional circumstances. For the avoidance of doubt, this is not a matter within my remit to consider. I can only determine the appeal solely on the ground made – *the claimed breach which led to the surcharge did not occur.*

Reasons for the decision

2. 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's agent contends that he submitted a CN on the appellant's behalf on 5 September 2016 and has enclosed a copy with his appeal. However, the Council contend that they did not receive it. The agent argues that he sent the notice by first class post, which is in keeping with the Council's own practice for delivery of documents. However, while the appellant was perfectly entitled to use this method of postage, it unfortunately 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.

3. As the Council point out, the onus was on the appellant to ensure a CN was received by the Council at least one day before works began on the chargeable development. The Liability Notice makes clear "*If a valid Commencement Notice has not been submitted before development commences, payment of the CIL amount will be due in full on the day that the collecting authority believes the development to have commenced. Shropshire Council will also impose a surcharge of 20% of the total amount due up to a max of £2,500*". Given the importance of the notice and the fact that the appellant could potentially be facing a surcharge, it is not unreasonable to expect him/his agent to have contacted the Council before starting works to check they were in safe receipt of the notice and to obtain written confirmation. I take the view that to press ahead with the development without taking such steps was a risky strategy to take.
4. While I have sympathy with the appellant if his agent posted the CN in good faith, in the absence of any documentary evidence before me to prove postage, I cannot be satisfied a CN was submitted before works began on the chargeable development as required by Regulation 67(1).
5. In these circumstances, I can only conclude that the alleged breach that led to the surcharge occurred. The appeal fails accordingly.

Formal decision

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

K McEntee