

Appeal Decision

by Ken McEntee

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

Decision date: 5 December 2018

Appeal ref: APP/L3245/L/18/1200199

• The appeal is made under Regulations 117(1)(b)of the Community Infrastructure Levy Regulations 2010 (as amended).

- The appeal is brought by against a surcharge imposed by Shropshire Council.
- Planning permission was granted on 24 June 2015.
- A Liability Notice was served on 13 July 2015.
- A revised Liability Notice was served on 18 June 2018.
- A Demand Notice was served on 18 June 2018.
- The relevant planning permission to which the CIL surcharge relates is
- The description of the development is
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is

Summary of decision: The appeal is allowed and the surcharge is quashed.

Procedural matters

1. It appears from the evidence that the appellant is appealing against the actual CIL as they insist they are still CIL exempt. For the avoidance of doubt, there is no ground of appeal available to restore a self-build exemption and I have no powers to do so. I can only determine the appeal in relation to the surcharge and on the ground made, which is - *The collecting authority failed to serve a liability notice in respect of the development to which the surcharge relates.*

Reasons for the decision

2. The appellant contends that he received the original Liability Notice (LN) of 13 July 2015 that was issued in error. He acknowledges that the Council (Charging Authority) stated in an e-mail of 23 July 2015 to his representatives, that a revised LN had been posted to the appellant, but he did not receive it. He insists that the first LN he received was the one dated 18 June 2018. However, the Council state that they posted an LN to the same address as the previous LN, as per the address given in CIL Form 0 –

- 3. It is ultimately the Council's responsibility to ensure a Liability Notice is correctly served. Regulation 126 (1) explains the options open to the Council for serving documents. It appears the Council submitted the LN by standard post in line with Regulation 126(1)(c). While they were entitled to do so, it entails an element of risk as it provides no proof of postage, unlike the option of registered post or recorded delivery, as per Regulation 126(1)(d), which requires a signature of receipt. In the absence of any such documentary evidence before me, I cannot be satisfied that a LN was correctly served on the appellant. Therefore, I have no option but to give the appellant the benefit of the doubt in this case.
- 4. The Council point to the fact that the appellant would have been fully aware in any event of the need to submit a Commencement Notice from previous documentation received and submitted. While I appreciate the Council's point, CIL is a very rigid and formulaic process and Regulation 65(3)(a) makes clear the Collecting Authority must serve a LN on the liable person the appellant having knowledge through other means of correspondence does not serve as a substitute for the required CIL notice. In any event, Regulation 67(2)(b) requires that a Commencement Notice must identify the LN in relation to the chargeable development in order for it to be valid. Therefore, irrespective of having knowledge of what was required, in the absence of the relevant LN it was not possible for the appellant to submit a valid Commencement Notice. In these circumstances, I have no option but to allow the appeal and quash the surcharge.

Formal decision

5. For the reasons given above, the appeal under on Regulation 117(1)(b) is allowed and the surcharge of **sector** is quashed.

K McEntee