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# Appeal Decision

by Ken McEntee

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

Decision date 10 May 2023

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**Appeal ref: APP/D0840/L/23/3317203**

**Land at** [REDACTED]

- The appeal is made under Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Cornwall Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- Planning permission was granted on 19 December 2019.
- The description of the development is "[REDACTED]".
- A Surcharge Notice was served on 25 January 2023.
- 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.**

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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 Council contend that they sent a LN by email of 23 December 2019 (copy of e-mail provided) to the appellants' agent at [REDACTED], which was the address given in the planning application form of 20 October 2019. No direct e-mail address for the appellants was given in the application.
2. Regulation 65(3)(a) explains that a LN must be served on the relevant person. The 'relevant person' normally being the person who applied for planning permission. However, Regulation 126 lists the different ways that are acceptable for documents to be served. Regulation 126(1)(e) explains that "*in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address...*". Such a person would normally be the applicant's agent and consequently service solely to the agent in circumstances such as this would suffice to meet the requirement of Regulation 65(3)(a). However, the agent in this case insists that he did not receive the stated e-mail.

3. The Council have cited three previous CIL decisions in support of their case, and I consider APP/Y9507/L/20/1200403 to be the most relevant to this one as it involved very similar circumstances. As I explained in that case, in a situation such as this I have no option but to make a judgement based mainly on the balance of probabilities. With that in mind, I note that the Council have produced a copy of the e-mail of 23 December 2019 which attached the LN. While this does not necessarily serve as irrefutable proof of service, added to the fact that subsequent e-mails to the same address were evidently successfully received by the agent, I cannot be satisfied on the evidence before me and on the balance of probabilities, that the Council failed to serve a LN in respect of the development to which the surcharge relates. The appeal must therefore fail.

**Formal decision**

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

*K McEntee*