



Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 16 June 2023

Appeal ref: APP/Q1445/L/23/3320610

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 surcharges imposed by Brighton & Hove City Council.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- Planning permission was granted on 11 March 2021.
The description of the development is: [REDACTED]
- A Liability Notice served on 17 March 2021.
- A revised Liability Notice was served on 15 March 2023.
- A Demand Notice was served on 15 March 2023.
- The alleged breach that led to the surcharges are: the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a commencement Notice is [REDACTED]

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

Reasons for the decision

1. An appeal under regulation 117(1)(a) is that the alleged breaches which led to the surcharges did not occur. In this case, the appellants concede that they failed to submit the necessary forms but ask for leniency as CIL was a new process, they were awaiting instructions and they have a lack of funds. However, while I have sympathy with the appellants and in no way wish to appear dismissive of their situation, I have no authority to consider mitigation and can only determine the appeal based on the factual evidence before me. Nevertheless, I would point out that the Council e-mailed the appellants' agents on 18 December 2020 attaching an Assumption of Liability Notice and asking for it to be completed and returned. Added to this, the original Liability Notice of 17 March 2021 clearly explained the need to submit a Commencement Notice before starting works on the development, and on the same day the Council sent a 'Prompter Notice' concerning the need to submit an Assumption of Liability Notice and a Commencement Notice. Therefore, the appellants were given every opportunity to submit the required forms.

2. It is clear that as a matter of fact, neither an Assumption of Liability Notice nor a Commencement Notice were submitted before works began on the chargeable development as required by Regulations 31(1) and 67(1) respectively. In these circumstances, I have no option but to dismiss the appeal.

Formal decision

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

K McEntee