



Appeal Decision

by Ken McEntee

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

Decision date 16 May 2023

Appeal ref: APP/A5840/L/23/3317926

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 surcharges imposed by the London Borough Southwark.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 18 August 2017.
- A revised Liability Notice was served on 16 February 2023.
- A Demand Notice was served on 16 February 2023.
- The description of the development is "[REDACTED]
[REDACTED]
[REDACTED]".
- The alleged breaches to which the surcharges relate is the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to assume liability is [REDACTED].
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

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 surcharges relate. The Council contend that they served the original LN to the appellant by post on 19 September 2019. As they do not stipulate otherwise, it is reasonable to assume that standard post was used. However, while the Council were perfectly entitled to use this method of service, it unfortunately does not provide for proof of postage, unlike recorded delivery or registered post for example, which requires a signature of receipt. Without any such documentary evidence before me, I cannot be satisfied a LN was served as required by Regulation 65(1).
2. The Council argue that the appellant was informed on 3 occasions of the forms that were required to be completed. However, CIL is a very rigid and formulaic process and the LN acts as the trigger for a Commencement Notice to be submitted. The appellant being aware by other means does not act as a

substitute for a LN. Without a LN, it was not possible for the appellant to submit a valid Commencement Notice as the notice requires the LN to be identified in accordance with Regulation 67(2)(b).

3. In these circumstances and on the evidence before me, I have no option but to allow the appeal and quash the surcharges.
4. I note that the appellant also complains about interest charges imposed by the Council. For the avoidance of doubt, the CIL Regulations does not facilitate for an appeal to made against interest charges, so I have no powers to quash them. However, in view of my findings above, the appellant may wish to pursue this with the Council.

Formal decision

5. For the reasons given above, the appeal on the ground made is allowed and the surcharges of [REDACTED] and [REDACTED] are quashed.

K McEntee