



Appeal Decision

by Ken McEntee

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

Decision date 29 August 2023

Appeal ref: APP/D0840/L/23/3321933

Land [REDACTED]
[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 Cornwall Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Approval of reserved matters was granted on 20 May 2021.
- The description of the development is [REDACTED]
[REDACTED]
- A Demand Notice was served on 27 April 2023.
- 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.

The appeal under Regulation 117(1)(b)

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 appellant asserts that he did not receive a LN, but the Council contend that they issued a LN to the appellant's agent [REDACTED], by e-mail on 21 May 2021, as the 'relevant person' (as no e-mail address provided for the appellant) and have provided a copy of that e-mail. They refer to previous appeal decisions supporting the Council's actions. Those decisions involved the situation where the LN has been served on the agent in line with Regulation 126(1)(e), which 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...*". However, where those cases differ from this one is that an e-mail address was given in the application form for planning permission, whereas in this case no such e-mail address was given, and it appears the Council found an address from a number of other planning applications involving that particular agent.

2. The Council also argue that "...it must have been subsequently provided to Planning colleagues during the process of the application being determined, because it is in the Council's planning system Idox Uniform, and it is from here information is fed through to the Council's CIL monitoring system". However, they have not provided any supporting evidence to demonstrate that this actually happened. In any event, I take the view that it is envisaged by Regulation 126(1)(e) that an address for service by electronic communications is given specifically in relation to the planning application in hand, not from being sought out from other avenues, such as separate unrelated applications submitted by the agent on other sites. Therefore, as no e-mail address was given in the planning application form for this case, I cannot be satisfied a LN was correctly served in accordance with Regulation 65(3)(a).
3. The Council point out that even if the appellant did not receive the LN, the Decision Notice clearly sets out in the informative that a Commencement Notice (CN) must be submitted before starting works on the development. However, CIL is a very rigid and formulaic process and the LN acts as the trigger for a CN to be submitted. Without a LN, it was not possible for the appellant to submit a valid CN as it requires the LN to be identified in accordance with Regulation 67(2)(b). The appellant having knowledge by other means does not act as a substitute for the required LN to be properly served.
4. On the particular facts and circumstances of this case, and on the evidence before me, I allow the appeal and quash the surcharges.

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