



Appeal Decision

by Ken McEntee

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

Decision date: 31 August 2023

Appeal ref: APP/P1133/L/23/3319103

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(a), 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Teignbridge District Council.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 22 June 2022.
- The description of the planning permission is: "[REDACTED]".
- A Liability Notice was served on the applicant for planning permission, [REDACTED] on 23 June 2022.
- A Demand Notice was served on [REDACTED] on 14 March 2023.
- A revised Demand Notice was served on the appellant on 17 March 2023.
- The alleged breaches are the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The surcharge for failure to assume liability is [REDACTED].
- The surcharge for failure to submit a Commencement Notice is [REDACTED].
- The determined deemed commencement date stated in the Demand Notice is 24 February 2023.

Summary of decision: The appeal is dismissed on all grounds made and the surcharges are upheld.

Preliminary matters

1. The Demand Notice dated 17 March 2023 was addressed to the appellant on page 1, but on page 4 where the surcharges are listed, they appear to be aimed at the previous land-owner, [REDACTED], who no longer has any interest in the appeal site as he has sold it. This provides a lack of certainty of who the Collecting Authority (Council) considers is responsible for the surcharges. A Demand Notice must satisfy Regulation 69(2) and subsection (e) explains that the Demand Notice must state "the amount payable by the person on whom the notice is served (including any surcharges imposed in respect of or interest applied to the amount)...". In view of the lack of certainty in the Demand Notice in this case, it appears that it does not meet the requirements of Regulation 69(2)(e) and is therefore defective on its face. However, there are no powers to correct, vary or quash a Demand Notice, but under Regulations 117 and 118 there are powers to quash the surcharges. I will proceed on this basis and return to this matter later.

The appeal under Regulation 117(1)(a)¹ and b²

2. Regulation 80 explains that where nobody has assumed liability to pay CIL and the chargeable development has commenced, a Council may impose a surcharge of [REDACTED]. Regulation 83 explains that where a chargeable development is commenced before the Collecting Authority has received a valid Commencement Notice, they may impose a surcharge equal to 20% of the chargeable amount payable or [REDACTED], whichever is the lower amount. In this case, it is clear, and not disputed, that works have commenced on the chargeable development without a Commencement Notice having been submitted, and an Assumption of Liability Notice was only submitted after the event by request of the Collecting Authority. The appellant argues that as the works commenced before he purchased the land, he was not responsible for submitting the required forms and therefore is not liable for the surcharges.
3. Regulation 31(7) explains that other than by way of transfer of assumed liability, a person may not assume liability to pay CIL in respect of a chargeable development after that development has been commenced. In a situation such as this where nobody assumed liability before works commenced, CIL is defaulted to the person who has taken possession of the relevant land (in whole or in part), in accordance with Regulation 33(4).
4. A Liability Notice was served on the previous land-owner (applicant for planning permission) on 23 June 2022. The notice will have been registered as a local land charge at the time it was served, which the Council are obliged to do under the local land charges Act 1975. Such a charge binds the land, and any future purchaser or owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration, such as assuming liability and submitting a Commencement Notice before starting work on the chargeable development. The wording of Regulation 117(1)(b) is not personalised for this reason. I also consider it reasonable to conclude that the appellant would or should have been aware as part of the purchasing process that building works had commenced on the land. However, this is a matter that the appellant may wish to take up with the previous owner. As works had commenced without Assumption of Liability and Commencement Notices being submitted, the appellant automatically became liable for the related CIL surcharges.
5. In view of my findings above, I conclude that the alleged breaches have occurred, and I am satisfied a Liability Notice has been correctly served. Therefore, the appeal under Regulation 117(1)(a) and (b) fails accordingly.

The appeal under Regulation 118³

6. It is not clear why the appellant has appealed on this ground as he has not offered an alternative date of commencement, so I can only assume he appealed this ground in error. It appears the Council obtained the date of 24 February 2023 from Building Control records with the applicant stated as [REDACTED]. There is no evidence before me to demonstrate that this date is incorrect. Therefore, I cannot conclude that the Council has issued a Demand Notice with an incorrectly

¹ The claimed breach which led to the surcharge did not occur.

² The Collecting Authority failed to serve a Liability Notice.

³ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.

determined deemed commencement date. The appeal on this ground also fails accordingly.

Formal decision

7. Returning to the preliminary matter, as I am not allowing any of the grounds of appeal pleaded, I cannot exercise my powers under Regulation 117(4) and Regulation 118(6) to quash the surcharges. Nevertheless, if the Council are to continue to pursue the CIL, they may wish to consider serving a revised valid Demand Notice in accordance with Regulation 69(4).
8. On the basis of the particular circumstances of this case and for the reasons given above, the appeal is dismissed on all grounds made and the surcharges of [REDACTED] and [REDACTED] are upheld.

K McEntee