



Appeal Decision

by Ken McEntee

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

Decision date: 27 September 2023

Appeal ref: APP/K5030/L/23/3324906

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the City of London.
- The relevant planning permission to which the surcharges relate is 2 [REDACTED]
- Planning permission was granted on 9 August 2022.
- The description of the development is "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was issued on 5 April 2023.
- A Demand Notice was issued on 1 June 2023.
- The alleged breaches are the failure to submit a Commencement Notice before starting works on the chargeable development and failure to pay the CIL after 30 days of the due date.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]
- The outstanding surcharge for late payment of the CIL is [REDACTED]

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

Reasons for the decision

1. Much of the appellant's supporting text refers to the long delay in trying to update titles with the Land Registry before being able to submit a Commencement Notice (CN). However, this is not relevant to an appeal under Regulation 117(1)(b). An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect of the development to which the surcharge relates. Regulation 65(1) explains that the Council must issue a LN as soon as practicable after the day on which planning permission first permits development. In this case, planning permission was granted on 9 August 2022, but it appears a LN was not served until 5 April 2023 – some 8 months later. The Council do not explain the reason for such a long delay. While the term "as soon as practicable" is open to interpretation, I do not consider that 8 months can reasonably be interpreted as meeting the requirement of Regulation 65(1) for a LN to be served as soon as practicable after the day on which planning permission first permits development.
2. The LN is the trigger for the recipient to submit the necessary forms, such as a valid CN, before starting works on the chargeable development. CIL is a very

rigid and formulaic process; having knowledge by other means of the need to submit a CN does not act as a substitute for the required LN. It is noted that the appellant submitted a CN dated 23 May 2023, but it was invalid as it was submitted after works had commenced. However, the Council's failure to issue a LN more promptly effectively deprived the appellant of the opportunity to submit a valid CN. Regulation 67(2)(b) explains that a CN must identify the LN in respect of the chargeable development for it to be valid. As the appellant did not receive a LN until some 8 months after approval, it was simply not possible for him to identify the LN and therefore to submit a valid CN before he started works. The late issue of a LN also prevented the appellant from paying the CIL on time.

3. In these circumstances, and on the evidence before me, I conclude that the Council failed to serve a timely LN and consequently the appeal should succeed accordingly.

Formal decision

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

K McEntee