



Appeal Decision

by Ken McEntee

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

Decision date: 12 October 2023

Appeal ref: APP/T5720/L/23/3326287

Land at [REDACTED]

- The appeal is made under Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by Merton Council.
- Planning permission was granted on 12 January 2018.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]".
- A Liability Notice was served on the applicants for planning permission (Woolbro Evolution Ltd) on 26 January 2018.
- A Demand Notice was served on the appellant on 30 June 2023.
- The alleged breaches are the failure to assume liability, the failure to submit a Commencement Notice before starting works on the chargeable development, and late payment of the CIL charge after 30 days, 6 months and 12 months.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a submit a Commencement Notice is [REDACTED].
- The outstanding surcharge for failing to pay the CIL within 30 days, 6 months and 12 months of the due date totals [REDACTED].

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

Reasons for the decision

1. The main basis of the appellant's case is that he was not aware he was liable for the CIL charge until the Demand Notice of 30 June 2023. However, a Liability Notice was correctly served on Woolbro Evolution Ltd as the applicants for planning permission on 26 January 2018. This 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 purchaser or owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. Therefore, the appellant should have been aware of the CIL responsibilities and procedures as explained in the notice, such as the need to submit a Commencement Notice before starting works on the development. The Collecting Authority (Council) were under no obligation to send out reminders and were entitled to issue a Demand Notice once they realised that commencement of development had begun. As soon as works

commenced, the appellant became liable for CIL surcharges with immediate effect.

2. I note the appellant does not refute that an Assumption of Liability Notice and a Commencement Notice was not submitted or that the CIL was not paid within the stipulated timescales, but contends that this was an oversight due to the difficulties his business faced during the time of the COVID pandemic. While I have sympathy with the appellant and in no way wish to appear dismissive of the financial burden that has been placed on his business, I have no authority to consider mitigation and can only determine the appeal on the factual evidence before me in relation to the CIL procedures. With that in mind, I have no option but to dismiss the appeal.

Formal decision

3. For the reasons given above, the appeal on the ground made is dismissed and the surcharges of [REDACTED] for failing to assume liability, [REDACTED] for failing to submit a Commencement Notice, and [REDACTED] for late payment of the CIL are upheld.
4. For the avoidance of doubt, there is no ground available to appeal late payment interest and therefore it is not something within my remit to consider.

K McEntee