



Appeal Decision

by Ken McEntee

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

Decision date: 6 December 2023

Appeal ref: APP/U1105/L/23/3330291

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 CIL surcharges imposed by East Devon District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 30 June 2020.
- A Demand Notice was served on 29 August 2023.
- The description of the development is "[REDACTED]".
- The alleged breaches are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].

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

Procedural matters

1. For the avoidance of doubt, I have no authority to grant or re-instate a CIL exemption. I can only determine the appeal solely on the ground made in relation to the CIL surcharges.

The appeal under Regulation 117(1)(b)¹

2. The Collecting Authority (Council) contend that they issued a Liability Notice (LN), on 17 August 2020 to the appellants by post to [REDACTED], which was the address given on the planning application form. They also assert that they served a copy on the appellants' agent, [REDACTED] by e-mail of the same date. However, the appellants argue that the LN should have been sent to the development site address as that is where they were now residing. They point out that they arranged for re-direction of post with Royal Mail from 1 July 2020 and there is no record of an LN having been received at [REDACTED]. They also contend that their agent has no record of having received an e-mail attaching a copy of the LN. In a situation such this, I can only consider the appeal on the documentary evidence before me and on the balance of probabilities.

¹ The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates.

3. The Council are correct to point out that they were entitled to send the LN by post to the address given on the application form, in accordance with Regulation 126(1)(c), which allows for documents to be served by post to the person to the usual or last known place of abode, or in the case where an address for service has been given by that person, at that address. There was no obligation for the LN to be sent to the development site address, and it was the appellants' responsibility to notify the Collecting Authority direct, of their change of address.
4. However, I note that the Council has not provided any documentary evidence to support their contention that a LN was issued, such as proof of postage to [REDACTED] or a copy of the relevant e-mail to the appellants' agent. It appears the Council may have used standard post to send the LN to the appellant. While they were entitled to choose this method, it entails an element of risk as it does not provide for proof of postage in the way that Registered post or Recorded Delivery does for example, which requires a signature of receipt. The Council have provided an Exacom Audit Trail with Log entries listing dates of events, such as the generating of a LN and e-mail to the agent. However, while this log demonstrates that such documents may have been generated, it does not provide proof that they were actually sent/delivered. On the evidence before me therefore, and on the balance of probabilities, I cannot conclude that a LN was served; the result of which was to effectively deprive the appellants of the opportunity to submit the necessary forms and thus prevent the imposition of the surcharges. The appeal succeeds accordingly.

Formal Decision

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

K McEntee