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# Appeal Decision

by Ken McEntee

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

Decision date: 17 January 2024

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**Appeal ref: APP/T5720/L/23/3331467**

**Land at** [REDACTED]

- The appeal is made under Regulation 117(1)(a) and (b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against CIL surcharges imposed by the London Borough of Merton.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 19 December 2019.
- The description of the development is "[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]".
- The alleged breaches are the failure to assume liability, the failure to submit a Commencement Notice before starting works on the chargeable development and the failure to pay the CIL on time.
- A Liability Notice was served on 28 September 2023.
- A Demand Notice was served on 28 September 2023.
- The outstanding surcharge for failing to assume liability is [REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding late payment surcharges total [REDACTED] (3x [REDACTED] for failing to pay the full amount after 30 days or any part of the amount after 6 months and 12 months after the due date).

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

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## Reasons for the decision

1. The appeal is made on the grounds that the alleged breaches which led to the surcharges did not occur, and that the Collecting Authority (Council) failed to serve a Liability Notice (LN) in respect to the development to which the surcharges relate. The Council contend that they originally sent a LN on 24 January 2020 to the appellant by First Class post. However, the appellant contends that since notice of the decision, he did not receive any communication on CIL from the Council until 28 September 2023. In a situation such this, I can only consider the appeal on the documentary evidence before me and on the balance of probabilities. With that in mind, I note that the Council has not provided any documentary evidence to support their contention that a LN was served, such as proof of postage. While they were entitled to use First Class post, unfortunately this method 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.

2. On the evidence before me therefore, and on the balance of probabilities, I cannot be satisfied that a LN was served; the result of which was to effectively deprive the appellant of the opportunity to submit the necessary forms and to pay the CIL on time, and thus prevent the imposition of the subsequent surcharges. In these circumstances, I cannot conclude that the alleged breaches occurred. The appeal succeeds accordingly.

### **Formal Decision**

3. For the reasons given above, the appeal is allowed and the surcharges of ■■■, ■■■■ and ■■■■ are quashed.

*K McEntee*