



Appeal Decision

by Ken McEntee

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

Decision date: 23 January 2024

Appeal ref: APP/M3835/L/23/3331460

Land at [REDACTED]
[REDACTED]

- The appeal is made under Regulations 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a CIL surcharge imposed by Worthing Borough Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]
[REDACTED]
[REDACTED]."
- permission was granted on 23 October 2020.
- A Liability Notice was served on 26 October 2020.
- A Default Liability Notice was served on 13 April 2022.
- A Demand Notice was served on 13 April 2022.
- A revised Demand Notice was served on 2 August 2022.
- A revised Demand Notice was served on 27 September 2023.
- The alleged breach is the failure to pay the CIL charge in full after 30 days of the due date.
- The outstanding surcharge for failing to pay the CIL on time is [REDACTED].

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

Reasons for the decision

1. The appeal is made on the ground that the alleged breach which led to the surcharge did not occur. The appellants contend that they did not receive the original Demand Notice (DN) of 13 April 2022 as it was sent to their previous address. However, before issuing a DN, the Council issued a Liability Notice (LN) on 26 October 2020. As there was no postal or e-mail address given in the planning application form for the appellant, the Collecting Authority (Council) sent the LN to the e-mail address given for the appellants' agents, ECE Planning, which was [REDACTED]. This was in accordance with CIL Regulation 126(1)(e) concerning the criteria for acceptable ways of service of documents¹. The appellants do not claim that this e-mail was not received by their agents. Therefore, although the Council conducted a Land Registry search in order to send the DN of 13 April 2022 direct to the appellants' postal address (which apparently was not received), they also e-mailed a copy to the agents. As they had no

¹ In a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications.

reason to believe the LN was not successfully received by this method, it was not unreasonable for the Council to decide to use it again for service of the DN.

2. In any event, it is the LN that makes clear when payment is due and warns of the possible surcharges if the correct payment procedure is not followed. Therefore, even if the appellants had successfully received the DN of 13 April 2022, it would not have prevented the late payment surcharge from being imposed.
3. On the evidence before me therefore, I am satisfied that the Council correctly served a DN and that the alleged breach occurred as a matter of fact as the CIL charge was not paid by the due date.
4. The appellants claim the Council have used conflicting methods to obtain the CIL payers address and refer to another case involving the appellants. However, that case is not before me to consider, and I can only determine the appeal on its own individual merits.

Formal decision

5. For the reasons given above, the appeal on the ground made is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee