



Appeal Decision

by Ken McEntee

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

Decision date: 7 March 2024

Appeal ref: APP/Z3825/L/23/3336220

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by Malcolm and Christine Gilbert against a surcharge imposed by Horsham District Council.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 14 October 2022.
- A Liability Notice served on 26 October 2022.
- A revised Liability Notice was served on 30 November 2022.
- A Demand Notice was served on 14 November 2023.
- The alleged breach to which the surcharge relates is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

The appeal under Regulation 117(1)(a)

1. An appeal under this ground is that the alleged breach that led to the surcharge did not occur. Regulation 67(1) of the CIL regulations explains that a Commencement Notice (CN) must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, it appears that commencement took place on 31 May 2023. The appellants contend that their agent submitted a CN by post on 22 December 2022. However, the Council insist that they did not receive it and have referred to previous decisions involving the same situation where the appeals were dismissed due to a lack of proof of postage. I appreciate the appellants point that all correspondence was usually sent by electric means and the CN was only sent by standard post due to difficulties accessing a former employee's e-mail data. I also do not doubt there was no intent by the appellants or their agent to circumvent procedures. However, I can only determine the appeal on the documentary evidence before me. Without any proof of postage, I cannot be satisfied that a CN was submitted.
2. The Liability Notice clearly warns of the possible consequences of failing to submit a CN and explains in bold text that on receipt of a CN the Council will issue an acknowledgement. It specifically states that "*If you submit any of the CIL forms and do not receive an acknowledgement of receipt, you must contact the CIL*

Team". I consider that the appellants' decision to press ahead with development without having received an acknowledgement was a risky strategy to take.

3. On the evidence before me, I have no option but to conclude that the alleged breach occurred. The appeal fails accordingly.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharge of [REDACTED] is upheld.

K McEntee