



## Appeal Decision

**Decision by A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 May 2024

**Appeal Ref: APP/T5720/L/24/3340591**

**271-273 The Broadway, Wimbledon, London SW19 1SD**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) and (b) of the Community Infrastructure Levy Regulations 2010 as amended.
- The appeal is made by [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, the Council of the London Borough of Merton ('the CA').
- The relevant planning permission to which the CIL relates is [REDACTED].
- The description of the development is described on the DN as follows: [REDACTED]
- A Liability Notice (the 'LN') was served on 7 February 2024. The total amount of CIL payable is [REDACTED].
- The DN was issued on 7 February 2024. The following surcharges were imposed: [REDACTED] for a failure to assume liability, [REDACTED] for a failure to submit a commencement notice (hereinafter 'CN'), and late payment surcharges (30 days [REDACTED] 6 months [REDACTED] and 12 months [REDACTED]). The total amount payable, including late payment interest, is [REDACTED].

### Decision

1. The appeal on Regulation 117(1)(a) and (b) is allowed in relation to the failure to submit a CN and late payment surcharges only but is otherwise dismissed.

### Reasons for the Recommendation

2. The appellant maintains the CA failed to properly serve a LN in respect of the development to which the surcharges relate. The issue and service of a LN is the sole responsibility of the CA and Regulation 126(1) explain the mechanics of service. A notice or other document required or authorised to be served, given, submitted, or sent may be served, given, submitted, or sent in any of the ways in sub (a) to (f). The CA can decide which method of service it wishes to select, but it must be mindful of keeping an accurate record.
3. The Council have provided a LN dated 21 March 2021. The recipients of this notice are set out within it as the applicant and agent for the planning approval to which the CIL relates. The CA states that the LN was delivered via First Class post to the named applicant, there is no proof of posting nor is there any detailed evidence from the CA's officers showing how it was posted. For instance, an official receipt or acknowledgement of posting from the Post Office would have substantiated the CA's assertion. The use of the regular postal service carries an element of risk as it cannot be guaranteed that the intended recipient will receive the document. In these circumstances, I give the appellant the benefit of the doubt because there is no evidence to make less than credible the statement that the March 2021 LN had not in fact been received. On the balance of probabilities and particular circumstances presented, I am not satisfied that the initial LN was correctly served.

4. Having regard to Regulation 31, the service of a valid LN is not dependent on the submission of a form assuming liability. In a similar vein, assumption of liability is not conditional on service of a LN. Material operations commenced on 15 December 2021 based on a building control application submitted and the appellant did not assume liability in breach of the Regulations. So, the failure to correctly serve the initial LN has no bearing on the imposition of the surcharge for the failure to assume liability.
5. The submission of a CN is, however, closely linked to the service of a valid LN. The first LN would have acted as a trigger because it clearly explains the need to submit a CN the day before material operations on the chargeable development commence. Whilst the CA claim to have issued a LN on 21 March 2021, they have produced no evidence to substantiate this. Without that LN, it simply was not possible for a valid CN to be submitted as required by Regulation 67(2)(b): the relevant LN must be identified. So, in my judgment, the breach which led to the imposition of this surcharge did not occur as the initial LN was not properly served.
6. I find that the CA has correctly imposed a surcharge of [REDACTED] for the failure to assume liability in accordance with Regulation 80. However, it has incorrectly imposed the surcharge for a failure to submit a CN as it could not be imposed pursuant to Regulation 83.

### **Conclusion and Recommendation**

7. On the particular facts and circumstances of this case, and for the reasons given above, my conclusions are that the imposition of surcharges relating to the failure to assume liability is correct, but the appeal in relation to the failure to submit a CN and late payment surcharges is allowed pursuant to 117(1)(a) and (b).

Signed

*N Unwin*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

8. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal in relation to the failure to assume liability is dismissed, and in relation to the failure to submit a CN the appeal is allowed.

*A U Ghafoor*

INSPECTOR