



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 2 October 2024

Appeal ref: APP/P3610/L/24/3347745

Land at [REDACTED]

- The appeal is made under Regulations 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Epsom and Ewell Borough Council.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 12 June 2023.
- A Liability Notice was served on 17 July 2023.
- A Demand Notice was served on 26 June 2024.
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].

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

Reasons for the decision

1. It appears clear that the appellant accepts he failed to submit a Commencement Notice before starting works on the chargeable development. He explains that this was a clerical error, which he corrected immediately. Unfortunately, the Commencement Notice he eventually submitted was invalid as it was sent after works had begun. CIL is a very rigid and formulaic process and although it may have been as a result of an unfortunate oversight, it is a matter of fact that a valid Commencement Notice was not submitted as required by Regulation 67(1).
2. However, the ground of appeal pleaded is under Regulation 117(1)(c) – that the surcharge has been calculated incorrectly. Rather than miscalculated, the appellant contends that the surcharge of £[REDACTED] is disproportionate and contravenes section 62 of the Consumer Rights Act 2015. However, Regulation 83(1) explains that where a chargeable development has commenced before the Collecting Authority (Council) has received a valid a Commencement Notice a surcharge equal to 20% of the chargeable amount payable or £[REDACTED], whichever is the lower amount. The CIL amount in this case, without self-build relief, would have been £[REDACTED]. As 20% of this amount = £[REDACTED], it follows that £[REDACTED] is the lower amount. Therefore, I am satisfied that the surcharge has been correctly calculated.

3. With regards to the appellant's contention that the surcharge is disproportionate and contravenes consumer rights, it should be noted that the surcharge amount is not an arbitrary one, decided by the Council on a whim. As explained above, the amount is set by CIL Regulation 83. Nevertheless, if the appellant disagrees with the Regulations, I can only suggest that he may wish to take the matter up with his local MP. I would just point out that the appellant signed a Declaration in his completed self-build exemption form of 14 July 2023, stating that he understood a sum of £[REDACTED] will be payable in the event that he fails to submit a Commencement Notice prior to commencement of the development to which the exemption applies.

Formal decision

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

K McEntee