



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 30 January 2025

Appeal ref: APP/H5390/L/24/3351962

- 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 Hammersmith & Fulham.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 16 March 2017.
- The description of the development is "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was produced on 24 April 2017.
- A Demand Notice was served on 23 August 2024.
- The alleged breaches that led to the surcharges 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.
- 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 for failing to pay the full amount within 30 days or any part of the amount within 6 months and 12 months after the due date, total £[REDACTED].

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

Procedural matters

1. For the avoidance of doubt, I have no powers to determine whether or not the CIL charge totalling £[REDACTED] was correctly imposed. This can only be done by way of an appeal to the Valuation Office Agency in accordance with Regulation 114. I also cannot consider whether or not any interest imposed is correct. For the avoidance of doubt, I can only determine the appeal solely in relation to the CIL surcharges.

Reasons for the decision

2. 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 served a LN by e-mail to the appellant's agents, [REDACTED], on 24 April 2017, as with previous correspondence. Regulation 126 lists the different ways that are acceptable for documents to be served. Regulation 126(1)(e) explains that "*in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address...*". Therefore, this would normally be an acceptable way for the Council to serve the LN, although I note that the agents' e-mail address was not given in the application form.

3. Nevertheless, 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 a copy of the relevant e-mail for example, as apparently such correspondence is only kept by the Council for a 6-year period. The Council refers to a comment "*I did not receive the notice served on my architect*", made by the appellant in an e-mail exchange of 13 August 2024, and suggests that this acknowledges the Council correctly served the LN. However, it appears to me that this was simply an initial response by the appellant to being told by the Council some 35 minutes earlier that they had sent the LN to his agents. It is clear that later within the same e-mail exchange on 23 August 2024, the appellant requested that the Council provide proof of service of the LN to his agents. This request was repeated on 26 and 29 August 2024.
4. I also note within the exchange, that the Council state "*It seems your Architect forwarded all other correspondence, so it seems unlikely in the extreme that they would have ignored the CIL liability notice*". I agree with this comment but consider it adds weight to the theory that it is likely an e-mail attaching a LN was not actually sent to the architects. The Council refer to the LN being publicly accessible via the Council's Public Access Simple Search. However, this does not act as a substitute for service of the LN in accordance with Regulation 65.
5. 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 being liable for subsequent surcharges. In these circumstances, I cannot conclude that the alleged breaches occurred. Accordingly, the appeal succeeds on both grounds.

Formal Decision

6. For the reasons given above, the appeal is allowed on both grounds made and the surcharges of £[REDACTED], £[REDACTED] and £[REDACTED] are quashed.

K McEntee