



Appeal Decision

by Ken McEntee

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

Decision date: 17 April 2025

Appeal ref: APP/A5840/L/24/3350589

- The appeal is made under Regulation 117(1)(a), (b) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Southwark Council.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 28 June 2018.
- The description of the development is as described in the annex to this decision.
- Liability Notices were served on 2 July 2018.
- A Demand Notice was served on 28 September 2023.
- A revised Demand Notice was served on 21 May 2024.
- A further revised Demand Notice was served on 23 July 2024.
- The alleged breaches to which the surcharges relate is the failure to assume liability, the failure to submit a Commencement Notice before starting works on the chargeable development, and failure to pay the CIL within 30 days, 6 months and 12 months of the due date.
- 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 total £[REDACTED].
- The determined deemed commencement date given in the Demand Notice is 15 October 2018.

Summary of decision: The appeal is allowed in part but the surcharges are upheld.

Procedural matters

1. It appears clear that the appellants are not happy with the way the Collecting Authority (Council) has dealt with matters leading up to the appeal, particularly with regard to the issue of an Enforcement Notice. However, I should make clear that the Council's behaviour is not a matter before me to consider in my determination of this appeal. I can only determine the appeal on the grounds made solely in relation to the CIL surcharges. If the appellants have concerns about the Council's conduct or their adopted procedures, I can only suggest that they may wish to submit a complaint through the Council's established complaints process in the context of local government accountability.
2. For the avoidance of doubt, I have no authority to quash late payment interest and there is no relevant ground of appeal available in which to contest it. This is a matter for the parties to resolve outside of the appeal process while having regard to this decision.

The appeal under Regulations 117(1)(a)¹ and (b)²

3. Although an appeal has been made under 117(1)(a), the appellants accept that they did not assume liability or submit a Commencement Notice (CN) as required by Regulations 31 and 67, but they are they are challenging the alleged late payment breaches. In order to determine this issue, I will need to first determine the appeal under 117(1)(b) to decide whether or not a Liability Notice (LN) was served on the appellants.
4. I note that two LNs were issued on 2 July 2018, one for a charge of £[REDACTED], levied under the Council's charging schedule, and one for £[REDACTED], levied under the Mayor of London charging schedule. However, the appellants contend that they did not receive these notices. Regulation 65(3)(a) explains that a LN must be served on the "relevant person". The relevant person is the person who applied for planning permission as per Regulation 65(12)(b). The appellants suggest that the Council erred by not sending the LN to either [REDACTED]'s registered address or [REDACTED] home address. However, Regulation 126 lists the different ways that are acceptable for documents to be served. Regulation 126(1)(c) explains "*by sending it by post, addressed to that person's usual or last known place of abode or, in the case where an address for service has been given by that person, at that address*". Therefore, the Council were entitled to use the address given in the Planning & Listed Building consent application form of 4 August 2017 ([REDACTED]).
5. Nevertheless, irrespective of whether the LNs were successfully delivered by post, the Council point out that copies were also sent by e-mail, along with the Decision Notice, to the appellants' agents at the time, [REDACTED], which is in accordance with Regulation 126(1)(e) that explains "*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...*". In this case, [REDACTED]'s e-mail address ([REDACTED]) was given in the application form of 4 July 2017. No e-mail address was given for the applicants. The Council have provided a screenshot of the relevant e-mail and a copy of the decision notice with the LNs attached to it in support their case. Therefore, on the evidence before me and on the balance of probabilities, I conclude that the LNs were correctly served.
6. The LNs explain that if a development commences without a valid CN being submitted, payment of the CIL amount will be due in full on the day the Council believes the development to have commenced, which is in accordance with Regulation 71(2). In this case, the date of commencement of 15 October 2018 was stated in the application form of 8 June 2023 for Approval of Details Reserved Condition ([REDACTED]) by the appellants' agents at that time, [REDACTED]. The Council issued a Demand Notice (DN) on 28 September 2023, but although payment was due with immediate effect, the Council allowed the appellants a time period for payment by 31 October 2023. As no such payment was made by that date, the Council issued a revised DN on 21 May 2024, this time including late payment surcharges and interest. Payment of the CIL amount (£[REDACTED]) was

¹ That the alleged breaches that led to the surcharges did not occur.

² That the Council failed to serve a Liability Notice.

made on 11 June 2024, but no surcharges or interest was paid. The Council therefore issued another revised DN on 23 July 2024, including added late payment interest.

7. The appellants contend that the Council were aware in early 2019 that works had commenced so question why CIL was not demanded sooner. However, the Regulations do not impose a time limit on when a DN can be served. In any event, the fact remains that payment of the CIL was due with immediate effect once works commenced, so while it may be unclear why the Council did not act sooner, it would not have had any effect on the CIL amount or surcharges had they done so.
8. I note the appellants contend that due to the issue of an enforcement notice and subsequent appeal, they only had funds after their first property sale was completed and they also believe that the Council should have taken a more pragmatic approach. However, CIL is a very rigid formulaic process, and I have no authority to consider mitigation. I can only determine the appeal on the factual evidence before me in accordance with the CIL Regulations. The Council were entitled to pursue the CIL and CIL surcharges irrespective of what the situation may have been in respect of the enforcement notice and appeal. Nevertheless, it seems to me that the Council did take a pragmatic approach by giving the appellants extra time to comply with the initial DN, when payment was actually due with immediate effect. However, as the appellants failed to meet that deadline, the Council were entitled to impose late payment surcharges based on the CIL amount being due with immediate effect.
9. I conclude that the alleged breaches that led to the surcharges occurred as a matter of fact and the Council did not fail to serve a LN. Therefore, the appeal under Regulations 117(1)(a) and (b) fail accordingly.

The appeal under Regulation 117(1)(c)³

10. Although an appeal has been made on this ground, the appellants have not provided any supporting evidence as to why they consider the surcharges have been miscalculated and what they consider the correct amounts should be. It appears to be more a case that they believe the surcharges should not have been imposed at all. However, this issue has been addressed above, and I am satisfied the appropriate surcharges have been correctly calculated in accordance with Regulations 80, 83 and 85. The appeal on this ground also fails accordingly.

The appeal under Regulation 118⁴

11. The determined deemed commencement date given in the Demand Notice is 15 October 2018. This was the date given by the agents in the application re [REDACTED] as mentioned in paragraph 6 above. The appellants contend that this date was given in error by [REDACTED] and have provided an e-mail dated 20 March 2025 from them to the Council in which they confirm that the date of 15 October 2018 was stated in error and was actually the date of approval for application [REDACTED]. They have provided an image of that approval in support of their claim. They also state that the correct commencement date for

³ That the surcharge has been miscalculated.

⁴ That the Council has issued a demand Notice with an incorrectly determined deemed commencement date.

