



Appeal Decision

by Ken McEntee

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

Decision date: 28 May 2025

Appeal ref: APP/T5720/L/24/3355296

- 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 surcharges imposed by the London Borough of Merton.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 6 May 2020.
- The description of the development is "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was served on 3 June 2020.
- A Demand Notice was served on 11 October 2024.
- The alleged breaches that led to the surcharges are: the failure to assume Liability and the failure to submit a Commencement Notice before starting works on the chargeable development, and the 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 surcharge totals £[REDACTED] ([REDACTED]).

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

Procedural matters

1. For the avoidance of doubt, I have no authority to adjudicate on the matter of any interest imposed. I can only consider the appeal solely in relation to the surcharges.

Reasons for the decision

2. The appeal has been made under Regulation 117(1)(c) - that the surcharges have been calculated incorrectly. There are two main arguments put forward by the appellant in support of his appeal; namely that had the Collecting Authority (CA) responded to his e-mail of 24 July 2020, and/or had the Building Control Dept notified the CA earlier that works on the development had commenced, the matter could have been resolved earlier and therefore the surcharges would not have been imposed.
3. I have some sympathy with the appellant's first argument, and I note the CA have not explained why they did not respond. There was clearly an e-mail exchange in progress after the issue of the Liability Notice, a copy of which the

appellant has provided, and the appellant asked a question in his e-mail of 24 July 2020 which does not appear to have been answered. However, irrespective of this, the responsibility was on the appellant to ensure a Commencement Notice (CN) was submitted before starting works on the chargeable development. The Liability Notice made clear the possible consequences of failing to do so, such as the CIL amount would be due in full on the day the CA believes development has commenced, which was deemed to be 9 October 2020. As no such payment was made on that day, it unfortunately meant that late payment surcharges were also automatically incurred.

4. The appellant contends that he simply forgot to submit a CN and to chase the CA for a response to his e-mail, due to dealing with the pressure of his first project of this kind, at the same time as his mother sadly passed away during the COVID pandemic and suffering serious health problems himself. While I have sympathy with the appellant for the extremely difficult personal circumstances he has had to cope with and in no way wish to appear dismissive of them, I'm afraid I have no powers to consider mitigation and can only determine the appeal on its facts in accordance with the CIL Regulations.
5. With regards to the appellant's second main argument in which he believes that as he was dealing with the Building Control Dept at the time, they should have notified the CIL team of commencement and consequently a Demand Notice could have been issued a lot earlier. However, I should explain that the Building Control Dept is not part of the CIL CA, and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. The necessary CN needed to be submitted directly to the CA for the requirements of Regulation 67(1) to be met. Unfortunately, that did not happen in this case. The CA contend that they first became aware on 2 July 2024 that works had commenced, but I note they did not issue a Demand Notice until 11 October 2024, and the appellant states that he received an e-mail on 2 July 2024 to say that the CA became aware on 28 February 2023 that works had been completed. However, while this discrepancy and the fact that a Demand Notice was not issued until 11 October 2024 is unexplained, it would not have had any impact on the surcharges, which would have been for the same amounts as that imposed as 12 months had clearly expired since the issue of the Liability Notice in any event.
6. Regulation 80 explains that the CA may impose a surcharge of £[REDACTED] where nobody assumed liability and the chargeable development has commenced. As nobody assumed liability, this surcharge is correct. Regulation 83 explains that the CA may impose a surcharge equal to 20% or £[REDACTED], whichever is the lower amount. The CIL amount in this case is £1[REDACTED] and 20% of this amount = £[REDACTED], which is the lower amount. Therefore, this surcharge is also correct. Regulation 85 explains that surcharges may be imposed where the CIL amount is not received in full at the end of 30 days or if any part of the CIL is not paid at the end of 6 months or 12 months, the CA may impose a surcharge equal to 5% or £[REDACTED], whichever is the greater amount. As 5% of £[REDACTED] = £[REDACTED], it is clear that this is the greater amount. Therefore, the late payment surcharges have also been correctly calculated. The appeal fails accordingly.
7. If the appellant is unhappy with the Council's conduct or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

Formal Decision

8. For the reasons given above, the appeal on the ground made is dismissed and the surcharges of £[REDACTED], £[REDACTED], and £[REDACTED] are upheld.

K McEntee