



Appeal Decision

by Ken McEntee

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

Decision date: 16 July 2025

Appeal ref: APP/N5090/L/24/3357293

- 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 surcharges imposed by the London Borough of Barnet.
- The relevant planning permission to which the surcharge relates is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 26 October 2017.
- A Liability Notice was served on 2 February 2018.
- A Relief Claim Decision Notice was served on 2 February 2018.
- A revised Liability Notice was served on 2 February 2018.
- A further revised liability Notice was generated on 13 November 2024.
- A Demand Notice was served on 13 November 2024.
- The alleged breaches that led to the surcharges is the failure to notify the Charging Authority of a 'disqualifying event' for self-build CIL relief, and the failure to pay the CIL within 30 days, 6 months and 12 months of the due date.
- The outstanding surcharge for failure to notify the Council of a disqualifying event is £[REDACTED].
- The outstanding surcharges for late payment total £[REDACTED].

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

Procedural matters

1. For the avoidance of doubt, I can only determine this appeal in relation to the CIL surcharges alone. I have no authority to quash or amend the overall CIL charge of £[REDACTED]. This can only be done by way of a successful appeal to the Valuation Office Agency in accordance with CIL Regulation 114. I also have no authority to consider any interest charges.

The appeal under regulation 117(1)(a)

2. An appeal under Regulation 117(1)(a) is that the alleged breach which led to the surcharge did not occur. The main alleged breach is the failure to notify the Charging Authority (Council) of a disqualifying event for CIL exemption; namely, that the property was sold within 3 years of completion. CIL Regulation 54(D)(4) specifies that "*the relevant person must notify the collecting authority in writing of the disqualifying event before the end of 14 days beginning with the day on which the disqualifying event occurs*". Regulation 2(F2)(b) explains

that the “clawback period” means the period of 3 years beginning with the date of the Compliance Certificate. In this case, the date of the Compliance (also known as Completion) Certificate was 18 March 2019. Therefore, as the appeal property was sold on 23 February 2022, it follows that it was sold within 3 years of the Compliance Certificate.

3. However, while the appellant accepts that the late submission of the Compliance Certificate was an oversight on his part, he argues that the Regulations are not definitive and are open to interpretation. He has provided documentary evidence, such as Council tax records and dated photographs, to demonstrate that he had occupied the property since at least 28 August 2018 and therefore contends that the 3-year period should be taken from that date, which would mean that the property was sold after 3 years of occupation, and a disqualifying event had not occurred.
4. While I can appreciate the appellant’s argument, I can only determine the appeal in accordance with the CIL Regulations. I note the appellant’s point about interpretation, but I consider the relevant Regulation is clear and unambiguous and can only reasonably be interpreted one way, which is that the 3-year period for notification begins from the date of the Compliance Notice. Therefore, I can only conclude that the appellant failed to notify the Council of a disqualifying event.
5. The other alleged breach is the failure to pay the CIL within the due date. Once the property was sold within the 3-year claw back period, without notification of a disqualifying event, the CIL became due with immediate effect in accordance with Regulation 71(4)(b). Therefore, the late payment surcharges were imposed.
6. I conclude that the alleged breaches occurred and the appeal under Regulation 117(1)(a) fails accordingly.

The appeal under Regulation 117(1)(b)

7. An appeal under this ground is that the Council failed to issue a Liability Notice (LN) in respect of the development to which the surcharge relates. The appellant specifically refers to the revised LN of 13 November 2024. The Council accept that they made an error in failing to send that LN at the same time as the Demand Notice (DN) of the same date, but they have since sent a copy to the appellant.
8. In circumstances where a surcharge has been imposed for the failure to submit a Commencement Notice (CN), the failure to serve a LN would be significant as the LN acts as the trigger for a CN to be submitted. However, in cases such as this where a surcharge has been imposed for the failure to notify the Council of a disqualifying event, it is the Relief Claim Decision Notice or Self-build Exemption Notice that is relevant as it acts as the trigger for notifying the Council of a disqualifying event within 14 days, should one arise. The notice explains this and warns of the possible consequences of failing to do so.
9. Therefore, I do not consider that the Council’s failure to serve the revised LN dated 13 November 2024 at the time of serving the DN had any impact on the appellant’s ability to provide the above notification.
10. The appeal under Regulation 117(1)(b) also fails accordingly.

Formal decision

11. For the reasons given above, the appeal on the grounds made is dismissed and the surcharges of £[REDACTED] and £[REDACTED] ([REDACTED] and [REDACTED]) are upheld.

K McEntee