Planning Inspectorate

Appeal Decision

by Ken McEntee

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

Decision date: 2 September 2025

Appeal ref: APP/U1105/L/25/3360200

[redacted]

- The appeal is made under Regulation 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against a surcharge imposed by East Devon District Council.
- The relevant planning permission to which the surcharge relates is [redacted].
- The description of the development is: "[redacted]".
- Planning permission was granted on 15 October 2018.
- A Liability Notice was served on 6 February 2019.
- A revised Liability Notice was served on 3 April 2019.
- A Relief Claim Decision Notice was served on 3 April 2019.
- A Demand Notice was served on 15 April 2019.
- A revised Liability Notice was served on 9 January 2025.
- A revised Demand Notice was served on 9 May 2025.
- The alleged breach that led to the surcharge is the failure to notify the Charging Authority of a 'disqualifying event' for self-build CIL relief within 14 days.
- The outstanding surcharge for failure to notify the Council of a disqualifying event is £[redacted].

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

Reasons for the decision

1. An appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to submit a Liability Notice (LN) in respect of the development to which the surcharge relates. However, rather than claiming a LN had not been served, the appellant appears to be arguing that the LN was served incorrectly as he claims it should have been served when the breach was found to have occurred. Regulation 65(1) explains that the Council must issue a LN as soon as practicable after the day on which planning permission first permits development. In this case, the initial LN was served on 6 February 2019 – some 4 months after planning permission was granted, but the Council do not explain the reason for this delay. While the term "as soon as practicable" is open to interpretation, I do not consider that 4 months can reasonably be interpreted as meeting the requirement of Regulation 65(1) for a LN to be served as soon as practicable after the day on which planning permission first permits development. Therefore, in this respect, I would agree with the appellant that the LN was not correctly served.

2. However, if this was a situation where a surcharge had been imposed for the failure to submit a Commencement Notice (CN), the failure of the Council to serve a LN more promptly 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. Therefore, the Council's failure to serve a LN more promptly had no impact on the appellant's ability to notify them that a disqualifying event had occurred; namely, the letting of a residential annex.
3. The appellant contends that the breach took place after 3 years from the date of decision notice. 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 7 September 2022, and the Council has provided evidence, in the form of visitor reviews, that the property has been let out within 3 years after that date.
4. In view of my findings above, the appeal fails accordingly.

Formal decision

5. For the reasons given above, the appeal on the ground made is dismissed and the surcharge of £[redacted] is upheld.

K McEntee