

# Appeal Decision

**by Ken McEntee**

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

**Decision date: 27<sup>th</sup> January 2026**

**Appeal ref: APP/Z3825/L/25/3365775**

- The appeal is made under Regulation 117(1)(a), (b) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Horsham 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 13 June 2019.
- A reserved matters application [REDACTED] was approved on 24 March 2023.
- A Liability Notice was served on [REDACTED] on 12 April 2023.
- A revised Liability Notice was served on [REDACTED] on 21 August 2023.
- A further revised Liability Notice was served on the appellants on 15 January 2025.
- A Demand Notice was served on the appellants on 16 May 2025.
- The alleged breaches that led to the surcharges are the failure to submit a Commencement Notice before starting works on the chargeable development, and the failure to pay the CIL within 30 days of the due date.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding surcharge for failing to pay the CIL within 30 days of the due date is [REDACTED].

**Summary of decision: The appeal under Regulation 117(1)(a) and (b) is dismissed and the surcharges are upheld, but the appeal under Regulation 118 is allowed.**

### **The appeal under Regulation 117(1)(a) and (b)**

1. An appeal under Regulation 117(1)(a) is that the claimed breaches which led to the surcharges did not occur, and an appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to serve a Liability Notice (LN). The first surcharge is for failing to submit a Commencement Notice (CN) before starting works on the chargeable development. The appellants accept that a CN was not submitted but argue that it was not possible to do so as the Council did not transfer liability in a timely manner and therefore a CN could not be submitted in the correct name. Plus, the Council did not serve a LN in the appellants' name until 15 January 2025. However, although an Assumption of Liability (Form 2) was dated 4 November 2024, unfortunately the Council did not receive it until 10 January 2025 by way of an e-mail from [REDACTED]. A Transfer of Assumed Liability (Form 4), also dated 4 November 2024, was then provided on 14 January

2025. Therefore, I am satisfied that the LN of 15 January 2025 was timely served on the appellants.

2. The appellants argue that whilst no CN was submitted, it is clear that the Council were aware works had begun as Building Control had been informed and the CIL authority were informed on receipt of the LN in January 2025. However, the Building Control Dept is not part of the CIL Collecting Authority, and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. A CN (Form 6) needed to be submitted directly to the CIL Collecting Authority for the requirements of Regulation 67(1)(a) to be met. The Authority having knowledge by other means does not act as a substitute for the required CN. It is a matter of fact, which the appellants do not refute, that a valid CN was not submitted before works commenced in November 2024. Therefore, the Council were entitled to impose a surcharge in accordance with Regulation 83. Once works commenced without a valid CN having been submitted, the CIL payment became due in full, with immediate effect, in accordance with Regulation 71(2). As this obviously did not happen and payment remained unpaid on 22 December 2024, the Council were entitled to impose a late payment surcharge in accordance with Regulation 85.
3. I note the Council were chased by [REDACTED] on several occasions in April 2025 to send a CIL invoice. However, even if the Council had done so, as the CIL was due with immediate effect, it would not have prevented the surcharges from being imposed.
4. In view of the above, the appeal made under Regulation 117(1)(a) and (b) fails accordingly.

### **The appeal under Regulation 118**

5. An appeal under this ground is that the Council has issued a Demand Notice (DN) with an incorrectly determined deemed commencement date. The deemed commencement date in the DN in this case is 13 November 2024. The Council were informed of this date by [REDACTED] by e-mail of 16 April 2025. However, they have since been advised, and are content to accept, that the correct date of commencement was in fact 22 November 2024. Therefore, the appeal under Regulation 118 succeeds accordingly.
6. Should the Council decide to continue pursue the CIL surcharges, they must now issue a revised DN with a new determined deemed commencement date in accordance with Regulation 69(4).
7. For the reasons given above, the appeal under Regulation 117(1)(a) and (b) is dismissed and the surcharges of [REDACTED] and [REDACTED] are upheld, but the appeal under Regulation 118 is allowed.
8. If the appellants are not happy with the Council's conducted this matter or their adopted procedures, they may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

*K McEntee*