



Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 30 August 2023

Appeal ref: APP/K0940/L/23/3322179

Land at [REDACTED]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Westmorland & Furness Council (formerly South Lakeland District Council).
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- Planning permission was granted on 9 March 2017.
The description of the development is: "[REDACTED]".
- A Liability Notice was served on 22 April 2020.
- A Demand Notice was served on 18 April 2023.
- The alleged breaches to which the surcharges relate 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.
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding surcharge for failing to pay the CIL on time is [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 reinstate a CIL exemption. I can only determine the appeal in relation to the surcharges.

Reasons for the decision

2. An appeal under regulation 117(1)(a) is that the alleged breach that led to the surcharge did not occur. I note that the appellant does not dispute that she failed to submit a Commencement Notice before starting work on the approved development. However, she explains that this was simply due to an oversight due to serious personal problems that were going on in her life at the time, not least the poor health of her husband. While I have sympathy with the appellant and in no way wish to appear dismissive of the stress and personal difficulties she has clearly been through, I'm afraid I have no authority to consider mitigation and can only determine the appeal on the factual evidence before me. With that in mind, it is a matter of fact that a Commencement Notice was not submitted before works began on the chargeable development as required by Regulation 67(1). Unfortunately, once the breach occurred, the appellant then became liable for full payment of the CIL. As this was not paid within 30 days, which is not disputed by the appellant, a late payment surcharge was correctly imposed in accordance with Regulation 85.

3. I note that the appellant states that she has no intention of going ahead with the development. However, the CIL Regulations is not concerned with whether a development has been or will be implemented but whether it has commenced, which it has done in this case.
4. Therefore, while I have sympathy with the appellant, I have no option but to dismiss the appeal on the evidence before me.

Formal decision

5. For the reasons given above, the appeal is dismissed and the surcharges of [REDACTED] and [REDACTED] are upheld.

K McEntee