



Appeal Decision

by Ken McEntee

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

Decision date: 6 September 2023

Appeal ref: APP/Y2736/L/23/3322436

Land at [REDACTED]
[REDACTED]

- The appeal is made under Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Ryedale District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 15 November 2019.
- A Liability Notice was served on 12 May 2020.
- A Demand Notice was served on 27 January 2023.
- The description of the development is "[REDACTED]"
[REDACTED]
[REDACTED]
[REDACTED]
- The alleged breach to which the surcharge relates is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

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

Procedural matters

1. Although the appeal has been made under Regulations 117(1)(b) and 118, from my reading of the appellant's supporting arguments, it appears clear that he is simply contesting the fact that a surcharge was imposed for failing to submit a Commencement Notice before commencing work on the development. He accepts that he failed to submit a timely notice but contends that this was due to mitigating circumstances, mainly that he found the CIL process and dealings with the Council to be confusing. However, while I have sympathy with the appellant, an appeal can only be determined on its facts, and I have no authority to consider mitigation. CIL is a very rigid and formulaic process, and a Commencement Notice must be submitted before works on a chargeable development are commenced. This was clearly explained in the Liability Notice of 12 May 2020. Therefore, the Council were entitled to impose the surcharge in accordance with Regulation 83(1).

2. However, if the appellant is unhappy with the Council's conduct in this matter or their adopted procedures, he may wish to make a complaint through the Council's established complaints process in accordance with local government accountability.

The appeal under Regulation 117(1)(b)

3. An appeal under Regulation 117(1)(b) is that the Collecting Authority (Council) failed to serve a Liability Notice in respect of the development to which the surcharges relate. However, I note that although the relevant box has been marked for an appeal on this ground, the appellant states in red font that "*(Is this CIL Form 2?) Yes if it is*". As Form 2 is an Assumption of Liability Notice, it is reasonable to assume an appeal on this ground has been made in error and fails accordingly.

The appeal under Regulation 118

4. An appeal under Regulation 118 is that the Council issued a Demand Notice with an incorrectly determined deemed Commencement Notice. However, as no such date has been given in the Demand Notice, I can again only assume that an appeal was also made in error on this ground and thus also fails accordingly.
5. However, while I am dismissing the appeal, I should point out that a Demand Notice must satisfy the requirements of Regulation 69(2); subsection (d) explains that the notice must state a determined deemed commencement date. In this case, no such date has been stated and therefore the notice does not meet the requirements of Regulation 69(2)(e). Consequently, the Demand Notice is defective. There are no powers to correct, vary or quash a Demand Notice, but under Regulations 117(1)(4) and 118(6) there are powers to quash surcharges. However, as I am not allowing any of the grounds of appeal pleaded, I cannot exercise those powers. Nevertheless, if the Council are to continue to pursue the CIL, they may wish to consider serving a revised valid Demand Notice in accordance with Regulation 69(4).

Formal decision

6. For the reasons given above, the appeal is dismissed on the grounds made and the surcharge of [REDACTED] is upheld.

K McEntee