



Appeal Decision

by Ken McEntee

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

Decision date: 19 December 2023

Appeal ref: APP/T57200/L/23/3330299

Land at [REDACTED]

- The appeal is made under Regulation 117(1)(a) and (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by the London Borough of Merton.
- The relevant planning permission to which the surcharges relate is [REDACTED]
- Planning permission was granted on 26 July 2017.
- The description of the development is: "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]".
- A Liability Notice was served on the applicants for planning permission ([REDACTED]) on 12 September 2017.
- A revised Liability Notice was served on [REDACTED] on 3 October 2017.
- Demand Notices were sent to the appellant and [REDACTED] on 12 July 2023.
- A revised liability Notice was served on the appellant on 31 August 2023.
- A revised Demand Notice was served on the appellant on 31 August 2023.
- The alleged breaches to which the surcharges relate is the failure to assume liability, to submit a Commencement Notice before starting works on the chargeable development, and to pay the CIL on time.
- The outstanding surcharge for failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED].
- The outstanding surcharges for late payment of the CIL totals [REDACTED].

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

Procedural matters

1. It appears clear that as well as the late payment surcharges, the appellant would like to appeal against the late payment interest charges. For the avoidance of doubt, there is no such ground of appeal available, and I can only determine the appeal solely in relation to the late payment surcharges.

The appeal under Regulation 117(1)(a)

2. An appeal under this ground is that the alleged breach which led to the surcharge did not occur. In this case, the appellant accepts that she failed to assume liability and to submit a Commencement Notice so is not appealing the surcharges in relation to these breaches. However, her agent, [REDACTED], is appealing on her behalf against the late payment surcharges on the basis that she is not liable to pay

them. The crux of the agent's case is that as a Demand Notice (DN) was served on [REDACTED] on 12 July 2023, the appellant did not become liable until she was served with a DN on 31 August 2023 as that is when default liability was re-apportioned to her. He also points out that the apportionment of liability to [REDACTED] has not been appealed.

3. However, it is noted that as well as [REDACTED], a DN of 12 July 2023 was sent to the appellant to the appeal site address. I also note that the DN addressed to [REDACTED] states the appellant's name under "Name and address of recipient". The Collecting Authority, (Council) do not explain why a DN was served on Flora Developments Ltd but it would appear that it was due to the appellant previously being a director of the company. Revised DNs of 31 August 2023 were subsequently sent to all 3 addresses associated with the appellant.
4. It appears the Council incorrectly served a DN in the name of [REDACTED] in their attempts to ensure service on the appellant. However, they were entitled to correct this error by serving a revised DN on the appellant as the owner of the property, in accordance with Regulation 69(3), which explains that a Council may at any time serve a DN on a person liable to pay an amount of CIL. Nowhere in the CIL Regulations does it say that this can only be done if any previous apportionment of liability has been successfully quashed by way of a Regulation 115 appeal as the agent suggests.
5. The Liability Notice of 3 October 2017 was registered as a local land charge as the Council were required to do under the local land charges Act 1975. Such a charge binds the land any purchaser or owner of the property are deemed to have knowledge of any burden attached to the land by virtue of the registration. Therefore, as soon as the appellant purchased the property on 3 November 2017, she became liable for CIL. The Liability Notice warns that if a Commencement Notice is not submitted before development commences, payment of the CIL amount will be due in full on the day the Council believes the development to have commenced, which in this case was 2 January 2018 (which the appellant does not dispute). As no payment was made on that date, the appellant also automatically became liable for late payment surcharges in accordance with Regulation 85.
6. On the evidence before me therefore, I conclude that the alleged breaches occurred as a matter of fact. The appeal under this ground fails accordingly.

The appeal under Regulation 117(1)(c)

7. An appeal under this ground is that the surcharges have been incorrectly calculated. Regulation 85 explains that the Council may impose a surcharge of 5% of the unpaid CIL or [REDACTED], whichever is the greater amount. The CIL amount in this case is [REDACTED]. 5% of this amount = [REDACTED]. The Council imposed this surcharge 3 times - after 30 days, 6 months and 12 months, which amounts to a total surcharge (not including interest) of [REDACTED]. Therefore, I am satisfied that the late payment surcharges have been calculated correctly.

Formal decision

8. For the reasons given above, the appeal on the grounds made is dismissed and the late payment surcharges totalling [REDACTED] are upheld.

K McEntee