



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State

Decision date: 13 November 2024

Appeal ref: APP/H1705/L/24/3349375

- The appeal is made under Regulations 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a surcharge imposed by Basingstoke & Deane Borough 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 January 2023.
- A Liability Notice was served on 16 January 2023.
- A revised Liability Notice was served on 19 June 2024.
- A Surcharge Notice was served on 23 July 2024.
- A Demand Notice was served 24 J July 2024.
- The alleged breach that led to the surcharge is the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].

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

Reasons for the decision

1. While the appeal has been made under Regulation 11(1)(c) – that the surcharge has been calculated incorrectly, the appellant also requests that the surcharge be waived as her failure to submit a Commencement Notice (CN) before starting works on the chargeable development was not only a mistake on her part, but also on the part of the Collecting Authority (Council) as they failed to send her the required form to complete when she requested all CIL forms. While I have sympathy with the appellant if she made a genuine error, I am afraid I have no powers to consider mitigation and can only determine the appeal on the facts before me. I appreciate that the Council did not help matters by neglecting to send the relevant form, but the onus was on the appellant to ensure a CN was submitted as explained in the Liability Notice. CIL is a very rigid and formulaic process and although it may have been as a result of an unfortunate oversight, it is nevertheless a matter of fact that a CN was not submitted as required by Regulation 67(1).
2. With regards to the calculation of the surcharge, Regulation 83(1) explains that where development has commenced before the Council has received a valid CN, they may impose a surcharge equal to 20% of the chargeable amount or £[REDACTED], whichever is the lower amount. The appellant contends that as there was no

chargeable amount in this case, due to the development being self-build exempt, the surcharge should also be nil. However, Regulation 83(1A), which is an amendment to the original Regulation, states that "*Subject to paragraph (1B)¹, where a relevant development is commenced before the collecting authority has received a valid commencement notice in respect of the development, then instead of any surcharge which may be imposed under paragraph (1) the collecting authority must impose a surcharge equal to 20 per cent of the **notional** (my emphasis) chargeable amount or £[REDACTED], whichever is the lower amount*". Amendment 83(5) explains that the notional chargeable amount means the amount of CIL that would have been payable, calculated in accordance with Regulation 40 and Schedule 1, in relation to the development, as if the relief had not been granted for residential annexes, self-build housing and charitable or social housing relief.

3. In view of the above, the Council were entitled to impose a surcharge of £[REDACTED], which is clearly the lower amount compared with 20% of the notional CIL amount of £[REDACTED], which equals £[REDACTED]. The appeal fails accordingly.

Formal decision

4. For the reasons given above, the appeal is dismissed and the surcharge of £[REDACTED] is upheld.

K McEntee

¹ A Collecting Authority is not required to impose a surcharge under paragraph (1A) where it is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge.