

Appeal Decision

by Ken McEntee

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

Decision date: 22 January 2025

Appeal ref: APP/U1430/L/24/3351790

- The appeal is made under Regulation 117(1)(a) and 117(1)(c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Rother District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: "[REDACTED]".
- Planning permission was granted on 20 February 2019.
- A Liability Notice was served on 22 March 2019.
- A Demand Notice was served on 10 May 2024.
- A revised Demand Notice was served on 20 August 2024.
- The alleged breaches that led to the surcharges are: the failure to assume liability and to submit a Commencement Notice before starting works on the chargeable development and the failure to pay the CIL within 30 days after the due date.
- The outstanding surcharge for failing to assume liability is £[REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].
- The outstanding surcharge for late payment of the CIL is £[REDACTED].

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

The appeal under Regulation 117(1)(a)

1. An appeal under Regulation 117(1)(a) is that the alleged breach which led to the surcharges did not occur. The appellant does not refute that a Liability Notice was served on him on 22 March 2019. Within that notice it makes clear the need to submit an Assumption of Liability and a Commencement Notice before development commences. It also warns of the possible consequences of failing to follow the correct procedures. The appellant does not deny that he did not submit either of the required notices before starting works on the chargeable development. Once works commenced, payment of the CIL became due in full, with immediate effect and the relevant surcharges for failing to assume liability and submit a Commencement Notice were imposed. However, it appears that the appellant accepts these surcharges and the only surcharge he is appealing is the one for the failure to pay the CIL amount within 30 days of the due date. However, it is evident that the CIL amount was not paid within 30 days of the Demand Notice of 10 May 2024, it therefore follows that a surcharge was correctly imposed for late payment in accordance with Regulation 85.
2. The appellant feels that the Collecting Authority (Council) should have sent out reminders for payment. While I can appreciate the appellant's view, the fact is

that it is not common practice for Councils to send out reminders and they are under no obligation to do so. The onus was on the appellant to ensure the correct procedures were followed, and he could of course have taken steps to set his own reminders, particularly in view of the warning given in the Liability Notice of the possible consequences of failing to submit a Commencement Notice or to follow the payment procedures.

3. On the evidence before me, I am satisfied that the alleged breaches occurred. In these circumstances, the appeal on this ground fails accordingly.
4. If the appellant has concerns about the Council's conduct or their adopted procedures, I can only suggest that he may wish to make a complaint through the Council's established complaints process in the context of local government accountability.

The appeal under Regulation 117(1)(c)

5. An appeal under this ground is that the surcharge has been calculated incorrectly. Regulation 85(1)(b) explains that if a CIL amount is not paid in full after the end of 30 days beginning on the day on which payment is due, the Council may impose a surcharge equal to 5% of the amount due or £[REDACTED], whichever is the greater. The amount due in this case was £[REDACTED]. 5% of this amount equals £[REDACTED], but the Council decided to round it down to £[REDACTED], which is obviously in the appellant's favour. Therefore, the appeal on this ground also fails accordingly.

Formal decision

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

K McEntee