



Appeal Decision

by Ken McEntee

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

Decision date: 13 May 2025

Appeal ref: APP/C1435/L/24/3359624

[REDACTED]

- The appeal is made under Regulation 117(1)(a), (b) and (c) and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Wealden District Council.
- The relevant planning permission to which the CIL relates is [REDACTED].
- Planning permission was granted on 7 June 2018.
- The description of the development is "[REDACTED]".
- A Liability Notice was served on the stated applicant for planning permission, [REDACTED], via his agent, [REDACTED] on 7 June 2018.
- A Demand Notice was served on 6 January 2022 but incorrectly dated 6 January 2021.
- The alleged breaches to which the surcharges relate are the failure to assume liability and the failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is £[REDACTED].
- The outstanding surcharge for failing to submit a Commencement Notice is £[REDACTED].

Summary of decision: The appeal is allowed in part and the surcharges are quashed.

Procedural matters

1. The appellant refers to a self-build CIL exemption being retracted. For the avoidance of doubt, I can only determine the appeal under the grounds made in relation to the CIL surcharges and have no powers to grant or reinstate a CIL exemption. This is a matter the appellant may wish to take up further with the Collecting Authority (Council).

The appeal under Regulations 117(1)(a)¹ and (b)²

2. I shall address the appeal on ground 117(1)(b) first as it impacts on the appeal on ground 117(1)(a).
3. The Council correctly served a Liability Notice (LN) on the applicant stated in the application form of 25 January 2017, [REDACTED], via the stated agent, [REDACTED]. However, it later transpired that [REDACTED] was stated as the applicant in error and the correct applicant should have been the

¹ That the alleged breaches that led to the surcharges did not occur.

² That the Collecting Authority (Council) failed to serve a Liability Notice in respect of the development to which the surcharges relate.

appellant, [REDACTED]. The Council contend that they subsequently served a revised LN on the appellant on 28 October 2019 by first class post and have provided a copy. However, the appellant insists that she did not receive it, and neither did she receive a copy of the original LN in her status as the landowner, irrespective of the fact that she was mistakenly omitted as the applicant on the application form. In support of her case, the appellant quotes text from a previous CIL appeal decision (APP/E0345/L/17/1200120) in which it was pointed out that as well as the "relevant person" (the person who applied for planning permission) as defined by Regulation 65(12), an LN is also required to be served on each person known to the authority as an owner of the relevant land in accordance with Regulation 65(3)(c). There is no evidence before me to demonstrate that this has happened in this case.

4. With regards to the Council's contention that the revised LN was sent to the appellant by first class post, the appellant refers to another previous appeal decision (APP/L3245/L/18/1200207) in which it explains that while the Council were entitled to serve the notice by standard post, this method of service entails an element of risk as it does not provide for proof of postage, unlike registered post or recorded delivery. The Council state *"As set out above the Council records show that clear correspondence was sent, by email and recorded delivery letter, that set out a CIL liability notice had been issued"*. However, although evidence has been provided of the Demand Notice being served by recorded delivery, I cannot find any evidence of any such verification being provided for service of the LN.
5. The Council refer to an e-mail of 17 January 2022 in which the agent states *"The applicant was sent the CIL paperwork issued on decision plus the accompanying email stating that the council must be informed of the commencement of development and the potential issues that would arise if they did not"*. As the agent refers to *"issued on decision"*, it is reasonable to assume that the said paperwork included the original LN. However, this notice was subsequently rendered invalid as it was not addressed to the appellant and was superseded. Having knowledge by other means does not act as a substitute for the required LN.
6. Furthermore, I note that the revised LN is given the same issue date (7 June 2018) as the original. This could have potentially impacted on the appellant's ability to submit an appeal against the calculation of the CIL chargeable amount as such an appeal would needed to have been made to the Valuation Office Agency within 60 days of the LN in accordance with Regulation 114. Plus, any such appeal can only be accepted after a request for a review has been made to the Council in accordance with Regulation 113 within 28 days of the LN. That being the case, I can only conclude that the revised LN is defective in any event.
7. On the evidence before me therefore, I conclude that a LN was not correctly served on the appellant. This deprived her of the opportunity to submit a valid Commencement Notice as the LN acts as the trigger to do so. Consequently, the alleged breaches which led to the surcharges did not occur. The appeal under Regulations 117(1)(a) and (b) succeed accordingly.

The appeal under Regulation 117(1)(c)³

8. In view of my findings above, the appeal on this ground does not fall to be considered.

The appeal under Regulation 118⁴

9. The determined deemed commencement date given in the Demand Notice is 1 June 2020. Although an appeal has been made on this ground, the appellant has not submitted any supporting arguments or evidence to contest this date. Therefore, I have no reason to believe that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal on this ground fails accordingly.

Formal decision

10. For the reasons given above, the appeal under Regulations 117(1)(a) and (b) is allowed and the surcharges of £■■■, £■■■■ are quashed, but the appeal under Regulation 118 is dismissed.

K McEntee

³ The surcharges have been calculated incorrectly.

⁴ The Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.