



## Appeal Decision

by Ken McEntee

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

Decision date: 13<sup>th</sup> November 2025

**Appeal ref: APP/G5750/L/22/3308150**

- 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 the London Borough of Newham.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- The description of the development is: [REDACTED]  
[REDACTED]  
[REDACTED]."
- Planning permission was granted on 31 January 2018.
- A Liability Notice was served on the applicant for planning permission, [REDACTED], on 28 February 2018.
- A default Liability Notice and Demand Notice was served on the appellants, along with 3 other parties/addresses, on 14 January 2022.
- A revised Demand Notice was served on the appellants, along with 3 other parties/addresses, on 3 February 2022.
- A further revised Demand Notice was served on the appellants, along with 4 other parties/addresses, on 13 April 2022.
- 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, 6 months and 12 months of 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 surcharges for late payment of the CIL total [REDACTED] [REDACTED]).
- The determined deemed commencement date given in the Demand Notice is 13 May 2019.

**Summary of decision: The appeal is dismissed in relation to Regulations 117(1)(a) and (b) and Regulation 118 but allowed in part in relation to Regulation 117(1)(c).**

### The appeal under Regulation 117(1)(a)<sup>1</sup> and (b)<sup>2</sup>

1. I shall address the appeal under Regulation 117(1)(b) first as it impacts on the appeal under Regulation 117(1)(a).
2. The Council contend that the original Liability Notice (LN) of 28 February 2018 was served on [REDACTED] as the applicant for planning permission by first class

<sup>1</sup> The claimed breaches which led to the surcharges did not occur.

<sup>2</sup> The Council failed to serve a Liability Notice in respect of the development to which the surcharge relates.

post. While the Collecting Authority (Council) were entitled to use this method of service, it doesn't provide for proof of postage, unlike recorded delivery or registered post for example. Without such documentary evidence, I cannot be satisfied that the initial LN was served, the result of which would normally have prevented the intended recipient from submitting the CIL charge and a valid Commencement Notice (CN) as it requires the LN to be identified.

3. However, it is normal practice for the Council to register the LN as a local land charge, which the Council are obliged to do under the local land charges Act 1975. Such a charge binds the land, and any purchaser or owner of the property are deemed to have full knowledge of any burden attached to the land by virtue of the registration. I note the appellants contend that a land charge search at the time of purchase of the site on 29 March 2019 did not reveal a CIL liability. However, the Council assert that the LN was registered on 16 March 2018 and have provided a copy of that registration. Therefore, on the evidence before me, I am satisfied the LN was correctly registered as a local land charge and therefore the appellants, as purchasers of the site, should have been aware of the LN and the procedures as explained within it, such as the need to pay the CIL amount within 60 days of commencement of the development and to submit a valid CN before such commencement.
4. I note that the appellants did submit a CN on 12 January 2021 stating a commencement date of 21 January 2021. However, as this was some 12 months after the stated event, the CN was not valid as it did not meet the requirement of Regulation 67(1) for a CN to be submitted no later than the day before the development is due to be commenced.
5. I also note that the appellants do not dispute that they failed to assume liability.
6. On the evidence before me, I can only conclude that the alleged breaches that led to the surcharges occurred as a matter of fact. The appeal under both these grounds fails accordingly.

### **The appeal under Regulation 117(1)(c)<sup>3</sup> and Regulation 118<sup>4</sup>**

7. I shall address the appeal under Regulation 118 first as it impacts on the appeal under Regulation 117(1)(c).
8. The determined deemed commencement date given in the Demand Notice (DN) is 13 May 2019. Although an appeal has been made to contest this date, the appellants have not submitted any supporting arguments or evidence to contradict it, although, as mentioned above, they stated a date of 21 January 2021 in the invalid CN. Therefore, on the evidence before me, I have no reason to believe that the determined deemed commencement date is incorrect.
9. Regulation 80 explains that the Council may impose a surcharge of [REDACTED] on each person liable to pay CIL in respect of a chargeable development. In this case, the surcharge stated in the DN is [REDACTED], but as with the rest of the surcharges, under "Liable Party" it states: "joint and several Liability". This suggests that the [REDACTED] is apportioned between all five recipients of the DN. However, I notice that two of those recipients are listed twice, both with two separate addresses. That being the case, while there are five separate addresses listed for liable parties, there are only

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<sup>3</sup> The surcharges have been calculated incorrectly.

<sup>4</sup> The Council has issued a Demand Notice with an incorrectly determined deemed commencement date.

three names. Therefore, it is reasonable to assume that the [REDACTED] amounts to [REDACTED] for each of the three liable persons named.

10. Regulation 83 explains that where a chargeable development has commenced before the Council has received a valid CN, a surcharge equal to 20% of the chargeable amount may be imposed or [REDACTED], whichever is the lower amount. As 20% of the CIL amount of [REDACTED], which is obviously the lower amount, I am satisfied that this surcharge has been correctly calculated. As the CIL amount was not paid within 60 days of commencement, as required by the LN, the Council were also entitled to impose late payment surcharges.
11. Regulation 85(1)(a) and (b) explains that a person is liable to pay a CIL amount (A), and if that amount is not received in full at the end of 30 days, beginning on the day in which it is due, the Council may impose a surcharge equal to 5% of the amount due or [REDACTED], whichever is the greater. The CIL amount (A) in this case is [REDACTED] and 5% of this amount = [REDACTED]. However, as the surcharge imposed is [REDACTED] it would appear that the Council reached this figure by adding the surcharges for failure to assume liability and to submit a CN onto the CIL amount, then calculated 5% of that total. I take the view that this is not the proper calculation process and the correct interpretation of Regulation 85(1)(a) and (b) is that the surcharge for the failure to pay A ([REDACTED]) within 30 days of the due date is solely payable in relation to that amount. However, other surcharges can be added to any unpaid amount after 6 and 12 months in accordance with Regulation 85(2) and (3). In other words, A, plus related surcharges, plus 5%. Therefore, it follows that I consider all three late payment surcharges to be incorrect, albeit the latter two by small amounts. I shall recalculate them in accordance with Regulation 117(4).
12. As mentioned above, I calculate the correct surcharge for failure to pay the CIL amount within 30 days of the due date to be [REDACTED]. Therefore, I calculate the correct surcharge for late payment within 6 months to be [REDACTED] and [REDACTED] within 12 months
13. In view of the above, the appeal under Regulation 118 fails but the appeal under Regulation 117(1)(c) succeeds in part.
14. Should the Council decide to continue to pursue the surcharges they must now issue a revised DN in accordance with Regulation 69(4).
15. For the avoidance of doubt, there is no ground of appeal available to contest late payment interest. I therefore have no authority to consider it.

### **Formal decision**

16. For the reasons given above, the appeal under Regulation 117(a) and (b) and Regulation 118 are dismissed, but the appeal under Regulation 117(1)(c) is allowed in part. The surcharges for failing to assume liability and submit a CN are upheld, but the late payment surcharges are recalculated to a total of [REDACTED].

*K McEntee*