



Appeal Decision

by **Ken McEntee**

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

Decision date: 28 May 2020

Appeal ref: APP/C1435/L/19/1200365

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by ██████████ against surcharges imposed by Wealden District Council.
- The relevant planning permission to which the surcharges relate is ██████████
- Planning permission was granted on 16 January 2019.
- A Liability Notice was served on 16 January 2019.
- A Demand Notice was served on 15 November 2019.
- The description of the development is: ██████████
██████████
██████████
██████████
- The alleged breaches are the failure to assume liability and to submit a Commencement Notice before commencing works on the chargeable development.
- The outstanding surcharge for failure to assume liability is ██████████
- The outstanding surcharge for failure to submit a Commencement Notice is ██████████
- The determined deemed commencement date given in the Demand Notice is 24 January 2019.

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

Procedural matters

1. I note that the appellant's agent contends in the appeal form that the development is not CIL liable. For the avoidance of doubt, that is not a matter before me to consider. I can only determine the appeal on the grounds made under the relevant CIL Regulations and in relation to the surcharges.

The appeal under Regulation 117(1)(b)

2. An appeal under this ground is that the Collecting Authority (Council) failed to serve a Liability Notice in respect of the development to which the surcharge relates. Regulation 126 explains the options open to the Council for service of documents. Regulation 126(1)(e) states "*in a case where an address for service using electronic communications has been given by that person, by sending it to*

that person at that address...". In this case, the Council state that they sent a Liability Notice to both the appellant and his agent to the postal and e-mail addresses provided. They have produced a screenshot to demonstrate that it was sent to [REDACTED], along with the planning approval, on 16 January 2019. The appellant's agent contends that the e-mail was later found in the junk e-mail box, and this would appear to be the reason an appeal has been made on this ground. However, while it is unfortunate if the relevant e-mail ended up in the agent's junk e-mail box, I am satisfied on the evidence before me, that the Council correctly served a Liability Notice by sending it to the e-mail address provided. The appeal under this ground fails accordingly.

The appeal under Regulation 118

3. An appeal under this ground is that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. In this case, the Council determined that date to be 24 January 2019 from building control records. Although the appellant has appealed on this ground, he has not provided an alternative date with any evidence to support it. Therefore, on the evidence before me, I have no reason to believe that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal under this ground also fails accordingly.

Formal decision

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

K McEntee