



## Appeal Decision

by Ken McEntee

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

Decision date: 29 June 2020

**Appeal ref: APP/D0840/L/20/1200392**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against surcharges imposed by Cornwall Council.
- Planning permission was granted on 20 June 2019.
- A Liability Notice served on 6 August 2019.
- A Demand Notice was served on 28 February 2020.  
The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED]
- The alleged breaches 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 dismissed and the surcharges are upheld.**

### **The appeal under Regulation 117(1)(a)**

1. An appeal under this ground is that the alleged breaches that led to the surcharge did not occur. The appellant accepts the breach that he failed to submit an Assumption of Liability Notice but contends that he did not fail to submit a Commencement Notice (CN). Regulation 67(1) of the CIL regulations explains that a CN must be submitted to the Collecting Authority (Council) no later than the day before the day on which the chargeable development is to be commenced. In this case, it appears that commencement took place on 22 December 2019. The appellant's agent contends that the appellant posted a CN to the Council on 20 December 2019 and has provided a copy with the appeal. However, the Council contend that they did not receive it. It would appear that the notice was sent by standard 1<sup>st</sup> class post. While the appellant was perfectly entitled to use this method of postage, unfortunately it entails an element of risk as it does not provide for proof of postage in the way recorded delivery or registered post does for example, which requires a signature of receipt. Given the warning in the Liability Notice of the possible consequences of failing to submit a CN, I consider it

not unreasonable to expect the appellant to have checked safe receipt with the Council before proceeding with the development.

2. I have no doubt, as his agent asserts, that the appellant has not sought to avoid any CIL liability, but I can only determine the appeal on the evidence before me. Without any proof of postage, I cannot be satisfied that a CN was submitted before works began on the chargeable development. Therefore, I have no option but to conclude that the alleged breaches occurred.

**Formal decision**

3. For the reasons given above, the appeal is dismissed and the surcharges of [REDACTED] [REDACTED] are upheld.

*K McEntee*