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# Appeal Decision

by **Ken McEntee**

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

Decision date: 24 May 2018

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**Appeal ref: APP/B1740/L/17/1200156**

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(1)(b) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Demand Notice was issued by New Forest District Council on 6 November 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED]
- The description of the development is: [REDACTED]
- [REDACTED]
- Planning permission was granted on 23 March 2017.
- The alleged breach of the CIL Regulations is the failure to submit a Commencement Notice.

**Summary of decision: The appeal is allowed.**

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## Procedural matters

1. It appears clear that the primary reason for this appeal is for the self-build exemption that was withdrawn by the Council (Collecting Authority) to be re-instated. However, it is not within my remit and neither do I have the powers to re-instate such an exemption. All that is before me to consider is the appeal on the ground made under Regulation 117(1)(b)<sup>1</sup>.

## Reasons for the decision

2. The Council contend they issued a Liability Notice on 30 March 2017 but the appellant insists he did not receive it. In such a situation such as this where there is no documentary evidence, I have no option but to determine the case on the balance of probabilities. It is ultimately the Council's responsibility to ensure a Liability Notice is correctly served. Regulation 126 (1) explains the options open to the Council for serving documents. One of the options is to send the document by post to the relevant person's usual or last known address, as per Regulation 126 (1)(c), and it is this option the Council chose to take. However, while they were entitled to do so, by sending the notice by standard post, it means there is no proof of postage, where there would have been had the Council chosen to serve the notice by registered post, as per Regulation 126 (1)(d), which requires a

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<sup>1</sup> The Collecting Authority failed to serve a Liability Notice in respect of the development to which the surcharge relates.

signature of receipt. Therefore, the standard post option entails an element of risk as it cannot be guaranteed that the intended recipient will actually receive the document. In these circumstances, I take the view that I have no option but to give the appellant the benefit of the doubt in this case. On the evidence before me, and on the balance of probabilities, I cannot be satisfied that a Liability Notice was correctly served. The appeal succeeds accordingly.

3. However, while I am allowing the appeal it is important to note that no surcharge has actually been imposed by the Council for the failure to submit a Commencement Notice. Therefore, there is no surcharge before me to either recalculate or quash as per Regulation 117(4).
4. I would also re-iterate for the avoidance of doubt that I have no powers to reinstate the self-build relief exemption granted to the appellant on 17 March 2017. This is a matter he may wish to take up further with the Council.

**Formal decision**

5. For the reasons given above, the appeal is allowed on the ground made.

*K McEntee*