

OFFICER / CABINET MEMBER DECISION REPORT FORM

(NB. all decisions should comply with Article 13.2 of the constitution)

1. Decision made

To exercise the discretion, under Regulation 83 of the Community Infrastructure Levy Regulations 2010 (as amended), to waive the surcharge for failure to submit a Commencement Notice in the case of:

- Planning Application Reference Number: 19/01141/FUL
- Site: 2, Bethesda Street, Cheltenham, Gloucestershire. GL50 2AY
- Description of Development: Erection of a new dwelling to the rear of 2, Bethesda Street.
- Liable Party: [REDACTED]

To uphold the levying of a surcharge under Regulation 80 for failure to assume liability for the CIL charge

To re-instate [REDACTED] right to pay the CIL charge and Regulation 80 surcharge according to the Councils adopted instalments policy

2. Identity of the Decision Maker

Mike Holmes, Head of Planning

3. Date of Decision

22 December 2020

4. Reasons for Decision

[REDACTED] gained planning permission to build a new dwelling to the rear of 2, Bethesda Street.

The permission (19/01141/FUL) was granted on 23 August 2019 and was therefore CIL liable.

No CIL Forms were submitted before development commenced.

An estimated CIL charge of £7,252 was applied.

As a result of failure to assume liability prior to commencement of development a surcharge of £50 was applied to the original CIL charge.

As a result of failure to submit a commencement notice the Charging Authority imposed an additional surcharge of £1,450 and on 7 December 2020 served a Demand Notice requiring payment immediately as a result of this breach.

Regulation 83 provides discretion in stating that the charging authority 'may' impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2,500 whichever is the lower amount.

Whilst no such discretion exists for the surcharge for failing to assume liability to pay the charge, on this occasion [REDACTED] has demonstrated that the standard of advice given by the Council fell short of that expected and as a result, and to avoid further legal action for the recovery of this surcharge and the original CIL Charge, I have made the decision not to impose the surcharge of £1,450.

Agreement has been reached with the liable party that the CIL Charge of

£7,252 plus the £50 surcharge for failure to assume liability will be payable, in line with the Council's adopted instalments policy, within 18 months of commencement of development.

5. Alternative options considered and rejected

Pursuing the surcharge of £1,450.

The Regulations do provide the discretion to waive the CIL charge for failure to submit a commencement notice and in doing so reduces the penalty being endured by small builder(s) particularly at this time.

6. Background documents

- CIL Managers report to the Head of Planning (21st December 2020)

7. Any Consultation undertaken

One Legal and Leader/Cabinet Member

8. Results of consultation (where undertaken)

Advice Received that the lead officer may feel that they can take the decision under that part of Table 5 under Part 3E of the Constitution whereby they can "Take all steps reasonably necessary for the effective and efficient delivery of services for which they are responsible"

Cheryl Lester, Chief Planning Lawyer, by email (31 January 2020)

The authority of the lead officer is delegated to the Head of Planning.

9. Any Conflict of Interest declared by an Executive Member who is consulted on the decision

None.

10. Dispensation

Was a dispensation given by the Head of Paid Service (Chief Executive) to Cabinet Members to participate in consultation on officer (or Cabinet Member) executive decisions where they have a conflict of interest in respect of any declaration of interest listed at 9 ?

Yes N/A

Date of dispensation

11. Supporting Report

Yes determined not required

Final report attached ? Yes No

12. Confidential or Exempt Information

Confidential or Exempt information ? Yes No

Name of document(s) which are confidential or exempt...

Signature..... 

Date.....22 December 2020