

Appeal Decision

by **Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 June 2014

Appeal Ref: APP/N2345/L/14/1200007

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations (2010) as amended.
- The appeal is made by [REDACTED] against a Demand Notice issued by Preston City Council (under Regulation 69).
- The Demand Notice was issued on 29 January 2014.
- The date of intended or deemed commencement of development: 6 January 2014.
- The reason for issuing the Demand Notice: a valid commencement notice has been received from [REDACTED].

Details of chargeable development to which the Demand Notice relates

- Reference of relevant planning permission [REDACTED]
 - Description of development: erection of single storey extension to rear of dwelling to form swimming pool.
 - The outstanding amount of CIL payable, including surcharges that the Demand Notice relates to: [REDACTED]
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Decision

1. The appeal is dismissed and the Demand Notice is upheld.

Planning history

2. The Appellant applied for planning permission [REDACTED] for the subject swimming pool on 10 April 2013. The application was refused by the Council on 4 June 2013.
3. Preston City Council's charging schedule came into effect on 30 September 2013.
4. Following Regulation 128, liability for CIL payment arose in respect of development granted planning permission on or after 30 September 2013.
5. [REDACTED] was allowed on appeal by decision letter dated 4 October 2013 [REDACTED].
6. The subject extension falls to be charged as a dwelling house at £65 per square metre.
7. The latest Community Infrastructure Levy (Amendment) Regulations 2014 came into effect on 24 February 2014.

8. Updated CIL guidance was published at the end of February 2014 which remains extant.
9. The Government's Planning Practice Guidance (PPG) came into force on 6 March 2014 and it is intended that guidance on CIL will be added to the PPG in future.

Main Issue

10. Whether the collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.

Reasons

11. The Appellant says that he started work on the subject swimming pool immediately upon receipt of the planning permission, but ceased on 18 October 2013 upon receipt of a letter dated 14 October 2013 from the Council which contained a CIL liability notice. It is not clear to me whether the 'work' at that time constituted a material operation in accordance with Regulation 7(2).
12. The requirements of Regulation 68 are that the Collecting Authority (i.e. Preston City Council) must determine the day on which chargeable development was commenced if it:
 - a) Has not received a commencement notice in respect of the chargeable development but has reason to believe it has commenced; or
 - b) Has received a commencement notice in respect of the chargeable development but has reason to believe that it was commenced earlier than the intended commencement date.
13. It follows from (b) that if an appeal is to be successful in circumstances where a commencement notice has been served, the Charging Authority must have issued a Demand Notice with a deemed commencement date earlier than the date specified in the commencement notice.
14. Setting aside whether or not the Appellant actually started 'work' on site in October 2013, the Appellant served a commencement notice on the Council dated 3 January 2014 stating a development commencement date of 6 January 2014. The Council then issued a Demand Notice on 29 January 2014 which states the date of intended or deemed commencement of development as being 6 January 2014 i.e. the date provided by the Appellant.
15. The Appellant then e-mailed the Council on 4 February 2014 to say that although it had been his intention to commence development on 6 January 2014, this did not happen and the intended date of commencement had changed due to a number of factors:
 - He was awaiting confirmation from United Utilities as to the scheme for disposal of water from the swimming pool – to comply with condition 5 of the planning conditions i.e. no development until scheme approved.
 - Adverse weather conditions.
 - Non-availability of Ibstock Katrina Multi face bricks i.e. 26 week national delay – to comply with condition 3 of the planning conditions.

16. He went on to say that in those circumstances he was withdrawing his notice of CIL and would inform the Council of his new intended commencement date.
17. Following receipt of that e-mail the Council carried out a site visit on 7 February 2014. From the photographic evidence of that site visit, the excavations and foundations look to be complete; and there is a single skin of blockwork around most of the perimeter of the pool to a height of 4 courses of blockwork. As such, it is clear to me that a material start had been made on the construction of the external walls of the extension some time prior to 7 February 2014. Furthermore, those works would have very likely commenced on 6 January 2014, if not October 2013.
18. Whilst Regulation 67(7) makes provision to withdraw a commencement notice, the withdrawal has to be before the commencement of the chargeable development to which it relates. In this case, a material start had already been made before 4 February 2014, Therefore there was a liability to pay the CIL charge.
19. The Amendment Regulations, which did not come into effect until 24 February 2014, include an exemption for residential extensions as set out in Regulation 42A. The Appellant served a self-build annex or extension claim form claiming an exemption under the Amendment Regulations, which was received by the Council on 26 February 2014. However, such a claim is a matter for the Collecting Authority and is not before me in this appeal. In any event, such a claim must be received by the Collecting Authority before commencement of the chargeable development under Regulation 42B. In this case, the Collecting Authority has decided that because the development had commenced prior to 7 February 2014, the claim is not valid.

Other matters

20. The Appellant notes that time is of the essence due to [REDACTED]
[REDACTED]
[REDACTED]
He considers that the planning permission could have been finalised in June 2013 and that it could by now have been built.
21. The Appellant says he immediately started work on the pool when planning permission was granted on appeal, but ceased on 18 October following receipt of the Council's letter dated 14 October 2013 in respect of the CIL Liability Notice. He says this was when he first became aware of CIL's existence. He goes on to say that [REDACTED]
[REDACTED]. Had planning permission been granted in June 2013, he argues they would not now be in this financial situation.
22. The Appellant says he submitted an application for approval of details the subject of conditions and paid a fee on 9 October 2013 relating to the pre-commencement condition (No. 5) in respect of the discharge of water. He received notification by e-mail of 5 March 2014 that the pre-commencement condition was finally discharged on 28 February 2014. He points to paragraph 3.80 of the Council's Community Infrastructure Levy: Advice for Planning Applicants which states that: *Planning permission first permits development on the day that planning permission is granted for that development unless it is subject to any pre-commencement conditions in which case the relevant date*

will be the day that final approval is obtained. He feels that he and his wife have been the victims of the Council which he says have been singularly unhelpful, obstructive and against them all the way.

23. I shall deal with these points in turn. First, the circumstances of [REDACTED] are unfortunate, but the need for the development is not a matter before me in the current appeal. In any event, the Appellant does now have the benefit of a planning permission for the swimming pool.
24. Secondly, if the Appellant considered the Council's behaviour was unreasonable in respect of the refusal of planning permission, it was open to him to make a costs application at the time he made his appeal against that refusal. My jurisdiction is limited to the current appeal which is against the serving of a Demand Notice on the basis that the deemed commencement date is incorrect. That is a separate matter to the "delay" caused by the fact that planning permission was granted on appeal. In this regard, the Council's CIL Advice To Planning Applicants states at 3.6: *"If there was a refusal of planning permission before the CIL implementation date, but planning permission is granted on appeal after the CIL implementation date, the development will be liable to pay CIL"*. Similarly, the CIL guidance states at 2:2:6:2 *"Planning permissions which first permit development on a day when the charging schedule is in effect will be liable for the levy. Regulation 8 defines the time at which a planning permission is treated as first permitting development."*
25. As to the other delays, the most significant delay identified by the Appellant appears to be in respect of the bricks (some 26 weeks) over which the Council has no control. But in any event, none of the delays mentioned by the Appellant have any bearing on the requirement to pay the CIL charge at the commencement of development.
26. Thirdly, while the timing of the introduction of CIL payments may seem unfortunate to the Appellant, the CIL Regulations apply nationwide and therefore there is no injustice to this particular Appellant by this particular Council.
27. Fourthly, I acknowledge the support given to the Appellant by Ben Wallace MP. However, there is no discretion in the CIL Regulations to waive a CIL charge applying to any application granted planning permission on or after the date when the charging schedule first comes into effect and this Charging Authority has not introduced a discretionary exceptional circumstances relief provision under Regulation 55 of the CIL Regulations. Further, the recently published PPG at paragraph 017 Reference ID: 16-017-20140306 states that: *"There is no right of appeal against the principle of liability to pay the levy; all qualifying development is liable for the appropriate charge"*
http://planningguidance.planningportal.gov.uk/blog/guidance/appeals/appeals-against-other-planning-decisions/#paragraph_017.
28. Fifthly, as to awareness of CIL, the CIL Regulations came into force on 6 April 2010; the introduction of CIL was publicised on the Council's website; the relevant notice was given in accordance with the requirements of Regulation 25 of the CIL Regulations; and a notice was inserted into the Lancashire Evening Post. Information in respect of CIL has therefore been in the public domain since April 2010, consequently the requirement to pay CIL should not have come as a surprise to the Appellant.

29. Finally, if the Appellant commenced development prior to discharging the pre-commencement conditions, then he would have been in breach of those conditions. Whilst that it not a matter before me in this appeal, the date of commencement of the development is a separate matter from the date upon which the development could be said to be authorised. As I have already concluded, development commenced prior to 7 February 2014 (whether in breach of the planning permission or not) and so the CIL payment is due. Given the extent of development that can be seen in the photographic evidence, as a matter of fact and degree and on the balance of probability, the development commenced on 6 January 2014 as originally notified by the Appellant. In the absence of any other evidence in respect of the date when those works were executed e.g. builder's receipts for materials and/or labour, I shall rely upon the date given by the Appellant of 6 January 2014 in the Commencement Notice he served on the Council itself dated 3 January 2014.

Conclusions

30. In summary my conclusions are:

- The development was granted planning permission after the CIL charging Schedule came into effect. It is therefore liable for CIL.
- The Appellant served a commencement notice on the Council stating the intended date of 6 January 2014. The subject Demand Notice states this date as the date of commencement. It follows, that there can be no issue of an incorrect deemed date.
- Irrespective of whether development commenced in October 2013 or January 2014, by the time the Appellant sought to withdraw the commencement notice, a material start had begun and so it was therefore too late under Regulation 67(7) to withdraw.

31. For the foregoing reasons I dismiss the appeal.

Jane V Stiles

INSPECTOR