The Planning Inspectorate

Appeal Decision

Site visit made on 16 March 2015

by Sara Morgan LLB (Hons) MA Solicitor (Non-practising)

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

Decision date: 08 May 2015

Appeal Ref: APP/T5720/L/14/1200015
[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations").
- The appeal is made by [redacted] against a Demand Notice issued by the Council of the London Borough of Merton under the Community Infrastructure Levy Regulations 2010.
- The notice was issued on 15 September 2014.
- The date of intended or deemed commencement of development as alleged in the notice is 8 April 2014.
- The development to which the Demand Notice relates: application for variation of condition 1 attached to LBM variation of condition [redacted] relating to the substantial demolition of existing building with retention of front facade and partial retention of side returns to create a new two storey, 5 bedroom dwellinghouse with additional basement and roof space accommodation. (Amendments involve rebuilding of front facade (which existing approval shows as retained) similar to existing house).
- The outstanding amount of Community Infrastructure Levy (CIL) payable that the demand notice relates to: [redacted].

Decision

1. The appeal is dismissed and the notice issued by the Council on 15 September 2014 is upheld.

Application for costs

2. An application for costs was made by the London Borough of Merton against [redacted], and by [redacted] against the London Borough of Merton. These applications are the subject of a separate Decision.

Preliminary

3. The appellants in their grounds of appeal refer, as well as to this appeal under Regulation 118, to their wish to appeal under Regulation 114 of the 2010 Regulations disputing the chargeable amount, and under Regulation 116 disputing the decision of the Council not to apply the self-build exemption. Appeals under these two regulations should be made to a valuation officer appointed under the Local Government Finance Act 1988 or a district valuer within the meaning of section 622 of the Housing Act 1985[1]. I only have jurisdiction to deal with the appeal under Regulation 118. The appellants were

[1] See Community Infrastructure Levy Regulations 2010 Regulation 112(1).

made aware of this by letter dated 23 October 2014 from the Planning Inspectorate to their agent.

4. The Council issued a CIL Liability Notice under Regulation 65 on 9 July 2014. This notice contained various errors, including spelling the names of the appellants incorrectly, not containing their correct address and not mentioning the appeal site address. It did, however, describe the chargeable development including the relevant planning application reference, included its date of issue and stated the chargeable amount.

5. Subsequently, after the CIL Demand Notice the subject of this appeal was issued, the Council issued a further liability notice containing the correct details, as it has power to do under Regulation 65(5). I am not satisfied that the errors in the original liability notice in any way invalidate the Demand Notice the subject of this appeal. Nor have the appellants been in any way prejudiced, as it is clear that they did in fact receive the original liability notice and it was clear what that notice related to.

Background

6. On 9 December 2010 the Council granted planning permission under reference [redacted] for the "erection of a detached single family dwelling house involving demolition of existing building except front facade and part of side returns which are to be retained" at [redacted] ("the 2010 permission"). The site is located in a Conservation Area.

7. On 14 May 2012 the Council granted planning permission under reference [redacted] ("the 2012 permission") for "variation during the course of construction of planning approval LBM ref [redacted] for substantial demolition of existing building with retention of front facade and partial retention of side returns to create a new two storey, 5 bedroom dwellinghouse with additional basement and roof space accommodation. [Revisions involve amendments to the elevations of the previously approved dwelling house]". That permission was subject to a number of conditions, including condition 1 which required it to be carried out in accordance with various approved plans.

8. On 8 April 2014 the Council granted permission under reference [redacted] ("the 2014 permission") for a variation of condition 1 attached to planning permission [redacted]. The Council's decision is in the form of a letter. This says that the amendment is for the demolition of the entire building including the front facade and side returns and erection of a new house similar in appearance to existing. The letter says that the amendment is partially retrospective, the front facade and side returns at first and second floor levels having already been demolished.

9. The CIL charge is sought under the Mayor of London Community Infrastructure Levy Charging Schedule, which came into force on 1 April 2012.

Main Issue

10. On 15 September 2014 the Council issued a Demand Notice relating to permission [redacted], the 2014 permission. The date of deemed commencement of development pursuant to planning application [redacted] as set out in that notice is 8 April 2014 (the date the 2014 planning permission was granted). This appeal relates to that Demand Notice, and the sole issue

for me to determine is whether the Council has correctly determined the date of deemed commencement.

Reasons

11. Regulation 128 of the 2010 Regulations provides that the liability to CIL does not arise in respect of development if, on the date planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect. In this case, when the original 2010 planning permission for development on the appeal site was granted, no charging schedule was in effect on that date.

12. The appellants argue that the development for which CIL is sought was commenced pursuant to the 2010 permission, before the Mayoral CIL Charging Schedule came into force. So, they say, CIL is not chargeable on the development. They say that the application was made and determined under section 73 of the 1990 Act, because approval was not being sought for what had happened on site, but for a new development. They point to their Architect's letter dated 1 November 2013, which refers to a new planning application being required to show how the existing façade details of the building would be replicated.

13. The appellants say that regulations 7(2) and 7(6) of the 2010 Regulations apply. These say that development is treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land, and "material operation" has the same meaning as in section 56(4) of the 1990 Act.

14. It is clear from the correspondence and from the Council's photograph of the site taken in December 2012 that part of the front façade of [redacted] had already been demolished at that stage[2]. That work of demolition was not authorised by the 2010 permission, and could not have been carried out pursuant to it, as the appellants have suggested.

15. The effect of the 2012 and 2014 permissions, both of which were applications to carry out development without complying with the conditions attached to a previous development, was to grant, in each case, a new planning permission. The most recent planning application, made in the letter of 1 November 2013, was described both in that letter and in the Council's decision letter as an application for variation of condition 1 of planning permission reference [redacted]. The 8 April 2014 decision letter goes on to refer to the proposed amendment as being for the demolition of the entire building and the erection of a new house on the property.

16. The Council has called this application in its submissions an application under section 73 and section 73A of the TCPA because it related to development works that had occurred without planning permission. The application is described in the Council's 8 April 2014 decision letter as being "partially retrospective given the front facade and side returns at first and second floor levels have already been demolished". The 2014 permission clearly authorised, retrospectively, the demolition works that had already been carried out before the date of the application for that permission, including those which were not authorised by the 2010 (or the 2012) permission. Consequently I conclude

[2] By the time of my site visit the whole of the building including front façade and side returns at ground floor level had been demolished.

that the permission was granted under section 73A of the Town and Country Planning Act 1990 as amended ("TCPA").

17. The CIL charge becomes due from the date that a chargeable development was commenced. Regulation 7(5) of the 2010 Regulations provides that development for which planning permission is granted under section 73A of the TCPA is to be treated as commencing on the day planning permission for that development is granted. In the case of the 2014 permission, that was 8 April 2014, the date set out in the Council's Demand Notice. My conclusion is therefore that the Council has correctly determined the date of deemed commencement of the development on the appeal site pursuant to planning permission [redacted]. The appeal therefore fails.

Other matters

18. The appellants have queried the form of the Council's decision relating to application [redacted]. There is no prescribed form for these types of decisions. This particular decision is in the form of a letter from a Council officer who had delegated powers to sign decision notices for planning permissions. The letter clearly describes what the permission is for and the conditions to be attached, and gives detailed reasons for both granting the permission and attaching the conditions. I am satisfied that it is a valid planning permission.

19. The appellants have also raised arguments about the application of the self-build exemption, and about the chargeable amount. As indicated above, these matters are not within my remit and I express no view on them.

Sara Morgan

INSPECTOR