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# Appeal Decision

Site visit made on 18 May 2015

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 29 June 2015

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## Appeal Ref: APP/N2345/L/14/1200019

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010.
- The appeal is made [REDACTED] against a Demand Notice issued by Preston City Council ('the Collecting Authority') under Regulation 69.
- The Demand Notice was issued on 31 October 2014.
- The date of intended or deemed commencement of development is 3 October 2014.
- The reason for issuing the Demand Notice is development is deemed to have commenced as observed on site by the Local Planning Authority 3 October 2014.

### Details of chargeable development to which the Demand Notice relates

- Reference of relevant planning permission is [REDACTED].
  - Description of development is the erection of 1 no. detached dwelling.
  - The outstanding amount of CIL payable, including surcharges that the Demand Notice relates to is [REDACTED].
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### Decision

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

### Main Issue

2. Whether the Collecting Authority has issued a demand notice with an incorrectly determined deemed commencement date.

### Reasons

3. The planning history is set out in the written representations. I shall refer to the relevant aspects of that history. In August 2011 planning permission was granted for the erection of a detached dwelling on land adjacent to [REDACTED]. Condition no. 2 required the development to commence within three years. The undisputed evidence is that this planning permission has not been implemented.
4. On 4 February 2014 planning permission was granted for the erection of 1 no. detached dwelling [REDACTED]. On 21 August 2014, a section 73<sup>1</sup> application to vary condition no. 1 imposed on planning permission ref: [REDACTED] was granted. The condition relates to the approved plans. Amended drawing [REDACTED] proposed the relocation of the garage and revised external wall dimensions. As a result of the changes the Council accept that the gross internal floorspace has slightly reduced. The amount payable would be [REDACTED] due to the revised floorspace.

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<sup>1</sup> Section 73 to the Town and Country Planning Act 1990 as amended.

5. The Council's charging schedule came into effect on 30 September 2013. Following Regulation 128, liability for CIL payment arose in respect of development granted planning permission on or after that date. The appellant accepts that the development is CIL liable as planning permission was granted after 30 September 2013. The subject development falls to be charged as a dwelling house at £65 per square metre.
6. Regulation 118 (1) states a person on whom a Demand Notice is served which states a deemed commencement date may appeal to the appointed person on the ground that the Collecting Authority has incorrectly determined that date. The Collecting Authority 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. In this case, the Council had not been notified of a commencement date. It follows from (a) that if an appeal is to be successful the appellant should show that development has not commenced on the date specified in the Demand Notice (3 October 2014). To the contrary the appellant's own evidence is that development commenced in June 2014. So, there is a liability to pay the CIL charge.
7. The appellant argues the Demand Notice is incorrect because it refers to planning permission ref: [REDACTED] whereas it should identify the later s73 permission (ref: [REDACTED]). Given the timing of commencement, it is probable that building work would have been pursuant to planning permission ref: [REDACTED]. However following grant of permission ref: [REDACTED] the amended design and layout was implemented. The Council had not been notified that this latter permission had commenced.
8. Paragraph ID 25-007-20140612 of the Planning Practice Guidance states that developers can amend a condition attached to a planning consent under s73 of the Act. If the s73 permission does not change the liability to the levy, only the original consent will be liable. If the s73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability. The evidence indicates that a revised liability notice should be issued by the Collecting Authority in relation to the most recently commenced scheme. It is not within my remit to recalculate the levy liability and issue a revised liability notice.
9. The appellant states the development is for personal family residential use and it would be occupied by his ageing parents. The argument is that it is a self-build project. Section 54A of the Regulations sets out criteria for an exemption from CIL payment if the chargeable development is for self-build housing. Section 54B sets out the mechanics to obtain an exemption. The procedure involves an application to be made to the Collecting Authority before commencement of development and on the condition that the claim lapses if the chargeable development is commenced before a decision is made on the self-build exemption. The appellant states adequate notification of the self-build regime had not been given, which came into effect on 24 February 2014. However, the evidence presented shows that the appellant failed to apply for the exemption before development commenced in June 2014.
10. A decision relating to the self-build exemption is not within the scope of Regulation 118 which is solely concerned with an appeal against deemed commencement on the

ground that the Collecting Authority has incorrectly determined the commencement date. As this matter is beyond my remit in this appeal, I am unable to give consideration to it in this decision.

**Conclusion**

11. For all of the above reasons, and having considered all other matters, I conclude that the Collecting Authority has not issued a Demand Notice with an incorrectly determined deemed commencement date. Therefore, the appeal fails.

*A U Ghafoor*

Inspector