
Appeal Decision

Site visit made on 17 March 2015

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 14 July 2015

Appeal Ref: APP/A5270/L/14/120016

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended.
 - The appeal is made by [REDACTED] against a demand notice issued by the Council of the London Borough of Ealing under Regulation 69.
 - The reference of the relevant planning permission to which the notice relates is [REDACTED].
 - The notice was issued on 9 October 2014.
 - The reason for issuing the demand notice is that a valid commencement notice has been received from [REDACTED].
 - The deemed date of commencement of development is 30 September 2014.
 - Description of development: conversion of single dwelling into two self-contained units including roof extension and single storey rear extension (retrospective with modifications to ground floor internal layout).
 - The outstanding amount of CIL payable that the demand notice relates to is [REDACTED].
-

Decision

1. I direct that the deemed commencement date stated in the Demand Notice be revised from *30 September 2014* to *17 April 2014*.

Subject to that revision, the appeal is allowed, and the demand notice ceases to have effect.

Preliminary matters

2. In accordance with Regulation 10(3) of The Community Infrastructure Levy Regulations 2010 as amended (the Regulations) in relation to CIL charged by the Mayor, the London Borough Council in whose area the development subject to the levy is situated must collect that CIL and accordingly is the Collecting Authority for that CIL. In this case the Collecting Authority is the Council of the London Borough of Ealing.
3. The appellant gives his reasons for making this appeal as being under Regulations 117(b), 118, and 119(a). Regulation 117(b) concerns a Collecting Authority's failure to serve a liability notice in respect of a development to which a CIL surcharge relates. Regulation 119(a) concerns imposition of a CIL stop notice, and a collecting authority's failure to serve a prior warning notice.
4. The Inspectorate wrote to the appellant on 4 November 2014 bringing to his attention that in relation to Regulation 117(b) he had not submitted any evidence to show that the Charging Authority had imposed any surcharge. Furthermore, in relation to Regulation 119(a), it was brought to the appellant's

attention that he had not submitted evidence to show that a prior warning of a CIL stop notice, or any stop notice itself had been served. He was asked to submit copies of any surcharge and/or stop notices by 14 November 2014, and warned that if he did not do so the appeal would proceed under Regulation 118 only.

5. No further communications were received from the appellant, and the Council have not drawn my attention to any surcharge or stop notices being served in relation to the appeal property. I have therefore proceeded to determine the appeal under Regulation 118. That is, a person on whom a demand notice is served, which states a deemed commencement date, may appeal on the ground that the collecting authority has incorrectly determined that date.
6. Although reason for issuing the Demand Notice is stated to be that a valid Commencement Notice had been received from the appellant, the Council state that is not the case. It appears to me that the reason for issuing the notice should have been '*that the development is deemed to have commenced*'. However, it is clear from the submissions of both parties that no commencement notice was ever submitted, and I do not consider any substantial prejudice would be caused to either party if any revised Demand Notice were issued with a revised reason for issue.

Reasons

7. The development in question was subject of a retrospective planning application for conversion of the appeal property - a single dwelling - into 2 self-contained units including a roof extension and a single storey rear extension (with modifications to the ground floor internal layout). Planning permission was granted for this development on 17 April 2014. I note that there is also an outbuilding at the rear of the appeal property that has a lawful use as a self-contained residential unit, and did not form any part of the planning permission.
8. The appellant's grounds of appeal are that he converted the property into 3 flats over four years prior to making his appeal, and obtained retrospective planning permission for the development over one year prior to making the appeal. He then received the Council's demand notice three weeks prior to making his appeal.
9. I take it from this that the appellant claims that the commencement date should have been set at some point prior to the date on which planning permission was granted – possibly 4 years before making his appeal.
10. Although, from Building Regulation records, the Council believe that operational development started at some time in 2013, they could not have determined an actual commencement date and issued a CIL liability notice, since under Regulation 65 this must be done as soon as practicable after the day on which a planning permission first permits development. At the time the development started there was no planning permission. Similarly, the appellant could not issue a CIL commencement notice, as required under Regulation 67, since again there was no planning permission for the development at that time.
11. The date on which development should be treated as commencing is determined under Regulation 7. In general, under paragraph 7(2), development is to be treated as commencing at the earliest date on which any

material operation begins to be carried out on the relevant land. This is subject to various provisions, including that for development already carried out, and granted planning permission under Section 73(A) of the Town and Country Planning Act 1990 as amended – as is the case here – then it is to be treated as commencing on the day planning permission is granted or modified¹.

12. The relevant planning permission [REDACTED] was determined on 17 April 2014. A further permission was granted in July 2014 for a time extension on Condition 1 of that permission, and for discharge of Condition 3 – relating to refuse disposal arrangements. While these changes affect the period for compliance with a condition, and to an extent the scope of the works required under a condition, they do not modify the underlying permission in a way that alters the basis for determining the commencement date. In my view the earliest date on which the development could have been treated as commencing is 17 April 2014. I have no information as to why the Council defined the commencement date as 30 September 2014.
13. I have come to the conclusion that the Council determined the commencement date incorrectly, and under Regulation 118(5) I must determine the new date as 17 April 2014. It follows – under Regulation 118(4) - that the demand notice ceases to have effect. In this case the Council have not applied a surcharge, and no action regarding any surcharge under Regulation 118(6) is necessary. However, I note that in a case such as this, the Council must serve a revised demand notice as required by Regulation 69(4).

Conclusions

14. For the reasons given above and having regard to all other matters raised, I consider the appeal should succeed, and I intend to revise the commencement date accordingly.

Stephen Brown

INSPECTOR

¹ Under Regulation 7(5)(a).