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## Appeal Decision

Site visit made on 23 February 2016

**by Hilda Higenbottam BA(Hons) MRTPI**

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

Decision date: 17 March 2016

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**Appeal Ref: APP/L5240/L/15/1200030**

- [REDACTED]
- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (the Regulations).
  - The appeal is made [REDACTED] against a Demand Notice issued by the Council of the London Borough of Croydon under Regulation 69.
  - The Demand Notice was issued on 17 July 2015.
  - The date of intended or deemed commencement of development: 16 March 2015.
  - The reason for issuing the Demand Notice: the development is deemed by Croydon Council to have commenced.
  - Reference of relevant planning permission [REDACTED]
  - Description of development: Erection of a two/three storey 3 bedroom detached house; formation of vehicular access and provision of associated parking.<sup>1</sup>
  - [REDACTED]
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### Decision

1. The appeal is dismissed and the notice issued by the Council on 17 July 2015 is upheld.

### Main Issue

2. The main issue in this case is whether the Collecting Authority has issued a Demand Notice with an incorrectly determined deemed commencement date.

### Reasons

3. Planning permission was granted [REDACTED] for the erection of a two/three storey 3 bedroom detached house, formation of vehicular access and provision of associated parking at the appeal site [REDACTED].
4. There is no dispute that the development is CIL liable, the dispute concerns whether or not an exemption should have been granted because it was being built as a self-build house for the appellant and his family. 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

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<sup>1</sup> Description taken from section C of the appeal form.

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- the condition that the claim lapses if the chargeable development is commenced before a decision is made on the self-build exemption.
5. The appellant submitted a Self Build Exemption Claim Form dated 9 March 2015 which is recorded as being received by the Council on 12 March 2015. A copy of this has been provided by the appellant.
  6. I note that in an email dated 16 March 2015 Mr Phil Mills, Deputy Team Leader Planning Technical Support states that the appellant sent in a claim for a self build CIL exemption which was received by the Council on 12 March 2015 and that a Commencement Notice was received from the appellant on 13 March 2015 stating works would start on site on 16 March 2015. In Mr Mills email it states that the claim for self build exemption would lapse if work commences prior to the local authority informing the appellant of its decision. Mr Mills requests that the Commencement Notice is withdrawn. I have no substantiated evidence to demonstrate the appellant requested that the Commencement Notice was withdrawn, although in an email dated 22 March 2015 the appellant seeks advice on how long a decision on the exemption would take and stating he could then submit the relevant Commencement Notice to the Council.
  7. The Council state that it was brought to its attention on 23 February 2015 and 7 March 2015 that works were taking place on the appeal site. A photograph attached to the neighbours 7 March 2015 email shows two yellow vehicles with digging buckets on them and the site cleared with a hole having been dug in roughly the middle of the site. It also shows that a hoarding with gates at the front of the site had been erected.
  8. A planning officer visited the site, on an unspecified date in February 2015 and noted works on site had begun, although no details of works or photographs from that visit were provided. An enforcement officer visited the site on 2 April 2015 and is stated to have determined that the development had commenced, although again no details of works or photographs from that visit were provided. A further site visit was carried out by an enforcement officer on 13 May 2015 where it was noted that ground works on site were in an advanced state and appeared to be continuing at that time, although the works were described, no photographs of the works were provided.
  9. The Demand Notice is dated 17 July 2015 and this records that the 'Date of intended or deemed commencement of development' was 16 March 2015. Although the Council also refer in various emails to the appellant that works were considered to have started on or before 23 February 2015<sup>2</sup>. However, for the purposes of this appeal the Demand Notice states that the deemed commencement date is 16 March 2015. Thus whilst earlier dates are referred to by the Council in their evidence and emails provided by the appellant they are not cited in the Demand Notice.
  10. Regulation 7 (2) of the Regulations states that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. Regulation 7 (6) states that material operation has the same meaning as section 56(4) of the Town and Country Planning Act 1990. The Council refer to the erection of site hoardings to segregate the rear garden from the host property and the establishment of a

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<sup>2</sup> Email dated 18 June 2015 from Mr Snodin.

chemical toilet on the land causing a change of use of the land which, in their view, would constitute material development. The development site appears to have been part of the garden of another residential property so I do not accept that there was a material change of use of the land as a result of the segregation of the development site to create a plot to build a residential dwelling on. However, I do consider that the clearing of the site and the undertaking of groundworks shown in the photograph of 7 March 2015, on the balance of probabilities, did amount to a material operation for the purposes of the Regulations.

11. The Council state that whilst they were in receipt of the CIL exemption forms it could not be determined because the development had been deemed to have commenced prior to the exemption forms being submitted. No decision on the application for exemption has been referred to by either party.
12. At the time of my site visit I noted builders were working on the appeal site, the hoarding and gates remained around the site and scaffolding was visible.
13. The appellant states that contractors erected temporary hoardings to secure the site. However, he makes no reference to the 7 March 2015 photograph submitted by the Council which shows diggers on site and that groundworks were being undertaken. On the evidence available, I consider that the photograph demonstrates that material operations had taken place at that time. Furthermore, in my view, the appellant has failed to demonstrate, on the balance of probabilities that works did not start on site prior to 16 March 2015 which is the date the appellant himself stated works would start in the Commencement Notice submitted to the Council. There is no substantiated evidence that the Commencement Notice was ever withdrawn by the appellant. The appellant has also failed to demonstrate when the works, which were clearly well advanced on the date of my site visit, were started.
14. In the absence of any other substantiated evidence in respect of the date when material operations were carried out I find that material operations took place prior to the 16 March 2015 which is the date stated in the Demand Notice as the 'Date of intended or deemed commencement of development'.

#### **Other matters**

15. 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**

16. For the reasons given above I conclude that the Collecting Authority has not issued a Demand Notice with an incorrectly determined deemed commencement date. Therefore, the appeal fails.

*Hilda Higenbottam*

Inspector