



Appeal Decision

Site visit made on 20 March 2017

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

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

Decision date: 18/05/2017

Appeal Ref: APP/P0119/L/16/1200073

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended [‘CIL’].
- The appeal is made by [REDACTED].
- A Liability Notice [‘LN’] was issued on 16 September 2016.
- A Demand Notice [‘DN’] was issued by South Gloucestershire District Council (the Collecting Authority [‘CA’]) on 24 November 2016.
- The deemed commencement of development is 16 September 2016.

Details of chargeable development to which the DN relates

- The relevant planning permission to which CIL and the surcharge relates is [REDACTED].
- The description of the development is [REDACTED].
- The outstanding amount of CIL payable that the DN relates to is [REDACTED].

Decision

1. The appeal is dismissed and the notice issued by the Collection Authority on 24 November 2016 is upheld.

Reasons

2. On 11 July 2013 the local planning authority [‘LPA’] granted a planning permission¹ for the following description of development: [REDACTED]
[REDACTED] subject to conditions [for convenient shorthand, I will refer to this permission as ‘*the 2013 permission*’]. This development was before adoption of the Council’s CIL charging schedule. Condition 1) required it to commence before the expiry of three years. [REDACTED] says that he started building work on 5 July 2016, pursuant to the scheme approved by the 2013 permission to keep it extant.
3. An application for full planning permission was made to the LPA for one dwelling-house in February 2016. The latter was substantially different in terms of design and layout. For example, major difference relates to the construction of a basement that is not part of the 2013 permission. Subsequently, on 16 September 2016, planning permission was granted for the following description of development: [REDACTED]
[REDACTED], subject to conditions² [‘*the 2016 permission*’]. The scheme approved by the 2016 permission is subject to the Council’s charging schedule and constituted chargeable development. A LN was issued at the same time.

¹ [REDACTED].

² [REDACTED].

4. The recipient of a LN must notify who assumes liability to pay by submitting a CIL Form 1: *Assumption of Liability* to the CA before development commences. On 18 October 2016, ██████████ assumed responsibility for payment. He now claims that the LPA should not have determined the 2016 application retrospectively. The inference is that the revised development had not commenced when permission was actually granted. He submits that the CA has issued a DN with an incorrectly determined deemed commencement date – that is 16 September 2016.
5. The operations comprised in the construction of the dwelling fall within the scope of s. 55(1) and 55(1A) of the Principal Act³. Those operations started in July 2016 but the scheme under construction was not in accordance with the approved plans because a basement had been excavated by at least August 2016. In fact, building operations pursuant to the 2016 permission had materially started even though the actual application had not been determined by the LPA. ██████████ evidence is that he intended to build the scheme approved in 2016⁴. I observed that, while development was not substantially complete, the as built structure includes a basement and that is consistent with the revised scheme. Having regard to *Lawson Builders Ltd. v Secretary of State for Communities and Local Government* [2015] EWCA Civ 122, the Council correctly granted planning permission for part retrospective and prospective development.
6. CIL Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operations begins to be carried out on the relevant land. However, Regulation 7(3) explains that this rule is subject to provisions, such as that stated in Regulation 7(5) (a) where planning permission has been granted under s. 73A of the Principal Act for development already carried out. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as part retrospective and prospective permission was granted for the development being implemented, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which was 16 September 2016.
7. A subsidiary argument is that, by determining the application as part retrospective and prospective, ██████████ has been prejudiced and denied an opportunity to benefit from self-build exemption set out in CIL Regulation 54A and 54B. A person might be eligible for an exemption from liability to pay CIL in respect of a chargeable development, or part of a chargeable development, if it comprises self-build housing. The latter is a dwelling built by the person, including where built following a commission, and occupied by the person as his/her sole or main residence subject to compliance with other criteria. The procedure is clearly set out in CIL Regulation 54B.
8. ██████████ maintains relevant application forms had been submitted with the revised 2016 application for planning permission. S. 54B(2) sub (b) states that the claim form must be received by the CA before commencement of the chargeable development. S. 54B(3) states that a claim under this regulation will lapse where the chargeable development to which it relates is commenced before the CA has notified the claimant of its decision. The issue here is that the operational development comprised in the chargeable development had, as a matter of fact, materially commenced at the time when the 2016 permission had been determined and before the CA made its determination on the self-build exemption.

³ See the Town and Country Planning Act 1990 as amended.

⁴ Building Control site visit record 12 August 2016 reads – 90% complete along with basement excavations.

Therefore I am afraid [REDACTED] cannot rely on the operation of these provisions. Even if an alternative view prevails, the failure to grant a self-build certificate or otherwise is beyond the scope of this appeal.

9. On the balance of probabilities, I find that the CA has not issued a DN with an incorrectly determined deemed commencement date.
10. Having considered all other matters, I conclude that the appeal should fail and the DN is upheld as set out above in paragraph 1.

A U Ghafoor

Inspector