



Appeal Decision

Site visit made on 17 July 2017

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

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

Decision date: 4 August 2017

Appeal Ref: APP/L3245/L/16/1200070

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117a and 118 of the Community Infrastructure Levy Regulations 2010².
- The appeal is made by [REDACTED]
- A Liability Notice [‘LN’] was issued on 27 February 2015.
- A Demand Notice [‘DN’] was issued by Shropshire Council (which is the collecting authority [‘the CA’]) on 1 November 2016.
- The deemed commencement date of development is stated as 27 April 2016.

Details of chargeable development to which the DN relates

- The relevant planning permission to which CIL and the surcharge relates is [REDACTED]
- [REDACTED]
- The outstanding amount of CIL payable, including total surcharges of [REDACTED] for a failure to submit a Commencement Notice (CN) and late payments, is [REDACTED]

Decision

1. The appeal is dismissed and the notice issued by the CA on 1 November 2016 is upheld.

Inspector’s reasons

2. The local planning authority [‘the LPA’], Shropshire Council, granted planning permission for the erection of [REDACTED] on 11 August 2014. Condition 1) states that development shall be begun before the expiry of two years, being 11 August 2016. Condition 2) requires development to be carried out in accordance with specified drawings. In October 2015, the LPA granted a further planning permission varying condition 2), as certain drawings were substituted to address amendments to the site layout. Condition 1) imposed on the 2015 permission states development shall be begun before 25 February 2017.
3. Liability for CIL payment arose in respect of chargeable development granted by the 2014 permission. The CA issued a LN on 27 February 2015. [REDACTED] do not dispute that they assume liability to pay the chargeable amount although the site has been transferred to [REDACTED]. It therefore follows that responsibility to notify the CA as to the when development commences in writing squarely falls on them as an interested party. This must be done no later than the day before the day on which the chargeable development is to commence³.

¹ West of the Water Works.

² As amended by statutory instrument 2014 no. 385 The Community Infrastructure Levy (Amendment) Regulations 2014.

³ CIL regulation 67 sets out requirements to follow for CN. The LN issued by the CA refers to CIL Form 6: *Commencement Notice*.

4. CIL Regulation 67(2) indicates that a commencement notice must be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect), identify the LN issued in respect of the chargeable development, state the intended commencement date of the chargeable development⁴, and include the other particulars specified or referred to in the form.
5. Having said all of the above, I consider that in these proceedings the determinative issue is the following: Whether the CA has incorrectly determined the deemed commencement date and whether the claimed breach, which led to surcharges being imposed, occurred.
6. On 1 April 2015 ██████████ submitted a CIL Form 6 notifying that he intended to commence development on 13 April 2015. In accordance with regulation 67(4) an acknowledgement was issued by the CA on 2 April 2015. However, in an email ██████████ informed the authority that work had not started due to a boundary dispute. He asked if the CN can be withdrawn and any demand for CIL payments held in abeyance. CIL Regulation 67(7) clearly states the following: *A person who has submitted a commencement notice may withdraw it at any time before the commencement of the chargeable development to which it relates by giving notice in writing to the collecting authority.* There is therefore provision for the withdrawal of a CN prior to starting of development, contrary to the authority's claims.
7. There is no evidence to contradict or make less than credible ██████████ claim that a boundary dispute delayed the starting of development. This is plausible and I consider that the granting of a minor material amendment reaffirms that version of events. I therefore accept development had not started on or before 13 April 2015. The problem, however, is that ██████████ did not provide the CA with a replacement CIL Form 6, or make it aware of a new commencement date. CIL Regulation 68 states that a CA must determine the day on which a chargeable development was commenced ("the deemed commencement date") if it - (a) has not received a CN in respect of the chargeable development but has reason to believe it has been 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 the absence of a valid commencement date, the CA made its own enquiries and claim it discovered operations had started by 27 April 2016. This is backed up by photographic evidence.
8. ██████████ evidence confirms that work had started in December 2015. For example, the grounds of appeal state the following: *"...Agricultural works including stacking the topsoil at the rear of the site, grading the plots and stoning the accesses off the road was completed in December 2015. No further works have taken place due to a lack of funding"*. A roadway has been constructed though ██████████ argue it is incomplete and serves to facilitate construction traffic. The CA maintains that development started in April 2016 because of these operations.
9. CIL Regulation 7 states that the term "material operation" has the same meaning as in section 56(1) of the Principal Act⁵. The law says development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. The relevant part of subsection (4) defines material operation in the following terms: any work of construction in the course of the erection of a building, the digging of a trench which is to contain the foundations, or part of the foundations, of a building or any operation in the course of laying out or constructing a road or part of a road.

⁴ Article 2 – Interpretation – states in these Regulations "intended commencement date" means the intended commencement date of a chargeable development as specified in a commencement notice submitted under regulation 67.

⁵ See the Town and Country Planning Act 1990 as amended.

10. The Court, in *Field*⁶, held that development may be begun by works which are not material operations in the list. The definition in sub 56(4) is not exclusive because some planning permissions would not involve any of these actions. It therefore must be possible to implement any type of planning permission and so material operations must be wider than the listed operations. It includes actions which are insufficient in themselves to be development. In *Malvern* it was held that the pegging out of a line of a road, where the pegs were not a permanent feature, fell within the ambit of action under subsection 56(4)(d)⁷. Any working activity on the land in the course of laying out a road, whether or not that activity resulted in a change in the character of the land or in anything that might be called development, can amount to a material operation.
11. Substantial amount of top soil has been stripped to form a regraded surface at different levels. A sizeable amount of the agricultural field has been excavated and [REDACTED] plots have been marked and allocated. The plots have been laid in conformity with the scheme approved. Further, a hard surfaced access connecting the site to the adjacent highway has also been constructed. The driveway has been clearly marked out and includes turning areas as shown on the drawings. It is likely heavy plant and specialist machinery has been utilised to construct the road. As a matter of fact and degree, given the nature, scale and scope of the work carried out, I consider that this work has resulted in a significant change in the physical appearance and layout of the land.
12. While trenches and foundations have not been dug, to my mind the nature and scale of the work suggests significant operations in the course of erecting [REDACTED] have occurred. In addition, engineering type operations have been carried out which facilitate access to [REDACTED]. The scope of that work is integral to the laying out or constructing a road. I am of the firm opinion that these actions fall within definition of "material operations" described in s56(4)(a) and (d). The operations carried out constitute a material operation comprised in the development permitted. When these events occurred on the site, development pursuant to planning permission granted by the LPA in 2014 and 2015 actually commenced. I therefore find that the date given as deemed commencement of development is correct.
13. CIL Regulation 83 states where a chargeable development is commenced before the CA has *received* a valid CN, it *may* impose a surcharge [my emphasis]. If a CN is withdrawn it follows that a valid replacement notice must be received by the CA in accordance with Regulation 67(2). Late payment surcharge provisions are set out in Regulation 85. In exercising its discretionary powers, the CA has imposed surcharges because of late payment. Evidently, [REDACTED] have failed to discharge their responsibility in accordance with the Regulations. On the balance of probabilities, I find that the claimed breach, which led to the imposition of the surcharges, did occur.
14. [REDACTED] maintain that they should not be liable to pay CIL. They say that [REDACTED] will be sold. Future owners should be liable to pay CIL. Regulation 32 sets out a procedure to transfer assumed liability. At the time when the LN and DN were issued by the CA, [REDACTED] assumed liability to pay CIL.

Conclusion

15. Having considered all other matters, I conclude that the appeal on both grounds made should fail and the DN is upheld.

A U Ghafoor

Inspector

⁶ *Field v First Secretary of State* [2004] JPL 1286.

⁷ *Malvern Hills District Council v Secretary of State for the Environment* [1983] 46 P & CR 58 and *Aerlink Leisure Ltd (in liquidation) v First Secretary of State* [2004] EWHC 3198 (Admin).