



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 1 November 2017

Appeal ref: APP/Z2830/L/17/1200110

[REDACTED]

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was served by South Northamptonshire Council on 17 January 2017.
- A Demand Notice was served on 12 April 2017.
- The relevant planning permission to which the CIL relates is [REDACTED], granted on [REDACTED].
- The description of the development is: [REDACTED]
- The deemed commencement date stated in the Demand Notice is 17 January 2017.

Summary of decision: The appeal is allowed and the Demand Notice ceases to have effect.

Procedural matters

1. The appellant has made an application for costs against the Council. This is the subject of a separate decision accompanying this letter.

Reasons for the decision

2. Although the appeal has been made under Regulation 118, it appears clear the main basis of appellant's case is that as development began without complying with condition 9 (concerning noise protection) of the permission, the development is without planning permission and is therefore unlawful. That being the case, he contends that the Council (Collecting Authority) cannot issue a Demand Notice (DN) as the development cannot be liable for CIL as lawful development has not yet commenced. The Council have responded by stating that condition 9 is not a 'true pre-commencement condition' in that it doesn't go to the heart of the permission and consequently the fact that it wasn't complied with does not render the development unlawful.
3. However, the issues of the status of condition 9 and whether or not the development should be considered lawful are not relevant to my determination of this appeal. The question of whether or not a condition is a 'true pre-commencement condition' does not arise for the purposes of CIL. It is only

relevant in the context of planning enforcement in determining whether a development has lawfully commenced or not. The CIL regime is not concerned with whether or not a development is lawful, it is only concerned with whether it has commenced. There is nothing in the CIL Regulations which requires the commencement to be lawful. The trigger for CIL is the carrying out of a material operation. It is not disputed that a material operation has taken place in this case. The date of commencement of development is a separate matter from the date upon which development could be said to be authorised.

4. As the appeal was made under Regulation 118, all that is before me to decide is whether or not the Council has issued a DN with an incorrectly determined deemed commencement date. Regulation 7(2) explains 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. In this case, the Council became aware that works had begun from a site visit conducted on 5 April 2017. However, as the Council concede, they incorrectly determined the deemed commencement date to be the date of the planning permission (17 January 2017). They are therefore content for the deemed commencement date in the DN to be changed to 5 April 2017. Although it is likely development began before this date the Council has no evidence of precisely when that would have been. That being the case, I agree with the Council that the correct deemed commencement date for the purposes of CIL is 5 April 2017.
5. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the DN ceases to have effect. As required by Regulation 69(4), the Council must now serve a revised DN with a revised deemed commencement date of 5 April 2017.

Formal decision

6. For the reasons given above, the appeal is allowed on the ground made.

K McEntee