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## Appeal Decision

Site visit made on 24 October 2017

by **Jean Russell MA MRTPI**

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

Decision date: 21 December 2017

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### Appeal Ref: APP/Q3115/L/17/1200104

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118(1) of the Community Infrastructure Levy Regulations 2010 (CILR).
  - The appeal is made by [REDACTED] against the decision of South Oxfordshire District Council to issue a Demand Notice under CILR 69.
  - The Demand Notice, numbered [REDACTED], was issued on 13 March 2017.
  - The planning permission to which the Demand Notice relates, ref: [REDACTED], is dated 23 January 2017.
  - The description of the development permitted is: [REDACTED]  
[REDACTED]  
[REDACTED]
  - The date of deemed commencement of development is 18 November 2016.
  - The appeal is made on the ground that the Collecting Authority (CA) has incorrectly determined the deemed commencement date.
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### DECISION

1. The appeal is allowed and the Demand Notice ceases to have effect. The revised commencement date is determined to be **23 January 2017**.

### Preliminary Matters

#### *The Scope of the Appeal*

2. The appeal was also made under CILR 117(1)(a) against a surcharge set out in the Demand Notice (DN). However, the DN does not include any surcharges and the appellants did not describe any; the CA has affirmed that none were imposed. I shall proceed on the basis that the appeal is made under CILR 118(1) alone.

#### *Background to the Appeal*

3. As noted above, the DN relates to a planning permission granted on 23 January 2017; I shall refer to it as the 2017 PP. The planning application was made on 19 October 2016, and validated by the Council on 4 November 2016, following a pre-application submission made on 4 October 2016. When the 2017 PP was granted, it became the third in a series of permissions to redevelop land at 9 Shirburn Road.
4. The Council initially granted permission (ref: [REDACTED]) on 29 October 2015 for the [REDACTED]  
[REDACTED] On 27 September 2016, the Council approved (ref: P [REDACTED]) the [REDACTED]  
[REDACTED] I shall thus refer to the '2015 PP' and the '2016 PP'. There is no dispute that the development permitted under the 2016 PP and the 2017 PP is chargeable for CIL, but the '2015' development is not.

5. CILR 54A(1) provides that a person is eligible for exemption from liability to pay CIL in respect of a chargeable development if it comprises self-build housing. As required under CILR 54B(1) and (2), the appellants submitted CIL Form 7: Self-Build Exemption Claim on 19 October 2016 and CIL Form 1: Assumption of Liability on 21 February 2017 so that they would be exempted from CIL liability for the construction of two dwellings on the site.
6. Under CILR 54B(6), a person granted an exemption for self-build housing ceases to be eligible if a commencement notice (CN) is not submitted to the CA before the day the chargeable development is commenced. The appellants submitted a CN on 6 March 2017, stating that development would commence on 18 March.
7. On 8 February 2017, however, the CA wrote to the appellants to advise that it was aware that pre-existing buildings on the site had been demolished. On 20 February 2017, the appellants confirmed that demolition had taken place on 18 November 2016 – but they reject, through this appeal, the CA’s argument that the development subject to the 2017 PP was commenced by the act of demolition.

### **Main Issue**

8. The main issue is whether the deemed commencement date is correct.

### **Reasons**

#### *Demolition and the Commencement of Development*

9. CILR 7(2) provides 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; CILR 7(6) provides that ‘material operation’ has the same meaning as in s56(4) of the *Town and Country Planning Act 1990* (the 1990 Act). Under s56(4)(aa), ‘material operation’ may include any work of demolition of a building.
10. The appellants do not dispute that development may be begun by demolition, but argue that the pre-existing buildings on the site were collapsing and demolished on an emergency basis, and this was permitted by *the Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO).
11. If that claim is not accepted, the appellants still say that the demolition could not have been pursuant to the 2017 PP, because it took place some two months before the permission was granted. I shall examine both arguments in turn.

#### *Was the Demolition Permitted by the GPDO?*

12. The GPDO grants permission under Article 3(1) for classes of development specified in Schedule 2. Article 3(9) provides permission is not granted under Schedule 2 for any development which requires or involves the demolition of a building, except as provided in Part 11, Classes B and C.
13. Part 11, Class B provides that any building operation consisting of the demolition of a building is permitted development, but subject to limitations and conditions. Condition B.2(a) is that, where demolition is urgently necessary in the interests of safety, and the measure immediately necessary in such interests is the demolition of the building, the developer must, as soon as reasonably practical, give the local planning authority (LPA) a written justification for the development.
14. The demolition took place on 18 November 2016, but the LPA/CA had not been notified of the works by the time that it emailed the appellants on 8 February 2017. The appellants only confirmed that demolition had taken place after the CA had asked for information about the works, and some three months after the

- event. It cannot be said that the developer provided a written justification for urgently necessary demolition 'as soon as reasonably practicable'.
15. If the demolition was not urgently necessary, it would only have permitted under Class B subject to condition B.2(b) – that the developer apply to the LPA, before beginning the development, for a determination as to whether their prior approval would be required as to the method of demolition and any proposed restoration of the site. Again, the appellants did not seek such prior approval.
  16. The appellants claim that they did not notify the Council because information had already been provided in support of the planning applications which had been approved; it was anticipated that there would be no objections to the demolition. However, permission is granted under the GPDO through separate proceedings, and only if conditions B.2(a) or B.2(b), as applicable, are complied.
  17. The demolition undertaken on the site was not permitted by the GPDO since there was a failure to comply with conditions B.2(a) and B.2(b). It is thus necessary to address whether the works were carried out pursuant to the 2017 PP.

#### *The Planning Permissions*

18. The appellants have pointed out that the 2017 PP was not only granted after the demolition took place, but also subject to 'pre-commencement' conditions. A planning permission can be retrospective or partly retrospective in effect, even if this is not obvious from the decision or the way that conditions are constructed.
19. As noted above, the 2017 PP related to development described as 'variation of condition...' indicating that it was made under s73 of the 1990 Act 'to develop land without compliance with' a condition attached to the 2016 PP. When an application made under s73 is approved, the result is a grant of an entirely new permission for the development originally permitted. The developer has a choice as to whether to implement the original [2016] or 'varied' [2017] permission.
20. There is no suggestion that the application for the 2017 PP was made under **s73A** 'for development already carried out' – or that the Council knowingly granted the 2017 PP on a retrospective basis. The pre-existing buildings were demolished after the submission of the application, and the appellants might not then have known that the works could represent commencement. It seems that the Council was not aware of the demolition until after the 2017 PP was granted.
21. Nonetheless, it is possible that the works of demolition carried out in November 2016 could have served to commence the development subject to the 2017 PP. This is because an application may be made under s73 whether the development has not yet begun, is in progress or has been completed. S73A(1) provides that 'on an application made to a [LPA], the planning permission which may be granted includes planning permission for development carried out before the date of the application'. It is implicit that retrospective permission may be granted under s73A for development already carried out, even if the application was made under s73.
22. The appellants stated that 'we can claim that we have implemented' the non-CIL chargeable 2015 PP. However, in correspondence with the Council and their representations for this appeal, the appellants were plain that the scheme to be built on the site was that subject to the 2017 PP. On the date of my visit, two new dwellinghouses were under construction – as permitted in 2016 and 2017.
23. The demolition works took place long after the 2015 PP was granted, and indeed after the grant of the 2016 PP. The works also took place after 19 October 2016, the date that the appellants submitted the application pursuant to the 2017 PP and

the Self-Build Exemption Claim. They stated that the 2017 PP was the relevant permission on the Assumption of Liability Form dated 21 February 2017 and the CN dated 6 March 2017. They also submitted a plan dated 2 March 2017 to the Council pursuant to condition no. 3 imposed on the 2017 PP, but have not sought to discharge any pre-commencement conditions imposed on the 2016 PP<sup>1</sup>.

24. Since the works of demolition carried out were not permitted by the GPDO, it must follow that the work was carried out pursuant to the 2017 PP because that is the only permission which has been implemented. The 2017 PP was, therefore, partly retrospective and partly prospective in its effect.

### **The Deemed Commencement Date and Conclusion**

25. Under CILR 7(5)(a), where permission for chargeable development is granted under s73A, the development is to be treated as commencing on the day that the permission is granted – not when material operations were begun. The 2017 PP was granted in effect, although not expressly under s73A. The deemed commencement date should not be 18 November 2016 but 23 January 2017.
26. The only question where an appeal is made under CILR 118(1) is whether the CA correctly determined the deemed commencement date. If it did not, the appeal must be allowed. Indeed there is no scope to correct the date set out in the DN unless the appeal is allowed – but if that is the decision, then a revised commencement date must be determined; CILR 118(3) and (4).
27. Since the revised commencement date still precedes the date of the CN, it might prove that allowing the appeal will not ultimately assist the appellants; CILR 69(3) empowers a CA to serve a revised DN at any time. However, I cannot comment on either the likelihood or merits of any revised DN being issued.
28. For the reasons given above and with regard to all other matters raised, I conclude that the demolition of buildings on the site was undertaken pursuant to the 2017 PP and served to commence the development thereby permitted. The CA has incorrectly determined the deemed commencement date, the appeal should be allowed and a revised commencement date should be determined as the date of the 2017 PP, being 23 January 2017.

*Jean Russell*

INSPECTOR

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<sup>1</sup> The Council's decision (ref: ██████████) to discharge condition no. 3 (dated 25 April 2017) gives the reference number of the 2016 PP, but that cannot be right because condition no. 3 on the 2016 PP concerned materials. Condition no. 3 on the 2017 PP required the submission of landscaping information, and it is plain that a landscape plan (██████████) pursuant to condition no. 3 was submitted and approved.