



## Appeal Decision

Site visit made on 9 April 2019

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

an Inspector appointed by the Secretary of State

Decision date: 29 May 2019

---

### Appeal Ref: APP/L/18/1200239

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended.
- The appeal is made by [REDACTED].
- A Demand Notice was issued by Sheffield City Council as the collecting authority on 9 November 2018.
- The deemed commencement date of development is stated as 24 October 2018.

#### Details of chargeable development to which the Demand Notice relates

- The relevant planning permission to which the levy and the surcharge relate is [REDACTED].
  - The description of the development is described in the Demand Notice as [REDACTED].
  - The outstanding amount of levy payable, including total surcharges for a failure to submit a Commencement Notice and late payments, is [REDACTED].
- 

### Decision

1. The appeal is allowed, and the Demand Notice is quashed.

### Inspector's reasons

2. Has the Collecting Authority (the 'CA') determined the correct deemed commencement date?
3. For background information, the Community Infrastructure Levy (CIL) is a tool for local authorities to help deliver infrastructure to support the development of the area. A charging schedule for new development requiring planning permission sets out the levy rates for a charging authority area. Sheffield City Council, as the CA, adopted its charging schedule on 3 June 2015. A planning permission for residential development after the schedule came into effect, on or after 15 July 2015, is subject to the levy unless an exemption is granted. For instance, an exemption could be granted under the self-build provisions the mechanics of which are set out in the CIL Regulations<sup>1</sup>.
4. CIL Reg. 5(1), amongst other things, sets out the meaning of planning permission and subsection (a) states that it is granted under section (s) 70, 73 or 73A of the Town and Country Planning Act 1990 as amended (the '1990 Act'). CIL Reg. (6) sets out the meaning of development, Reg. (7) provides for interpretation of commencement of development, and Reg. (8) sets out the time at which planning permission first permits development. Section 70 of the 1990 Act sets out general principles dealing with application for planning permission. Where an application is made to a local planning authority (LPA), it may grant planning permission either

---

<sup>1</sup> CIL Regulation 54B.

unconditionally or subject to conditions as it sees fit, or it may refuse permission. Section 73 provides a power to determine an application for planning permission to develop land without compliance with conditions previously attached, and s73A provides for a grant of planning permission for development already carried out.

5. In an appropriate case a decision-maker considering an application for planning permission could grant, under s73A, retrospective permission for a development already carried out without it usually being necessary to forewarn the applicant of this before determination. Where any grant of planning permission had to be retrospective in its effect, the power to make the grant is derived from s73A. Subsection (1) provides that on an application for planning permission, the permission granted may include permission in respect of development that has already been carried out. By subsection (2) retrospective permission may embrace development carried out without planning permission.
6. The appellant obtained planning permission for [REDACTED] on 10 July 2015 (I will refer to this as the first permission). The assertion is that on or before 19 February 2018 building operations had already started as the garage was demolished and foundations were constructed. A site visit by the LPA officers revealed work had started by March 2018. The onus is on the appellant to show that material operations pursuant to the first permission had commenced in February 2018.
7. At some point between February and April 2018, a new architect was appointed who modified the scheme allowed by the first permission. [REDACTED]  
[REDACTED]  
[REDACTED]. These resulted in a fundamental alteration to the scheme allowed by the first permission and marked a material departure from the previous scheme. The new development was significantly different in nature and scale because the overall external appearance of the building was dramatically changed.
8. There was some negotiation between the architect and LPA resulting in an application to amend the first permission by non-material amendment. However, that attempt was rejected by the LPA as being an unacceptable route, due to the stark differences between the previous and proposed schemes. The amendments proposed were not non-material in planning terms. Subsequently, a full standalone planning application was eventually approved by the LPA on 12 April 2018 (the second permission<sup>3</sup>).
9. Notwithstanding the claim operations pursuant to the first permission had commenced on 19 February 2018, there is no specific detail or clear evidence. The nature and scale of operations is ambiguous and there is very little information about the scope or sequence of the work. Given the siting, layout and location of the building, which is a substantial structure, it is probable foundations had been constructed to reflect the dwelling as illustrated on the plans submitted with the second planning application. Indeed, there is nothing before me to suggest works had been carried out to alter the layout after the second permission was approved. At the time of my site visit, the building approved by the second permission had been built and was substantially complete. Based on the available evidence, the

---

<sup>2</sup> Local planning authority (LPA) ref: [REDACTED]

<sup>3</sup> Ref: [REDACTED]

second permission was part-retrospective and part-prospective in nature as work had started but the building was incomplete.

10. In October 2018, the CA told the appellant a valid CN pursuant to CIL Reg. 67 was required because building work had begun without any notification. There was some discussion as to which notional commencement date should be cited on the relevant form. Following a telephone conversation, it seems the CA decided to treat the deemed commencement date as 24 October 2018, yet there appears to have been no analysis as to what had occurred on the ground. Based on the appellant's own evidence, building operations pursuant to implementing the second permission had, on the balance of probabilities, started on around 19 February 2018.
11. Even if building operations pursuant to the first permission commenced on 19 February 2018, this argument does not assist the appellant. Planning permission which first permits a development on a day when the charging schedule is in effect will be liable for the levy. CIL Reg. 8 defines the time at which a planning permission is treated as first permitting development and it will be the day that planning permission is granted. Planning permission for a materially different scheme, which was approved by the second permission, was granted when the charging schedule was in effect. As I have said elsewhere, the building has been built in accordance with the scheme permitted on 12 April 2018, yet there is nothing before me to suggest the appellant submitted a valid CN prior to starting building operations pursuant to that permission.

### **Other considerations**

12. A secondary argument advanced is that, if the deemed commencement date is 19 February 2018, a self-build exemption, which was granted on 23 February 2018<sup>4</sup>, should have effect. However, whether there has compliance with CIL Reg. 54B is a matter for the appellant and CA to determine.
13. Much is made about environmental benefits of the dwelling, but this is irrelevant to the determination of this appeal.

### **Conclusions**

14. For the reasons given above, I conclude that the CA has issued a Demand Notice with an incorrectly determined deemed commencement date. The appeal therefore succeeds and the Demand Notice is quashed.

*A U Ghafoor*

Inspector

---

<sup>4</sup> Self-build ref: 18/00267/FUL granted 23 February 2018.