



Appeal Decision

by **Ken McEntee**

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

Decision date: 24 April 2020

Appeal ref: APP/R0660/L/19/1200319

- 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 brought by [REDACTED] against the determined deemed commencement date by Cheshire East Council.
- The relevant planning permission to which the CIL relates is [REDACTED]
- Planning permission was granted on 29 March 2019.
- An undated Liability notice was initially issued.
- A Demand Notice was issued on 16 July 2019.
- A revised Liability Notice was issued on 18 December 2019.
- A revised Demand Notice was issued on 18 December 2019.
- A revised Liability Notice was issued on 10 March 2020.
- A revised Demand Notice was issued on 10 March 2020.
- The description of the development is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 29 March 2019.

Summary of decision: The appeal is allowed.

Reasons for the decision

1. An appeal under Regulation 118 is that the Collecting Authority (Council) issued a Demand Notice with an incorrectly determined deemed commencement date. This case involves circumstances where at the time the original planning permission [REDACTED] and subsequent permission [REDACTED] were granted on 25 March 2016 and 20 April 2018 respectively, a CIL schedule was not in place for Cheshire East. However, a CIL schedule was in place by the time part retrospective permission [REDACTED], the subject of this appeal, was granted on 29 March 2019. The appellant contends that works began on the original permission on 11 June 2018, along with some minor design amendments that are the subject of permission [REDACTED]. The appellant argues that these minor works should have been considered by way of a section 73A or 96A application under the Town & Country Planning Act 1990 and that a full planning application was submitted in error. However, I can only determine the appeal on the evidence and facts before me

and while it I have sympathy if the application was made in error, it is a fact that planning permission [REDACTED] was granted as a full permission, and not under a section 73A or 96A application.

2. In the initial Demand Notice the deemed commencement date was stated as 1 March 2019. However, the Council decided to change this to 29 March 2019 in the Demand Notice of 10 March 2020 as that was the date of planning permission [REDACTED]. They contend that they could not deem the date to be 11 June 2018 as there was no CIL schedule in place at that time. However, there is nothing in the CIL Regulations preventing the Councils from determining the deemed commencement date to be before a CIL schedule was in place. 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. It appears clear that both parties are content that material operations began on site on 11 June 2018, and that the "minor changes" were carried out before permission was granted on 29 March 2020. Therefore, on the evidence before me, I take the view that the Council has issued a Demand Notice with an incorrectly determined deemed commencement date and the correct date should be 11 June 2018. The appeal succeeds accordingly.
3. In accordance with Regulation 118(4), the Demand Notice ceases to have effect. As required by Regulation 69(4), the Council must now serve a revised Demand Notice with a revised determined deemed commencement date of 11 June 2018.
4. For the avoidance of doubt, although I am allowing the appeal, I have no powers to quash the CIL charge.

Formal decision

5. For the reasons given, the appeal is allowed.

K McEntee