



Appeal Decision

Site visit made on 25 February 2020

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

an Inspector appointed by the Secretary of State

Decision date: 27 May 2020

Appeal A and B Refs: APP/L/19/1200314 and 315

- The appeals are made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended [the 2010 regulations].
- The appeals are made by [REDACTED]
- Two Demand Notices [DN] were issued by Wakefield Metropolitan Borough Council as the collecting authority [CA] on 2 August 2019.
- On each DN, the deemed commencement date of development is stated as 23 May 2019.

Details of chargeable development to which each DN relates

- The relevant planning permission to which the levy relate is [REDACTED]
- The description of the development described on each DN is at paragraph 3 below.
- In Appeal A, the outstanding amount of levy payable for a failure to submit a Commencement Notice [CN] is [REDACTED] and in Appeal B the outstanding levy amount is [REDACTED]

Decisions

1. The appeals are allowed, and it is directed that the DNs and LNs be quashed in Appeal A and B.

Inspector's reasons

2. The main issue is whether the deemed commencement date is correct.
3. On 21 December 2018, full planning permission was granted for the following development: [REDACTED]
[REDACTED]
[REDACTED] [hereinafter referred to as 'the 2018 permission']. An application for a non-material amendment to plot 5 (phase 5) was approved on 23 May 2019, but this did not alter the phased implementation of the overall scheme. A further application to discharge conditions was approved by the local planning authority on 31 May 2019. In October 2019, an application was submitted under section 73 of the 1990 Act¹ but that application does not affect these appeals.
4. The 2010 regulations state 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. Where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates is the relevant land.

¹ The Town and Country Planning Act 1990 as amended.

5. The evidence presented shows that around May 2019 work started on the construction of the internal road, the access between [REDACTED] and the development site and the frontage wall splaying into the site and continuing to provide a visibility splay. By the time officers conducted a site visit on 23 May 2019, significant building and engineering operations had in fact occurred. I agree that material operations comprised in the development permitted by the 2018 permission had commenced in material way by at least 23 May 2019. That is what I saw at the time of my inspection.
6. The appellant company assumes liability to pay CIL, which arises from the 2018 permission and each phase is a separate chargeable development. Phase 1 is zero-rated. However, the appellant company, essentially, maintains that all the work outlined above relates to phase 1 of the 2018 permission and, in each Appeal A and B, the DN has been incorrectly issued because no work has been undertaken on phase 4 and 6. The CA disagrees. It says the frontage wall splaying into the site and continuing to provide a visibility splay spans across virtually the entire development site and cuts across phase 4 and 6. The claim is that works started on phase 1 and the frontage wall splaying into the site and so a material operation comprised in the construction of phase 4 and 6 had in fact begun by May 2019. On that basis, the CA deems works on phases 4 and 6 commenced on 23 May 2019 and issued a DN in respect of each phase.
7. For the following reasons, I am not persuaded by this line of reasoning. My starting point is the effect of the 2018 permission. The description of development is precise and clearly refers to 5 dwellings to be delivered in 6 phases. The conditions imposed are relevant to a scheme implemented in stages. For example, condition 2) imposed on the 2018 permission states the development shall be carried out in accordance with a list of drawings. Amongst other plans approved by the permission, drawing no. [REDACTED] is a site layout plan and a Phasing Plan at 1:500 scale is a schematic showing phase 1 to 6: phase 1 is described as 'road' and phases 2 to 6 are given a plot number. Phase 4 is plot 1 and phase 6 is plot 5.
8. Given the clear and unambiguous language used in the operative part of the permission document and conditions, I find that the 2018 permission is a phased planning permission. Since the permission is a public document, members of the public are likely to reasonably conclude that a phased planning permission has been granted to develop the site for residential purposes. It follows that the permission falls within the scope of regulation (2) sub (1) of the 2010 regulations.
9. The 2018 permission describes phase 1 as 'road/infrastructure'. The choice of words causes some confusion as to the nature of the work involved in building the road and infrastructure. For example, the use of oblique stroke punctuation could be interpreted as meaning 'and' or 'or' (or perhaps both). Nonetheless, drawing no. [REDACTED] and the Phasing Plan 1:500 show phase 1 to include the internal road and access. This type of work involves significant engineering operations to construct the internal road and access between [REDACTED] and the new dwelling-houses. The approved plans also depict the geographical extent of each phase of development.
10. Condition 13) and 14) imposed on the 2018 permission relate to access work and stipulate certain standards to be achieved for highway safety reasons. The former requires the development shall not be brought into use until vehicle visibility splays of 2.4 metres x 43m, as indicated on drawing no. [REDACTED] have been constructed in which there should be no obstruction to visibility exceeding 1.0m in

height above the adjacent carriageway. Condition 14) stipulates the development shall not be brought into use until all footway/verge crossings have been completed. In contrast to the Phasing Plan, drawing no. [REDACTED] clearly illustrates the extent of the visibility splays, which cut across plot 1 and 5 and encompass the wall adjacent [REDACTED].

11. There is some concern over the height of the wall, as built, but the appellant explains a course of stone will be removed once the site is secure. At risk of repetition, the wall runs along the entire frontage of the development site and cuts across phase 4 and 6. However, contrary to the CA's assertions, there is nothing before me to indicate it was to be erected in stages. Nor does the Phasing Plan specifically refer to any boundary treatment for each plot. In my assessment, the frontage wall splaying into the site and continuing to provide a visibility splay facilitates the provision of an access into the residential development as shown on drawing no. [REDACTED] and required by condition 13) imposed on the 2018 permission. Once the height of the wall is reduced, the visibility splay would meet the latter's requirements.
12. The frontage wall has been substantially rebuilt with a new access, but it is integral to the construction of the access with adequate sightlines. Whilst the Phasing Plan appears to show the geographical extent of phase 1 extending only to the access and internal road coloured grey, drawing no. [REDACTED] shows the extent of the visibility splays as required by condition 13). Both plans need to be considered in combination as drawing no. [REDACTED] shows in detail the access with visibility splays and the frontage to the development site. I consider that the frontage wall splaying into the site and continuing to provide a visibility splay is part-and-parcel and necessary in delivering an internal road and infrastructure. The operations involved in rebuilding the wall practically fall within the scope of work pursuant to the implementation of phase 1.
13. In May 2019 material operations comprised in the development permitted started on land to which phase 1 relates and not phase 4 and 6, irrespective of the argument that the wall spans across land shown on the Phasing Plan as phase 4 and 6. Therefore, material operations comprised in delivering the latter phases had not commenced on 23 May 2019 as alleged by the CA.
14. Pulling all the above points together, on the particular facts and circumstances of this case, I find that the CA has issued a DN in relation to phase 4 and 6 with an incorrectly determined deemed commencement date. The 2010 regulation 118 appeals should therefore succeed, and I have quashed each DN and LN in relation to Appeal A and B.

A U Ghafoor

INSPECTOR