



## Appeal Decision

Site visit made on 24 June 2020

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

an Inspector appointed by the Secretary of State

Decision date: 3 August 2020

### Appeal Ref: APP/P0119/L/19/1200345

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended (for convenient shorthand, the 'CIL Regs').
- The appeal is made by [REDACTED]
- A Demand Notice ['DN'] was issued by South Gloucestershire District Council as the collecting authority ('the CA') on 2 October 2019.
- The deemed commencement date of development is stated as 15 December 2017.

#### Details of chargeable development to which the DN relates

- The relevant planning permission to which CIL and the surcharge relates is [REDACTED]
- The description of the development is described in the following terms: [REDACTED]  
[REDACTED]  
[REDACTED]
- The outstanding amount of CIL payable including surcharge for a failure to submit a Commencement Notice ['CN'] and late payments is [REDACTED]

### Decision

1. The appeal is dismissed, and the DN issued by the CA on 2 October 2019 is upheld.

### Inspector's reasons

2. The question is this: has the CA correctly determined the deemed commencement date?
3. [REDACTED] is a detached building situated within a substantial plot. It was once part of [REDACTED], but currently forms a self-contained unit of occupation. [REDACTED] purchased the site in circa 2017 [REDACTED] renovating the property. They applied to the Local Planning Authority ['the LPA'] for planning permission to change the use of [REDACTED] into a [REDACTED], which was granted on 15 December 2017 subject to conditions. I refer to this permission as 'the 2017 permission'. Subsequently, on 30 April 2018, the LPA granted planning permission for [REDACTED]  
[REDACTED] This permission is for the carrying out of operational development and does not materially affect the scheme approved in the 2017 permission.

<sup>1</sup> I have taken the site address details from the appeal form.

4. There is no dispute between the appeal parties levy for the chargeable development arises from the 2017 permission. Indeed, [REDACTED] assume liability and a self-build exemption was granted in February 2018 by the CA<sup>2</sup>.
5. In 2019, a land survey revealed that work at [REDACTED] had started and the 2017 permission had been implemented. The CA believed building work comprised in the permitted scheme had started yet a CN had not been received. Pursuant to CIL Regs 68, it determined the deemed commencement date the day when the 2017 permission was granted – that is the 15<sup>th</sup> of December 2017.
6. Essentially, [REDACTED] submission is that building work had not in fact started on 15 December 2017, because operations involved in the physical conversion of the existing building had not begun. The argument is that [REDACTED] had been built before the property was purchased and [REDACTED]. The nub of their argument is that the CA incorrectly determined the deemed commencement date as 15 December 2017. For the following reasons, I am not persuaded by these submissions.
7. My starting point is the 2017 permission. It is unambiguous on its face and the meaning of the permitted development is clear. It grants permission to carry out both a change in the use of [REDACTED] and engineering operations involved in the construction of the new access. My interpretation is consistent with the imposed conditions and plans.
8. The material facts show that in around October 2017 an access had been created. The latter provides access to [REDACTED]. [REDACTED], my observations are that the driveway forms a hard-surfaced area given the type of roadstone used in its construction. It practically serves the appeal property and it does not have a fleeting appearance or character. In addition, a timber fence provides a visual barrier between the driveway and parcel of land under separate ownership. When the nature of the road is considered in combination with its position and location, I disagree with the claim that the access is temporary.
9. The creation of a permanent access and driveway into [REDACTED] probably involved a significant amount of pre-planning. Given the extent and scale of the driveway combined with the nature of the material used in its construction, it is likely that heavy plant and machinery was utilised to construct the road. In my assessment, the construction of the driveway firmly falls within the scope of section 55 subsection (1) of the Town and Country Planning Act 1990 (as amended) [‘the 1990 Act’] for which express planning permission was required.
10. The size and location of the access in the scheme approved by the 2017 permission is as constructed. The visibility splays roughly conform with the approved scheme. In my judgement, work comprised in the scheme approved by the 2017 permission had already begun before planning permission had been granted by the LPA. The 2017 permission allowed development that had already started, albeit in part, and it is therefore part-retrospective-and-part-prospective in effect. Once [REDACTED] obtained express permission for [REDACTED] and associated access, the 2017 permission came into immediate effect.

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<sup>2</sup> Pursuant to CIL Regs 69.

11. In an appropriate case, a decision-maker considering an application for planning permission could grant, under s73A of the 1990 Act, a retrospective permission for development already carried out without it usually being necessary to forewarn the applicant of this before determination. In addition, 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.
12. It may be the case that [REDACTED] were not informed about the potential effect of the 2017 permission. In hindsight, it may have been better to advise the applicants of the potential outcome to avoid any surprises and explain the serious consequences given the potential loss in relief. However, the important issue is whether it is within the decision-maker's power to determine a planning application for development already carried out. Clearly the power to determine the application retrospectively does exist, namely, s73A of the 1990 Act.
13. CIL Regs 7(2) explains that development is to be treated as commencing on the earliest date on which any *material operation* [my emphasis] begins to be carried out on the relevant land. "Material operation" has the same meaning as in s56(4) of the 1990 Act. I acknowledge the arguments that the access and driveway as well as the construction of trenches and provision of electricity and water are works done by the previous owners. These were required for the purchase of the property. Nevertheless, who carried out the work isn't determinative. The quantum of the evidence clearly shows material operations involved in the laying out or constructing a road or part of a road and the construction of trenches had, as a matter of fact, started on or before 15 December 2017. All these operations were intended to facilitate [REDACTED] and firmly fall within the scope of s56(4) of the 1990 Act.
14. CIL Regs 7(3) explains that the general rule in 7(2) is subject to provisions, such as that stated in 7(5) (a) where planning permission has been granted under s73A of the 1990 Act for development already carried out. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as part-retrospective-and-prospective permission was granted for the development being implemented, the general rule in CIL Regs 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which is 15 December 2017.
15. Pulling all the above threads together, I find that the deemed commencement date is correct.

### **Overall conclusion**

16. For the reasons given above, I conclude that the appeal should fail.

*A U Ghafoor*

Inspector