



Appeal Decision

Site visit made on 19 January 2021

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2021

Appeal Ref: APP/F1610/L/20/1200395

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 (the Regulations).
 - The appeal is brought by [REDACTED] against the deemed commencement date determined by Cotswold District Council.
 - The relevant planning permission to which the CIL surcharges relate is [REDACTED]
 - A Liability Notice (LN) was served on 3 September 2019.
 - A Demand Notice (DN) was served on 17 March 2020.
 - The description of development is [REDACTED]
 - The determined deemed commencement date given in the DN is 5 February 2020.
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Decision

1. The appeal is allowed and the Demand Notice ceases to have effect.

Appeal under Regulation 118

2. Planning permission was granted under reference [REDACTED] on 13 August 2019. An assumption of liability notice and a self build relief claim were submitted by the appellants. Self build relief was granted by Cotswold District Council, the Charging Authority (the CA) and a liability notice was sent for a total charge of [REDACTED]
3. The CA carried out a routine site visit on 5 February 2020 and took a number of photographs. The CA considered that material operations had taken place by 5 February 2020 and treated development as commenced. A deemed commencement date was determined to be 5 February 2020. The CA state that this resulted in a surcharge of [REDACTED] and a Demand Notice was issued on 10 February 2020. No payment was made within 30 days and the CA issued a new Demand Notice on 17 March 2020 with an additional surcharge of [REDACTED]
4. 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. Regulation 7(6) explains that 'material operation' has the same meaning as section 56(4) of the Town and Country Planning Act 1990 (the Act).
5. Section 56(2) of the Act states that development is taken to have begun on the earliest date on which any 'material operation' **comprised in the**

development¹ begins to be carried out. Material operations are defined under subsection 4.

6. Section 56(4) states a material operation means -
 - (a) any work of construction in the course of the erection of a building;
 - (aa) any work of demolition of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations of a building or to any such trench as is mentioned in paragraph (b);
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land which constitutes material development.
7. The CA consider that the photographs taken on 5 February 2020 'clearly show material operations had taken place'. The CA do not elaborate on what that actually means. The photographs show some metal fencing, a pile of rubble, a portable toilet, a small digger and a skip which appears empty.
8. The appellants state that the photographs do not demonstrate site clearance was taking place. They confirm that the existing vehicular access was widened and a pile of rubble/stone, a small digger, a dumper, an empty skip and Heras fencing were on site and are shown in the photographs. The pile of rubble resulted from the widening of the access which itself was carried out to allow the equipment to be delivered to the site, so work could commence on 2 March 2020.
9. Planning permission [REDACTED] was granted for the conversion of the gospel hall and the works; both internal and external works comprised in that development are those shown on the approved plan reference [REDACTED] or controlled by the conditions imposed on the planning permission. This is the development identified as liable for a charge under the Regulations.
10. Neither the approved plan nor the conditions imposed include alterations to the vehicular access from Hampton Street. As such, I find that the works carried out to widen the access way, which resulted in the pile of rubble shown in the photographs, are not comprised in the development granted planning permission under reference [REDACTED]. Furthermore, the erection of the metal fencing, parking of construction equipment etc shown on the photographs are not, of themselves, material operations as set out in section 56(4) of the Act.
11. While the photographs support preliminary organisation for starting to initiate the planning permission, what is shown does not amount to a material operation itself. The widening of the access did not form part of the development which received planning permission under reference [REDACTED]. It therefore cannot be held to be a material operation of the development granted planning permission and referred to in the LN or the DN.

¹ My emphasis.

12. On the basis of the evidence provided I have concluded that no material operation to initiate planning permission [REDACTED] had taken place at the time of the photographs being taken on 5 February 2020. As such, the commencement date of 5 February 2020 stated in the DN is incorrect.

Conclusion

13. It therefore follows that the deemed commencement date is incorrect and the appeal under Regulation 118 is allowed. In accordance with Regulation 118(4) the Demand Notice ceases to have effect.

Hilda Higenbottam

Inspector