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# Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

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**Appeal Ref: APP/X3540/L/23/3331027**

- The appeal is made under the Planning Act 2008 Section 218 and under the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL 2010") sections 117(1)(a) and 118(b).
  - The appeal is made by [REDACTED] against a Demand Notice (DN) issued by the Collecting Authority, East Suffolk Council (CA).
  - The relevant planning permission to which the Community Infrastructure Levy relates is [REDACTED]
  - The description of the development is described on the DN as follows: [REDACTED]
  - A Liability Notice (LN) was served on 14 August 2023. The total amount of the Community Infrastructure Levy payable is [REDACTED].
  - A DN was issued on 27 September 2023. The following surcharges were imposed: [REDACTED] for a failure to assume liability, [REDACTED] for a failure to submit a Commencement Notice (hereinafter CN). The total amount payable is [REDACTED].
  - The determined deemed commencement date given in the DN is 10 March 2023.
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## Decision

1. The appeal under s117(a), that the claimed breach which led to the imposition of the surcharge did not occur, is allowed, and the surcharges are quashed.

## Preliminary matters

2. As the outcome of the appeal under CIL 2010 s118 has a bearing on the 117(1)(a) appeal, I shall evaluate the former first.
3. Some of the appellant's arguments relate to how the collecting authority has calculated the Levy. It seems to me all these arguments should be made under CIL 2010 s113 and 114, not 117(1)(a) and 118, I will proceed on this basis.

## Reasons for the Recommendation

### *Section 118*

4. The appellant argues that the CA has issued a DN with an incorrectly determined deemed commencement date. However, it appears clear in this case that the basis of the appeal is that the chargeable development has not begun at all, rather than the deemed commencement date being incorrect. Nevertheless, it is clear, and not disputed by the appellant, that works to construct a staircase have taken place on the relevant land, but the appellant contends that such works took place solely under Listed Building Consent (LBC) approval ref [REDACTED]. They argue that several changes were made on site, including to change the location and type of staircase to make access more straightforward.

5. The CIL 2010 regime is not concerned with whether or not a development has begun with other purposes in mind, it is only concerned with whether it has commenced as a matter of fact. There is nothing in CIL 2010 which requires the commencement to be intentional. The trigger is the carrying out of a material operation on the relevant land in accordance with CIL 2010 Sections 7(2) and 7(6). Material operation has the same meaning given in the Town and Country Planning Act 1990 (TCPA 1990) s56(4). Clearly, given the description of the planning permission referred to in the DN relates to a material change in the use of the building to three dwelling houses, the definition given in s56(4)(e) is relevant –namely, any change in use of any land which constitutes material development and refers to definition of material development in s56(5).
6. The courts have held that for a material change of use to occur then the building in question must be constructed or adapted for use as a dwellinghouse that provides the facilities for day-to-day domestic use. The photographic evidence does not show any kind of such facilities. The photographic evidence portrays the first floor with staircase access and a laid floor. There are no other facilities provided and no dividing walls installed at first floor level for bedroom and bathroom as the plans for permission [REDACTED] show. The evidence appears to show that the change of use permitted by this permission has not yet commenced and the building could be used as an art studio as claimed by the appellant.
7. The construction of the staircase, albeit altered to the submitted plans for [REDACTED], which relates to the art studio, is not sufficient by itself to constitute a material operation commencing planning permission [REDACTED]. I am of the view that the installation of the staircase does not mark the change of use to three dwelling houses. I am therefore led to conclude that the appellant has implemented the LBC approval reference [REDACTED] as argued by the appellant.
8. On the evidence before me, I am satisfied that works have not begun on the chargeable development, [REDACTED]. Having regard to the provisions set out under s118 there is no power to allow the appeal on the basis that the chargeable development has in fact not commenced. If I conclude that chargeable development has not commenced, then I must decline to determine the appeal under s118.

*Ground B – Section 117(1)(a)*

9. An appeal under this ground is that the alleged breach which led to the surcharge did not occur. The CA deemed the chargeable development to have commenced on 10 March 2023, in accordance with CIL 2010 Section 68.
10. CIL 2010 Section 67(1) requires a CN must be submitted to the collecting authority no later than the day before the day on which the chargeable development is to be commenced. The appellant has not submitted a CIL 2 or CIL 6 form. However, given my findings on the facts regarding the appeal on ground 118, I find that chargeable development has not occurred without notification of commencement nor acceptance of liability, and, on this basis, the alleged breach which led to the surcharges did not occur.

**Conclusion and Recommendation**

11. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed, and the surcharges of [REDACTED] and [REDACTED] are quashed.

*S. Wilson*

APPEAL PLANNING OFFICER

**Inspector's Decision**

12. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed, and the surcharges are quashed.

INSPECTOR

*A. Ghafoor*