



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 28 May 2024

Appeal Ref: APP/G1630/L/24/3341152

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(c) and 118 of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs')².
- The appeal is brought by [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, Tewkesbury Borough Council ('the CA').
- The relevant planning permission to which the CIL relates is [REDACTED].
- The description of the development is described on the DN as follows: [REDACTED]
- A Liability Notice (the 'LN') was served on 22 March 2019³. The total amount of CIL payable is [REDACTED].
- The DN was issued on 21 February 2024 and the deemed commencement date is 10 January 2024. 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].

Summary of Decision: CIL Regs 118 is allowed, but 117(c) fails.

Inspector's reasons

1. CIL Regs 118(1) challenge is the CA has incorrectly determined the deemed commencement date. CIL is a tool for local authorities to help deliver infrastructure to support the development of the area. A charging schedule for new development requiring planning permission sets out the levy rates for a charging authority area. The Council, as the CA, adopted its charging schedule, which came effective on 1 January 2019.
2. The appellant complains about the handling of the application for planning permission by the local planning authority ("the LPA"). They maintain that on 14 December 2018, they were informed by an officer that permission would be issued in a couple of days. It was delayed due to resource issues. The permission document was eventually issued on 11 January 2019 (for ease I refer to this as the "2019 permission"). The concern is that the document was deliberately delayed until the CIL regime came into force. The development permitted is of a kind subject to the levy. However, none of these arguments relate to the grounds of appeal before me and I do not need to determine them.
3. On 14 January 2021, the appellant contacted the Council's building control officer (BCO) before material operations pursuant to the implementation of the 2019 permission had commenced. The Council's BCO could not make site inspections at the time, due to restrictions imposed during the pandemic by the Government. This is a specific date which the CA does not dispute, nor does its evidence cast any doubt over the appellant's explanation about the sequence of the events.

¹ I have taken these details from the appeal form. The street name is also spelt "Brockridge Road" on various documents.

² As the outcome of CIL Regs 118 has a bearing on the 117(c) appeal, I shall evaluate the former first.

³ The first LN was served 11 February 2019.

4. The appellant says that an independent BCO was appointed, which suggests material operations had commenced in January 2021. In any event, a CN had not been submitted the day before material operations commenced on site. The failure to submit a CN pursuant to CIL Regs 67(1) is a flagrant breach of the regulations. Pursuant to CIL Regs 68(1), the CA must determine the day on which the chargeable development was commenced if it has not received a CN yet believes development has commenced.
5. The CA say that on 10 January 2024 it received information from a member of the public complaining about the burning of rubbish on the site. This report prompted investigation and contact with the Council's BCO to establish whether a record of commencement had been submitted. The Revenues and Benefits section was also contacted to establish whether the new properties had yet been assessed for local taxation purposes and if officer visits had taken place. The CA believe the deemed commencement date is correctly determined as 10 January 2024, because building works had progressed at the time. For the following reasons, I attach limited weight to these claims.
6. Firstly, the CA's bundle shows entry of complaints⁴. It appears to me the Council, as an organisation, was aware of building work starting between January 2018 and November 2021, given the type and nature of the complaints or the logged actions. For example, on 17 June 2021 "█████ called to advise that he is clearing the land". This refers to the appellant. Another entry states that on 22 November 2021, a building control record had been generated. The CA's bundle⁵ includes a screenshot of the record, which suggests an application was deposited on that date.
7. Secondly, the CA's own evidence is that subsequent visits to the site and reports from Revenue and Benefits officers suggest material operations had begun before 10 January 2024. The quantum of evidence indicates building work began about three years after the date given by the appellant. Taking all the evidence in the round, on the balance of probabilities, material operations had in fact commenced well before 10 January 2024.
8. The CA allege lack of cooperation as relevant CIL forms were not submitted despite chasing the appellant and their agent and a default LN was issued. The appellant indicates they had acknowledged correspondence from the CA. Nevertheless, in discharging its functions, if the CA feel inadequate information had been submitted, it has power, under relevant planning or local government acts, as well as the CIL Regs, to require information and enter land to ascertain whether a chargeable development has been commenced in breach of controls. It also has discretion to impose a surcharge where there is a failure to submit a notice of chargeable development.
9. Frankly, it is likely the CA did not carry out adequate prior investigations to determine when development commenced pursuant to the 2019 permission. I consider that, had proper prior investigations been made by the Council, the dots would have joined up. I acknowledge that in 2021 LPA's were operating in very difficult circumstances and enforcement investigations were challenging. There is, however, no evidence to make less than credible the appellant's claim that material operations had, in fact, commenced on 14 January 2021 or thereabouts.
10. Pulling all the above threads together, I conclude that the CA has incorrectly determined the deemed commencement date and the appeal is allowed. In accordance with CIL Regs 118(5), the revised deemed commencement date is 14 January 2021. The appeal succeeds to this limited extent only.

⁴ Appendix 8 to CA's statement of case.

⁵ Appendix 7.

11. A CIL Regs 117(1)(c) challenge is that the surcharge has been calculated incorrectly. I will swiftly deal with this challenge. CIL Regs 80 explains that the CA may impose a surcharge on each person liable to pay CIL. The amount is ■■■ where nobody has assumed liability and the chargeable development has commenced. In this scenario, the CA imposed the surcharge on two individuals and there is no evidence before me to suggest these people are not liable to pay CIL.
12. CIL Regs 83 explains that where a chargeable development is commenced before the CA has received a valid CN, the CA may impose a surcharge equal to 20% of the chargeable amount payable or ■■■■■, whichever is the lower amount. However, while the CIL Regs 118 appeal is allowed and I am aware of my discretionary power to quash a surcharge pursuant to 118 sub-section (6), the appellant failed to submit a CN before development commenced back in January 2021.
13. For all the above reasons, I find that the CA reasonably applied its discretionary power, and the surcharges have not been calculated incorrectly.

Overall conclusions

14. For the reasons given above, CIL Regs 117(c) appeal fails. The appeal on CIL Regs 118 succeeds as the CA has incorrectly stated the deemed commencement date. The CA has power under CIL Regs 69(3) to serve, at any time, a revised DN on a person liable to pay an amount of CIL.

Formal Decision

15. The appeal is allowed in part on CIL Regs 118 but is otherwise dismissed on CIL Regs 117(c).

A U Ghafoor

Inspector