The Planning Inspectorate

Appeal Decision

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2024

Appeal Ref: APP/W3520/L/24/3341946

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010 as amended (hereinafter 'the CIL Regs').
- The appeal is brought by against a Demand Notice (the 'DN') issued by the Collecting Authority, Mid Suffolk District Council ('the CA').
- The relevant planning permission to which the CIL relates is .
- The DN was issued on 15 February 2024 and the deemed commencement date is 5 January 2024. The description of the development is described on the DN as follows:
- A Liability Notice (the 'LN') was served on 20 April 2020, on 20 June 2020, on 28 December 2023 and again on 15 February 2024. The total amount of CIL payable is .

Decision

1. The appeal is allowed.

Preliminary matters

2. The appeal form included CIL Regs 117(a). However, the DN did not include any surcharges and the appellants' reasons suggest their arguments should be made under 118(1), because they argue that the CA has incorrectly determined the deemed commencement date. The Planning Inspectorate informed the appellants via electronic mail the appeal would be determined on this basis.

Reasons

3. The charging schedule for the CA's area came into effect on 11 April 2016. On 17 April 2020, planning permission was first granted for chargeable development by the Local Planning Authority (LPA). For convenient shorthand, I refer to this permission as "the 2020 Permission" and the full description is set out above at bullet-point 4. I pause here because it appears to me the CA fails to grapple with the meaning of the development permitted by the 2020 Permission.

4. The 2020 Permission incorporates the application form and submitted plans. The former is a composite document for both planning permission and listed building consent. Effectively, the LPA simultaneously granted both consent and planning permission. It is not a phased permission but includes various standalone elements. The description on the application form and decision notice clearly refer to structural repairs to the tower mill. The latter is firmly part and parcel and an integral part of the whole development permitted by the 2020 Permission.

5. The agreed facts are that on 20 April 2020 a LN was issued for the CIL of £[redacted], which reflects the amount due for chargeable area of 121.38 square metres for residential development. All other uses approved by the 2020 Permission were zero rated. On 17 June 2020, the appellants assumed liability to pay the chargeable amount but immediately applied for a self-build exemption pursuant to CIL Regs 54A on the basis the dwelling would be their sole residence. The exemption can be granted for chargeable development in whole or in part.

6. There is broad agreement between the appeal parties the self-build exemption had been correctly obtained – before any material operations had commenced. Section A to CIL Form 7 submitted on behalf of the appellants, at sub-section 2, describes the development for which an exemption is being applied as follows: [redacted]. On 24 June 2020, the CA granted the appellants their self-build housing exemption and duly issued a revised zero-rated LN for the entire development permitted by the 2020 Permission.

7. A CN must be submitted no later than the day before the day on which the chargeable development is to be commenced[1]. The authority must determine the day on which a chargeable development was commenced ("the deemed commencement date") if it has not received the notice in respect of the development but has reason to believe it has been commenced[2]. The CA believes development commenced by 5 January 2024 because work on the proposed access had significantly progressed. In contrast, the appellants maintain that the chargeable development is confined to the self-build housing element and that work had not commenced.

   For the following reasons, I find that both parties have adopted a fundamentally flawed approach.

8. For CIL purposes, development is treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land[3]. Material operation has the same meaning as that given in s56(4) of the Principal Act[4]. The language used in the CIL Regs indicates to me that material operations are not circumscribed only to the commencement of chargeable development or isolated elements of the development: any material operation could trigger commencement of the chargeable development provided the operation falls within the scope of s56(4).

9. The CA seems fixated on the operations comprised in the creation of the access as marking the commencement of the chargeable development. The appellants clearly explain the sequence of events. Their evidence is that they first commenced operations on the Tower mill soon after the self-build housing exemption was granted. They did this in good faith because they wanted to protect the dilapidated Tower mill from collapse. The work involved in the creation of the access came much later. The CA have not provided evidence which casts any doubt on the appellants' version of the events.

10. The evidence clearly explains the nature of the work undertaken to the Tower mill. I consider that the extent, type, and scale of the structural repairs carried out to the building strongly indicates the work fell within the meaning of material operation. Alarm bells should have been triggered as soon as building operations commenced on the Tower mill. To my mind, the appellants, knowingly or inadvertently, commenced the chargeable development well before 5 January 2024. I find that, on the available evidence, the CA has incorrectly determined the deemed commencement date and CIL Regs 118 appeal

[1] CIL Regs 67(1).
[2] CIL Regs 68(1)(a).
[3] CIL Regs 7(2).
[4] Town and Country Planning Act 1990 (as amended).

succeeds on this basis alone. That is not the end of the matter. A further lesson to take from this saga is the failure to appreciate the effect of CIL Regs 67(1A)[5].

11. It is important to read the entirety of the relevant regulation and to understand its effect. The regulations are designed to operate as a comprehensive code and should not be treated in isolation. The provisions set in CIL Regs 67(1A) are clear and immediately follow paragraph (1). The former explains that this regulation, in other words the imperative to submit a CN the day before the day on which chargeable development is to be commenced, is disapplied in any of the following circumstances: where CIL Regs 42 applies, where no CIL is payable because it relates to a residential extension or in relation to which the chargeable amount, calculated under regulation 40, is zero.

12. At risk of repetition, the LN issued in April 2020 correctly applied CIL Regs 40 and the amount payable was £[redacted] for the 2-bedroom residence. All other uses are zero rated. The self-build housing exemption led to the issue of a revised LN on 24 June 2020. Any earlier LN issued in respect of the same chargeable development ceases to have effect. Again, pursuant to CIL Regs 40, the June 2020 LN is also zero-rated. So, given the effect and operation of CIL Regs 67(1A), my interpretation of the CIL Regs suggests that a CN is not required to be submitted by the total CIL amount is calculated as zero.

13. Pulling all the above threads together, I find that the deemed commencement date is incorrectly determined, and the appeal is allowed. In accordance with CIL Regs 118(4) the DN issued by the CA in respect of the development permitted by the 2020 Permission ceases to have effect. On the available evidence, pursuant to CIL Regs 118(5), I consider that the deemed commencement date should be set at the time when the self-build housing exemption was granted.

Other matters

14. The added complexity is the sale of part of the site which contains the two-bedroom residence and is the subject of the self-build housing exemption. At final comments stage, the appellants confirm that liability was transferred to the new purchaser on 28 December 2023, which the CA acknowledged and served a LN on the purchaser. However, it is unclear if the new owner has been issued a DN[6]. In any event, the CA believe the exemption is lost, due to a failure to submit a CN and disposal of the self-build plot. In the context of this appeal, I do not need to determine this issue and make no comment on the CA's approach. This is a matter for the appeal parties to resolve.

Overall conclusions

15. For the reasons given above, the appeal on CIL Regs 118 succeeds as the CA has incorrectly stated the deemed commencement date.

A V Ghafoor

Inspector

[5] Introduced by The Community Infrastructure Levy (Amendment) Regulations 2011 (SI.2011/987) regs 1 and 9(8) and came into force on 6 April 2011. CIL Regs 67(1(a) and (aa) were further amended by regulations which came into force in February 2014, but are non-consequential for this appeal.

[6] The issued DN does not refer to the new owner as a recipient.