



Appeal Decision

Site visit made on 9 September 2024

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

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Appeal Ref: APP/B5480/L/24/3346986

- 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 [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, the Council of the London Borough of Havering ('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 initially served on 21 November 2023 and again on 11 June 2024.
- The revised DN was issued on 21 August 2024 and the deemed commencement date stated is 14 May 2024.
- The total amount payable is £ [REDACTED].

Decision

1. The appeal is dismissed.

Reasons

2. The Council, as the CA, adopted its charging schedule and it became effective in September 2019. A planning permission for residential development of this kind is subject to the levy unless it is exempt.
3. The appeal site is situated adjacent to a residential property. It comprised a bungalow. On 25 August 2023, planning permission was granted by the local planning authority ("the LPA") for the extension and alteration of the bungalow. The description of development is clear and unambiguous¹. In November, the appellant submitted a commencement notice pursuant to CIL Regs 67(1) and, following grant of an exemption as residential extension on 21 November 2023, commenced work. The development was zero-rated.
4. As work progressed on site it became apparent to the LPA that the existing bungalow had been substantially demolished. The latter was put down to the poor condition of the existing building, which had deteriorated as soon as building work commenced. This is because of structural failure. New foundations and external walls have been constructed. At the time of my site visit, building work had just about reached roof level. Clearly, a new building has been constructed albeit it is yet to be substantially completed.

¹ Permission ref [REDACTED]

5. Given the threat of planning enforcement action, a revised planning application was submitted and subsequently granted on 14 May 2024. The description of the development permitted is stated in my header above and is unambiguous. Knowingly or unwittingly, a materially different scheme is being implemented. To regularise the situation, the 2024 Permission retrospectively authorises material operations comprised in the erection of a new two storey dwelling and not extensions to an existing dwelling. Effectively, the 2024 Permission is retrospective in nature and is for part-retrospective-and-part-prospective development.
6. The difficulty for the appellant is CIL Regs (7). This explains when chargeable development is treated as commenced. The relevant parts clearly say that where development for which planning permission is granted under section 73A of Principal Act², permission for development already carried out, then development is to be treated as commencing on the day planning permission for that development is granted. The deemed commencement date is therefore correct.
7. Much is said about the exemption for residential extension. However, in this case the appellant has lost their exemption from CIL as there was no opportunity to submit a CN for development that is subject to the 2024 Permission: that was the appellant's own making. The combined effect of the regulations is that the exemption from liability to pay CIL for residential extensions is not available where the exempted extension changes after the commencement of chargeable development. That is exactly what has happened in this case. The substantial demolition and subsequent construction of a new dwelling amounts to a change to the exemption extension.

Overall Conclusions

8. On the particular facts and circumstances of this case, and for the reasons given above, I conclude the CA correctly determined the deemed commencement date. The appeal should be dismissed.

A U Ghafoor

Inspector

² The Town and Country Planning Act 1990 as amended.