



Appeal Decision

Site visit made on 30 July 2024

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/T5150/L/24/3345047

- 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 [REDACTED] against a Demand Notice (the 'DN') issued by the Collecting Authority, the Council of the London Borough of Brent ('the CA'), on 22 April 2024.
 - The relevant planning permission to which the CIL relates is [REDACTED].
 - The description of the development is described on the DN as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - A Liability Notice (the 'LN') was served on 26 February 2024. The total amount of CIL payable is £[REDACTED].
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Decision

1. I decline to determine the appeal.

Reasons

2. The planning history of the site is documented and there is little merit in repeating that history here. Additionally, there is extensive background relevant to the administration of CIL, attempt to claim relief and the submission of several commencement notices ("CN"). All this is well documented and rehearsed between the appeal parties: I will not set them out here.
3. Essentially, the CA considers that, when it visited the site back in March 2024, it had discovered the removal of several walls. For example, walls which are shown as existing on the plans and then removed on plans approved by planning permission ref [REDACTED]. I observed that the walls were part of the reception rooms on the ground floor as well as bathrooms at ground and first floor level.
4. On 6 March 2024 the appellant submitted a CN together with an application for residential relief. In the CN, the commencement date given is 4 March 2024. Following a site visit by officers, the CA determined chargeable development had commenced and issued a DN with a deemed commencement date of 4 March 2024.
5. The question is not whether internal works falls within the definition of "development" for the purposes of the 1990 Act. Instead, for CIL Regs purposes, how do we determine if development has commenced?

6. CIL Regs (7) administers when a development commences. Sub-section (2) states 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. CIL sub-section (6) explains "material operation" has the same meaning as in s56(4) of the Town and Country Planning Act 1990 (as amended) (the '1990 Act').
7. For context, s56(1)(a) of the 1990 Act states development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. Sub-section (2) states that, for the purposes of development granted by a planning permission, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Sub-section (4) provides a broad definition of "material operation" and examples: they are just that. While CIL Regs (7)(2) refers to "...any material operation..." the latter should be referable to the chargeable development. The decision-maker applies an objective test, and the intention of a developer is not, necessarily, relevant. The operation relied on must, however, be more than minor.
8. The appellant maintains the internal walls were timber whereas the CA maintain the walls were made of brick construction. Be that as it may, the nature of the work involved in the removal of four walls at ground floor level and three at first floor level suggest some kind of knowledge and experience of building work. At least one of the walls appeared to support the stairs. In addition, existing timber floors have been exposed. I saw that this work affects the dwelling's interior and its make-up and layout. The evidence presented does not show work involved in the creation of a basement, rear extension or loft and dormer window had begun by 4 March 2024.
9. The CA's argument is the work facilitates the implementation of the scheme permitted by planning permission ref [REDACTED]. However, the type and extent of the work could, reasonably, be required in connection with general building work and renovation. In my experience, the nature and scale of the internal works could reasonably be regarded as preparatory and site clearance. In comparison to the approved scheme, the alterations relied on by the CA can be regarded as minor. In my planning judgment, and as a matter of fact and degree, the work relied on by the CA as operations marking the commencement of chargeable development do not amount to "material operations" for the purposes of CIL Regs (7)(2).
10. On the evidence before me, I am satisfied that the identified internal works did not commence the chargeable development, [REDACTED], as claimed by the CA. It follows that the deemed commencement date is incorrect. Since work on the chargeable development has not commenced, I cannot determine a revised commencement date.
11. Having regard to all other matters and the provisions set out under CIL Regs 118(1), there is no power to allow the appeal on the basis that the chargeable development has in fact not commenced.
12. I have therefore declined to determine the appeal under CIL Regs 118(1).

A U Ghafoor

Inspector