The Planning Inspectorate

Appeal Decision

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 21 November 2024

Appeal Ref: APP/D0121/L/24/3350965

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(a) and 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, North Somerset District Council ('the CA'), on 1 August 2024. A Liability Notice (the 'LN') was served on the same date.
- The relevant planning permission to which the CIL relates is [redacted]
- The description of the development is described on the DN is [redacted] The deemed commencement date is 31 July 2024.
- The total amount of CIL payable is £[redacted] including surcharge for a failure to assume liability and submit a commencement notice ('CN').

Decision

1. The appeal is dismissed.

Inspector's Reasons

2. The planning history, including an appeal made under CIL Regs 114 and 115, is well documented and there is little point in repeating that history here. The agent said that this appeal should be determined once the decision by the Valuation Office Agency is issued: well, it has held that a charge of £[redacted] is appropriate. That appeal was dismissed but I note the agent says that decision is under legal scrutiny. Be that as it may, while a relevant factor, the appeal before me turns on its own individual merits. I am not bound by the outcome of the VoA decision, nor do I need to wait for any legal challenge to that decision. So, I will proceed to my decision.

3. The CIL Regs 118 has a bearing on the 117(a) and so I will first assess the former. In that context, I ask this question: has the CA issued a DN with an incorrectly determined deemed commencement date? The material facts are that planning permission was granted by the local planning authority ("the LPA") on 4 August 2015 for the conversion of existing farm buildings to live/work dwelling. However, the development, as built, materially departed from the scheme approved. A non-material amendment application was submitted but subsequently withdrawn because the LPA argued that the amendments were not material. Whether or not the 2015 permission was implemented is a separate planning enforcement matter: it is not a matter for my determination.

4. On 30 November 2023 the LPA granted a certificate certifying as lawful building works in connection with existing building operations but refused to grant a Lawful Development Certificate in respect of the residential use of the building. Following the principles established in the Supreme Court's judgment *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; [2011] JPL 1183, the LPA said that the occupation of the

building as a dwelling began on 22 October 2018. However, it determined that the use had to have been established for a period of 10 years as the building was erected as a dwelling from day one and did not involve a change of use. In the context of CIL, that is highly problematic for the appellant. This is because material operations involved in the erection of the dwelling had already commenced and substantially completed by 2018.

5. Subsequently, planning permission ref [redacted] for the use of the existing building as a dwelling was granted on 31 July 2024. Effectively, this is a retrospective permission granted by the LPA under power found in s73A of the Town and Country Planning Act 1990 (as amended) ("the Act"). I appreciate the appellant's concerns about not being made aware of the potential CIL consequences. Arguably, it is good practice to inform the applicant of the potential consequences where a retrospective planning application is invited and approved, especially if it is for chargeable development. Be that as it may, the appellant is squarely at fault here: the situation they find themselves in is their own making. They obtained retrospective permission to use the building as a dwellinghouse: that kind of development is CIL chargeable.

6. The difficulty for the appellant is the operation of 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 s73A of the Act, permission for development already carried out, then development is to be treated as commencing on the day planning permission for that development is granted. So, contrary to the CIL Regs, a valid CN could not have been submitted no later than the day before the day on which the chargeable development is to be commenced as required by CIL Regs 67(1). This is problematic and a flagrant breach of the CIL Regs. In such circumstances, the CA had to work out a deemed commencement date and, applying CIL Regs 7 sub-section (5), came to the right deemed commencement date. The CIL Regs 118 ground of appeal must fail.

7. A CA may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if nobody has assumed liability to pay CIL in respect of the chargeable development; and the latter has been commenced. Similarly, CIL Regs 83 grants discretionary power to impose a surcharge where there is a failure to serve a CN. Having regard to CIL Regs 31, the service of a valid LN is not dependent on the submission of a form assuming liability. In a similar vein, assumption of liability is not conditional on service of a LN.

8. Being professionally represented, the appellant could, and, arguably, should have made enquiries as to any CIL liability before the retrospective planning application was approved by the LPA. Similarly, by applying retrospectively to regularise the land use via a planning application there was, effectively, no opportunity to submit a CN as material operations had already commenced. Therefore, the breach which led to the imposition of the two surcharges did occur and the CIL Regs 117(a) ground is bound to fail.

A U Ghafoor

Inspector