



Appeal Decisions

Site Visit held on 30 October 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th November 2025

Appeal Ref: APP/X0360/L/24/3358149

- The appeal is made under Section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended) ("CIL 2010").
- The appeal is made by [REDACTED] against a Demand Notice ("DN") issued by the Collecting Authority ("CA"), Wokingham Borough Council.
- The relevant planning permission to which the Community Infrastructure Levy ("CIL") relates is [REDACTED].
- The description of the development is described on the DN as [REDACTED].
[REDACTED]
[REDACTED]."
- A Liability Notice ("LN") was served on 22 December 2021. The amount payable is [REDACTED].
- The DN was issued on 27 November 2024. A total surcharge of [REDACTED] was imposed for failure to assume liability and failure to submit a Commencement Notice ("CN") on the CA. The total amount payable is [REDACTED].
- The intended or deemed commencement date given in the DN is 12 July 2024.

Decision

1. It is directed that the Demand Notice be corrected by the substitution of "30 November 2022" for "12 July 2024" as the deemed commencement of development date. Subject to this correction, the appeal is dismissed.

Preliminary Matters

2. CIL is payable on the date that a chargeable development is commenced. 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. Material operation has the same meaning as in section 56(4) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
3. Chargeable development is "*the development for which planning permission is granted*"¹. Where planning permission is granted under section 73 of the 1990 Act, the chargeable development is the most recently commenced or re-commenced chargeable development².
4. An application under section 73 of the 1990 Act seeks permission to develop land for the same operative development without compliance with conditions previously attached. For a section 73 application to be valid, there must be an extant planning permission in place which has conditions requiring variation or removal. If a section 73 application is successful, a further planning permission will be granted for the development. Either planning permission can then be built out.

¹ Regulation 9 (1) of The Community Infrastructure Levy Regulations 2010

² Regulation 9 (6) of The Community Infrastructure Levy Regulations 2010

5. An application made under section 73A of the 1990 Act however seeks planning permission for development already carried out. This can apply to development carried out without planning permission, where permission was granted for a limited period, or where the development does not comply with some condition to which planning permission was granted. In these circumstances, regulation 7. (5) (a) of CIL 2010 confirms that development is to be treated as having been commenced on the day planning permission is granted.
6. Several legal authorities have been brought to my attention. I will have regard to these where relevant to my deliberations.

Background

7. Planning permission was granted on 9 December 2021 for the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].” This development has the planning application reference number [REDACTED].
8. An LN dated 22 December 2021 was issued to the appellant via email. The LN confirms the appellant is liable to pay the identified amount on commencement of [REDACTED]. The LN confirms that the chargeable development has a floor area of 108.32 square metres. The LN also sets out the appellant’s notification responsibilities. While the LN does not specifically advise the appellant that the development could be exempt from paying CIL, it does provide a link to the Planning Portal where relief, exemptions and phased credits are explained.
9. The appellant’s email to the CA dated 14 July 2024 confirms that “*The actual build work started 18-20 months ago...*”. The email also states the hip to gable loft conversion to create habitable accommodation with rear dormer has not been started. The email does not refer to any deviation from the [REDACTED] planning permission in respect of erecting the single storey extension.
10. An application under section 73 of the 1990 Act, for the removal or variation of a condition following the grant of planning permission, is dated 24 December 2024. The application form confirms that it relates to the variation of condition 2, the approved plans condition, of planning permission [REDACTED]. There can therefore be no dispute that [REDACTED] remained extant at that time. Further, the application form confirms the development was started on 30 November 2022 and that it has not been completed.
11. The plans accompanying the section 73 application show the single storey side/rear extension to have the same footprint as the development granted by planning permission [REDACTED] but different fenestration details. The section 73 application³ also provides for the loft conversion and rear dormer element of the development to be completed at some future date, which is referred to as phasing the development.
12. The appellant’s evidence all points to planning permission [REDACTED] having been implemented and a section 73 application having been made to vary that

³ Council reference number 243237

development as opposed to a section 73A application having been made to retain what has been built. This matter is somewhat academic as application reference [REDACTED] has not been determined by the Council, nor have I been advised that an appeal against non-determination has been made. In the absence of any evidence to the contrary, the only relevant planning permission remains [REDACTED] and I shall proceed on that basis.

Regulation 117(a)

13. An appeal under this regulation is that the claimed breach which led to the imposition of the surcharges did not occur. It is the appellant's case that planning permission [REDACTED] has not been commenced as a different development has been carried out. That different development is the subject of application [REDACTED].
14. Having regard to section 56 (4) of the 1990 Act, development is deemed to have commenced when any of the following have occurred:
 - (a) any work of construction in the course of the erection of a building;
 - (b) any work of demolition of a building; or
 - (c) the digging of a trench which is to contain foundations, or part of the foundations, of a building.
15. The appellant's evidence confirms that works commenced on a single storey side/rear extension some 18 to 20 months before the CA contacted them in July 2024. It would be reasonable therefore to find the development had commenced sometime between November 2022 and January 2023. This is corroborated by the section 73 application form, which states the development commenced on 30 November 2022.
16. From the description of development, planning permission [REDACTED] includes the demolition of a shed and single storey extension. These have clearly been demolished to make way for the development. From a visual comparison of the approved plan DRG.03A and the section 73 plan 175/100 rev B [REDACTED] [REDACTED] there is no difference in the siting or footprint of the single storey extension element of the development. It would therefore be reasonable to assume that foundation trenches, or parts of them, required for the development as granted by [REDACTED] are the same as what has been constructed for the as built development. Development as defined by section 56 (4) of the 1990 Act has therefore commenced.
17. There has been a deviation from the granted planning permission in relation to door and window positions and styles of openings, as well as the internal layout. This of itself does not however show that the development was not commenced in accordance with the approved plans. The appellant has also provided no evidence to show when the deviation from the approved plans occurred.
18. Taking the above factors together, I find it more likely than not that the development commenced in accordance with [REDACTED] and that deviation from the approved plans occurred at some later point in the build process. I acknowledge that a chargeable development can be commenced and halted, while work on a different chargeable development is granted planning permission and commenced (Regulation 9. (6) of CIL 2010). However, planning permission for a different chargeable development has not been granted in this case.

19. The submission of the section 73 application and the clear deviations in the external appearance and internal configuration of the single storey extension do not change my findings that the development granted planning permission by [REDACTED] was commenced. The judgement of [REDACTED] does not therefore apply.
20. For these reasons, the appeal under section 117(a) fails.

Regulation 118

21. As I have found that planning permission [REDACTED] has been commenced, the appeal under regulation 118 falls to be considered. An appeal under this regulation is that the CA has incorrectly determined the commencement date.
22. The appellant did not submit a CN to the CA before commencing works. The CA became aware that works had commenced in respect of the chargeable development in July 2024 following monitoring checks. The CA has used the date they brought the failure to pay CIL to the appellant's attention as the deemed commencement date.
23. There is no doubt that the chargeable development had commenced before 12 July 2024. Having regard to the appellant's email of 14 July 2024 and the section 73 application form, the deemed commencement date would be more accurately identified as 30 November 2022.
24. The appeal under regulation 118 succeeds in so far as I shall correct the deemed commencement date.

Other matters

25. The appellant is correct that a section 73 application cannot change the operative part of a planning permission and therefore it would be impossible for such an application to secure planning permission for the 'as built' development without also providing for the hip to gable loft conversion and rear dormer. A section 73A application for only the as built development would not however have the same constraint applied.
26. Regulation 42A of the CIL 2010 sets out the circumstances under which residential extensions would be exempt from paying CIL. There is no size threshold specified in regulation 42A. From the information available, it seems likely that this chargeable development could have qualified for an exemption. Regulation 42B however makes it clear that, for a person to benefit from the exemption, they must submit a claim to the CA before the commencement of the chargeable development. I have not been made aware of any such exemption being claimed or made.

Overall Conclusion

27. For the reasons given above, subject to the correction of the deemed commencement date in the Demand Notice, I conclude the appeal should not succeed.

M Madge

INSPECTOR