



Appeal Decisions

Site Visit held on 27 October 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2026

Appeal A: APP/G1630/L/24/3354481

- The appeal is made under Section 218 of the Planning Act 2008 and Regulations 117(1)(a), 117(1)(c) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL 2010").
- The appeal is made by [REDACTED] against a Demand Notice ("DN") issued by the Collecting Authority ("CA"), Tewkesbury 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]".
- A Liability Notice ("LN") was served on 30 September 2024. The total amount payable is [REDACTED].
- A DN was issued on 30 September 2024. A total surcharge of [REDACTED] was imposed for failure to assume liability and failure to submit a Commencement Notice on the CA. The total amount payable is [REDACTED].
- The intended or deemed commencement date given in the DN is 15 August 2024.

Appeal B: APP/G1630/L/25/3362637

- The appeal is made under Section 218 of the Planning Act 2008 and Regulations 117(1)(a), 117(1)(b) and 118 of the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL 2010").
- The appeal is made by [REDACTED] against a Demand Notice ("DN") issued by the Collecting Authority ("CA"), Tewkesbury 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].
- A Liability Notice ("LN") was served on 10 January 2025. The total amount of CIL payable is [REDACTED].
- A second Liability Notice ("LN2") was issued on 14 February 2025. The total amount of CIL payable is [REDACTED].
- A DN was issued on 14 February 2025. A surcharge of [REDACTED] was imposed for a for failure to serve a Commencement Notice on the CA. The total amount payable is [REDACTED].
- The intended or deemed commencement date given in the DN is 31 January 2025.

Summary of Decision: The regulation 117(b) and 118 appeals succeed, the surcharge is quashed, and the deemed commencement date is corrected.

Applications for costs

1. Applications for costs were made by [REDACTED] against Tewkesbury Borough Council in respect of Appeals A and B. These applications are the subject of a separate Decision.

Preliminary Matters and Background

2. The chargeable development is the development for which planning permission has been granted. A development becomes liable to pay the community infrastructure levy (CIL) from 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. Section 73 of the 1990 Act provides for carrying out development without complying with a condition that has been imposed on a planning permission. Providing the planning permission remains extant, it does not matter whether it has been implemented or not, only that the condition to be removed or varied has not been breached. In applications of this type, the operational part of the development remains the same. The result of an application under section 73 is the grant of a new planning permission. In such cases, the chargeable development is the most recently commenced (or re-commenced) chargeable development.
4. Section 73A of the 1990 Act grants planning permission for development carried out before the date of an application for that development. Where planning permission is granted for the development under section 73A, the development is treated as commencing on the day planning permission is granted or modified.
5. There are four planning permissions and two discharge of condition approvals relating to the development of the appeal land. Some of the documentation relating to these approvals/permissions is clearly inaccurate. Following my request, copies of the approved plans for the four relevant planning permissions were provided, along with written confirmation from the appellant of when the agricultural buildings were demolished and works on the various plots began.
6. Unfortunately, identifying which of the four planning permissions has been commenced is not immediately obvious. Based on the information and documents provided the timeline of development, as I understand it, and what I saw when I visited the site, I have set out below my conclusions on which planning permission(s) have been commenced.
7. The original application was for "[REDACTED]
[REDACTED]" and this is the operative part of the planning permission granted on 25 September 2020¹ ("the 2019 PA"). This planning permission was the subject of two pre-commencement conditions, (no.s 4 (site levels) and 10 (tree protection measures)), a no above ground development condition (no. 11 (drainage)), and a no above slab level development condition (no. 3 (external materials)).
8. No applications to discharge the four conditions referred to in paragraph 7 were made before an application for the "[REDACTED]
[REDACTED]" was made. That application was made under section 73 of the 1990 Act and was granted on 18 March 2021 ("the 2020 PA"). Similar conditions to those imposed on the 2019 PA were imposed on the 2020 PA, including the two pre-commencement

¹ Application reference 19/00957/FUL

conditions, (no.s 4 (site levels) and 10 (tree protection measures)), the no above ground development condition (no. 11 (drainage)), and the no above slab level development condition (no. 3 (external materials)).

9. On the 18 March 2021 there were therefore two planning permissions for the development of the land, either of which could be lawfully implemented once the pre-commencement conditions were discharged. A discharge of condition application relating to conditions 4, 10 and 11 of the 2020 PA was made on 24 April 2023² ("the 23 DoC"). While the Council's letter approving these details is undated, it would be reasonable to conclude that their approval was given on or shortly after the 22 June 2023 as details received on that date are referenced therein.
10. Section 56 of the 1990 Act³ sets out the circumstances when development will be deemed to have begun. For the purposes of the development permitted on the appeal land, this would be the earliest date on which any material operation comprised in the development begins to be carried out. Section 56 (4) (aa) confirms material operation includes any work of demolition of a building.
11. Given the operative part of the planning permissions, it would not be unreasonable to conclude that the demolition of agricultural buildings commenced the development for which planning permission had been granted. While I have not been provided with a specific date of when the demolition occurred, the appellant asserts that the agricultural buildings had been demolished prior to their purchase of the land, which is specified as 12 April 2024.
12. Prior to April 2024 the pre-commencement conditions had only been discharged in relation to the 2020 PA. It would therefore be reasonable to conclude that it is the 2020 PA which was lawfully commenced. As the developments approved under the 2019 PA and the 2020 PA overlap one another, it would not be possible to commence both. Therefore, in accordance with relevant legal authorities, once [REDACTED] had lawfully commenced, it rendered the 2019 PA unimplementable. I shall proceed on this basis.
13. The second discharge of condition application, relating to no. 3 (external materials), was submitted on 9 May 2024⁴ ("the 24 DoC"), after the 2020 PA had been implemented. The appellant's claim that works started on plot 4 in May 2024, and on plots 1 and 3 in June 2024 is not disputed. It seems to me, more likely than not, that the external materials details, to comply with condition 3, were submitted for approval in advance of above slab work being started.
14. Unlike the 23 DoC, the 24 DoC identifies "*planning application ref number* [REDACTED] rather than the 2020 PA. While no explanation is given for this discrepancy, as the 2019 PA is unimplementable by this date, it would not be unreasonable to conclude that the 2019 PA was identified in error. Regardless, the Council approved the schedule of external facing materials and there is no suggestion that the external materials utilised are not those that were approved on 7 June 2024.

² Application reference 23/00044/CONDIS

³ Town and Country Planning Act 1990 as amended

⁴ Application reference 24/00072/CONDIS

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15. The second application⁵ to vary the plans condition (no. 2) was submitted on 7 July 2024 and granted on 15 August 2024 (“the AUG24 PA”). This references the 2019 PA and refers to the development being “(*Part Retrospective*)”, this cannot be correct as the 2020 PA had been implemented, not the 2019 PA. Furthermore, conditions imposed on the AUG24 PA do not correctly identify approved plan numbers that had been commenced in respect of plot 3, or details approved by the 23 DoC in relation to condition no.s 4, 10 and 11.
 16. The Council initially considered that the AUG24 PA represented a grant of planning permission under section 73A of the 1990 Act. The CA therefore issued the LN, DN, DCN and DLN all on the same date, identifying the deemed commencement date as the 15 August 2024, the planning permission date.
 17. The CA has since conceded that the AUG24 PA is in fact a section 73 application. The appellant contends they have not implemented this planning permission as it incorrectly cites the 2019 PA and identifies incorrect plans. Given the ambiguity associated with the AUG24 PA, and in the absence of any substantive evidence to the contrary, I agree with the appellant that the AUG24 PA has not been commenced.
 18. Furthermore, the CA accepts the liability calculation, cited in Appeal A documentation, is incorrect and indicate the subsequent notices shall be reviewed⁶. I have no information as to what progress, if any, has been made in respect of the corrected calculation or the review of the notices. Appeal A therefore remains before me for consideration.
 19. The fourth application⁷, to vary the plans condition (no. 2), was submitted on 4 November 2024 and granted on 23 December 2024 (“the DEC24 PA”). While this correctly references the 2020 PA, conditions 4, 10 and 11 incorrectly reference the 24 DoC. There is however no dispute that the DEC24 PA is a grant of planning permission under section 73 of the 1990 Act.

Appeal A

20. This appeal relates to notices issued in relation to chargeable development granted planning permission by the AUG24 PA. The grounds of appeal include that the breach which lead to the surcharge did not occur. However, if it did occur, the surcharge has been calculated incorrectly. Furthermore, the deemed commencement date has been incorrectly identified.
21. The CA has conceded that they incorrectly identified the AUG24 PA to have been granted under section 73A of the 1990 Act. As such the deemed commencement date in the DN is incorrect. No alternative commencement date for the AUG24 PA has been suggested, however, given my findings above (paragraphs 17 to 19), the chargeable development granted by the AUG24 PA cannot be lawfully commenced.
22. For the above reasons, I therefore decline to determine Appeal A.

⁵ Application reference 24/00515/FUL

⁶ CA letter dated 23 October 2024

⁷ Application reference 24/00922/FUL

Appeal B

23. This appeal relates to notices issued in relation to chargeable development granted planning permission by the DEC24 PA. Appeals under regulation 117 are against the CA's imposition of a surcharge. My jurisdiction in this regard does not extend to quashing a liability notice only, if appropriate, quashing an associated surcharge that has been imposed.
24. The grounds of appeal include that the breach which lead to the surcharge did not occur (117(a)). However, if it did occur, the CA failed to serve a valid liability notice in respect of the development to which the surcharge relates (117(b)). Furthermore, the deemed commencement date has been incorrectly identified (118). Given the nature of these grounds, it is appropriate for me to deal with the regulation 117(b) appeal first.

Regulation 117(b) appeal

25. In accordance with regulation 65, the LN served on 10 January 2025 was issued as soon as practicable after the date upon which planning permission first permits development. A revised LN was served on 14 February 2025. The LNs take the prescribed form; they include a description of the chargeable development; they state the date upon which they were issued and state the chargeable amounts. No claim has been made that any exemption or social housing relief is applicable in this case.
26. The only area of conflict is whether regulation 65(2)(g) has been met in respect of the LNs *"contain[ing] the other information specified in the form."* That information includes details of the *"Recipients of this notice who are potentially liable to pay CIL:"* and details of who *"This notice has also be [sic] copied to the following recipients:"*. [REDACTED] is identified as the recipient of the notice as a liable party and landowner. Neither the LN nor the revised LN specify that they have been copied to any other recipient.
27. Regulation 65(3) states the CA must [my emphasis] serve the LN on – (a) the relevant person; (b) if a person has assumed liability to pay CIL in respect of the chargeable development, that person; and (c) each person known to the authority as an owner of the relevant land. For the purposes of regulation 65(3)(a), the relevant person is *"the person who applied for planning permission"*, namely [REDACTED] of [REDACTED]. As already established neither LN states they have been served on or copied to [REDACTED] of [REDACTED].
28. The CA contend that the relevant person has been served as [REDACTED] and their agent for the purposes of the planning application, [REDACTED], were copied into an email addressed to [REDACTED] dated 10 January 2025. There is however nothing in the copy of that email which I have been provided with to suggest that the LN attached to it is being served on [REDACTED] in accordance with regulation 65(3).
29. As [REDACTED] are not specifically identified as being served in the LN and/or the CA's email of 10 January 2025 I find that the relevant person has not been served in accordance with regulation 65(3) in relation to the chargeable development granted by the DEC24 PA.

Conclusion on regulation 117(b)

30. For the reasons given above, the appeal under regulation 117(b) succeeds. The appeal under regulation 117(a) does not therefore fall to be considered.

Regulation 118 appeal

31. An appeal under this regulation is that the CA has incorrectly determined the commencement date.
32. Regardless of whether the CN submitted by [REDACTED] is valid, it states that development would commence on 29 January 2025. The CA's representative was told during a site visit made on 31 January 2025 that development in respect of the DEC24 PA had commenced on 30 January 2025. It would not be unreasonable to conclude that the CA's representative saw that works on the chargeable development granted by the DEC24 PA had commenced during their site visit.
33. While a further CN was submitted by [REDACTED] on 30 January 2025, which states that works to commence the DEC24 PA would take place on 3 February 2025, this contradicts the first CN submitted by the builder and what the CA's representative was told during their site visit. On the balance of probabilities, I find it more likely than not that works in respect of the DEC24 PA chargeable development were commenced on 30 January 2025.
34. For the reason given above, I find the deemed commencement date specified on the DN, being 31 January 2025, is incorrect. The regulation 118 appeal succeeds in so far as I shall correct the deemed commencement date.

Formal Decision on Appeal B

35. The appeal under regulation 117(b) is allowed and the surcharge of [REDACTED] is quashed.
36. It is directed that the Demand Notice be corrected by the deletion of the deemed commencement date of "31 January 2025" and its substitution of the date "30 January 2025". Subject to this correction, the appeal under regulation 118 is dismissed.

M Madge

INSPECTOR