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## Appeal Decision

No Site Visit

by **Mrs Hilda Higenbottam BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10<sup>th</sup> April 2026

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### Appeal Ref: APP/R3650/L/25/3370585

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 117(a) and 118 of the Community Infrastructure Levy Regulations 2010.
- The appeal is made by [REDACTED] against a Demand Notice issued by Waverley Borough Council (the Charging Authority (CA)).
- A Liability Notice (LN) was served on 4 June 2021.
- A Demand Notice (DN) was served on 15 October 2025<sup>1</sup>.
- The chargeable development to which the LN and DN relates is [REDACTED]

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### Decision

1. In relation to the Regulation 117(1)(a) appeal it is allowed and the surcharges of [REDACTED] are quashed.
2. In relation to the Regulation 118 appeal it has been declined to be determined because it does not come within the scope of the regulations.

### Preliminary Matters

3. Matters relating to the calculated chargeable amount are not within my remit. The Valuation Office Agency decision in relation to the Regulation 114 appeal has been provided to me.
4. I note that representations have been made in relation to the Liability Notices. However, no regulation 117(1)(b) appeal has been lodged.
5. The appellant states that the Residential Extension Exemption application and admission of liability should be validated. However, this is not a matter over which I have authority and is a matter for the charging authority.
6. Planning permission [REDACTED] granted consent for the conversion and sub division of Upper Ifold House. The parties have referred to the elements as Upper Ifold House, Upper Ifold Cottage and The Cottage. It is not clear within each reference whether Upper Ifold Cottage and The Cottage are always the same or include the whole of the area granted planning permission under

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<sup>1</sup> A Demand Notice was issued on 4 June 2021 which ceased to have effect when the Charging Authority served the Demand Notice on 15 October 2025 in accordance with Regulation 69(5).

<sup>2</sup> The description of development in the planning application form was stated as 'Change of use of part of dwelling to provide an independent dwelling known as "The Cottage" together with alterations to elevations. And Listed building consent for internal and external alterations to "the Cottage".'

██████████. The plans in the Eastern Planning Committee 14 April 2021 Officer's Report and Update Sheet for the planning application show that it was proposed to do alterations internally on the ground floor and the first floor including walls, a staircase, and redefining spaces within the envelope of the building. I will therefore refer to the area the subject of the planning permission, which is permitted to be converted into a self-contained dwelling, as the chargeable development area.

### Appeal under Regulation 118

7. An appeal under Regulation 118 is that the collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.
8. The application form for planning application reference ██████████ records at section 4 'No' to the question '*Has the development or work already been started without consent?*'
9. At section 30 of the planning application form the declaration is confirmed, which states '*I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.*'
10. In the Officer's Report for planning application reference ██████████ the development is described as proposed conversion (paragraph 1). It is recorded that the northern most part of ██████████ is in use as an annex. Whilst the report records that extended family currently occupies the site, the applicant had sought to argue that its use represented an independent dwelling at that time. The Officer's Report however assessed the development as a proposal and not as an application seeking retrospective consent. Furthermore, the planning permission records that planning permission is granted subject to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended). The effect of section 91 is that the development for which permission is hereby granted shall be begun not later than the expiration of three years beginning with the date of this permission. This would not be appropriate on a retrospective permission.
11. I also note that pre-commencement conditions were imposed on the planning permission reference ██████████ 4. These related to 'Construction Logistics Plan' and 'Tree Protective Measures.' There is no information from either party on whether these have been discharged. However, pre-commencement conditions are also not appropriate when retrospective planning permission is granted.
12. The plans included in the Eastern Planning Committee 14 April 2021 Officer's Report and Update Sheet for application reference ██████████ 4 show internal and external changes to the building. There is no substantiated evidence that any of these internal and external changes have been carried out to create the new self-contained dwelling granted permission.
13. The appellant confirmed that from May 1999 until January 2012 and from 2018 until the appeal was lodged The Cottage has been used as an annex. The Officer's Report records this. I do note that before the appellant acquired the

property "The Cottage" had been let to third parties. The Planning Enforcement Officer of Waverley Borough Council confirmed, in an email dated 1 November 2013, that an alleged separation of the property, at that time, on the balance of probability, had not taken place. The enforcement file was closed accordingly.

14. The CA reference inventory reports for 2013, 2015 and 2017 which show photographs of rooms and meter readings. A photograph is stated to confirm physical separation of The Cottage and Upper Ifold. This was prior to the submission of the planning application. I note that Council Tax data shows it was paid by a different party for The Cottage. All this evidence was sent to Waverley Borough Council for planning application [REDACTED] and prior to it being determined. All this evidence shows is that there has been an annex at this site which has been let independently. There is however, no substantiated evidence that this was the chargeable development area.
15. I note that Appendix 17 is a representation stating that the person has lived in Upper Ifold Cottage independently for three years since 2018 with their family, with a wall division separating the two dwellings, payment of their own council tax and separate bins. There is no substantiated evidence that this was the chargeable development area as permitted by planning permission [REDACTED]
16. Appendix 26 and 29 includes correspondence with the appellant explaining physical separation between The Cottage and Upper Ifold had taken place some time ago. However, the chargeable development area permitted by planning permission [REDACTED] shows proposed internal alterations to rooms including additional walls, which would alter what existed.

*Has the development commenced?*

17. Regulation 7(2) explains 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. Regulation 7(6) explains that 'material operation' has the same meaning as section 56(4) of the Town and Country Planning Act 1990 (the Act).
18. Section 56(2) of the Act states that development is taken to have begun on the earliest date on which any 'material operation' comprised in the development begins to be carried out. Material operations are defined under subsection 4 and constitute, in the main, forms of operational development except for paragraph (e) which includes any change in the use of any land where the change constitutes material development.
19. The CA refer to planning permission for the relevant development being granted retrospectively under section 73A of the Town and Country Planning Act (as amended) (the 1990 Act). Section 73A 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
20. I note the further update sheet commentary and the use of the term regularise in the Officer's Report. However, I have set out above from the application form, the Officer's report, and the actual planning permission document all the

evidence that demonstrates that what was granted was for future development and not retrospective permission.

21. The Cottage appears to have been separated by a wall for many years from Upper Ifold. However, that is not demonstrated to have been a material operation in relation to planning permission [REDACTED].
22. The appellant explained in evidence ownership matters of The Cottage. However, ownership does not demonstrate that a material operation has taken place. The appellant has confirmed that the current use of The Cottage is as an extension of the main house occupied by the same family.
23. In my view, planning permission was granted under reference [REDACTED] for a proposed development, subject to a three year time limit for implementation and subject to pre-commencement conditions. The planning permission was not granted under section 73A of the Act.
24. On the balance of probabilities, on the evidence before me, I consider that there has not been a material operation pursuant to planning permission reference [REDACTED]. Therefore, I find that the chargeable development had not commenced on the date the CA stated in the DN.

#### *Conclusion*

25. It therefore follows that the chargeable development has not commenced, as a matter of fact. However, there is no power to decide, under Regulation 118, that the development has not in fact commenced. I therefore decline to determine the appeal under Regulation 118 because it does not come within the scope of the regulations.

#### **Appeal under Regulation 117(1)(a)**

26. An appeal under Regulation 117(1)(a) is that the claimed breach which led to the surcharge did not occur.
27. The surcharges which have been imposed relate to a failure of [REDACTED] and [REDACTED] to assume liability and a failure to submit a notice of commencement.
28. In relation to both surcharges the CA's position is that the development was permitted retrospectively, and the surcharges are correctly imposed.
29. In the light of my finding that the chargeable development has not been commenced, the appeal under Regulation 117(1)(a) succeeds and the appeal is allowed and the surcharges are quashed.

*Hilda Higenbottam*

INSPECTOR