



Appeal Decisions

No Site Visit

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th September 2026

Appeal Reference: APP/R3650/L/25/3365773

- The appeal is made under Section 218 of the Planning Act 2008 and Regulations 117(1)(a) and 117(1)(b) 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"), Waverley 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 9 October 2020. The total amount payable is [REDACTED].
- A DN was issued on 16 April 2025. A total surcharge of [REDACTED] was imposed for failure to assume liability, failure to submit a Commencement Notice, and for three late payments (30 days, 6 months and 12 months). In addition, late payment interest is imposed at a total of [REDACTED]. The total amount payable is [REDACTED].
- The intended or deemed commencement date given in the DN is 16 September 2020.

Decision

1. The appeal is allowed and the total surcharge of [REDACTED] is quashed.

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. For CIL purposes, '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. There are two planning permissions relating to the development of the relevant land. The first, application reference [REDACTED] was for the erection of a dwelling following the demolition of a garage block. This was the subject of several conditions, including one that identified the approved plans. The appellant does not dispute that this planning permission was commenced.
4. There is also no dispute that the first application, granted planning permission on 25 September 2018, was not CIL liable as the Council did not adopt its charging schedule until 1 March 2019.
5. Following an enforcement investigation that found the dwelling was being erected taller than approved, I am told the second application was made for [REDACTED]

████████████████████ This was granted planning permission on 16 September 2020, subject to conditions that regularised the increased height of the dwelling and reiterated other details approved under planning permission reference ██████████

6. Section 73A of the 1990 Act grants planning permission for development carried out [my emphasis] before the date of an application for that development. This can be applied to development carried out without planning permission, planning permission granted for a limited period or without complying with some condition subject to which planning permission was granted.
7. It is the appellant's contention that the second planning application was made under s73 of the 1990 Act. This provides for the development of land without complying with conditions subject to which a previous planning permission was granted. In applications of this type, the operational part of the development remains the same, and providing the planning permission remains extant, it does not matter whether it has been implemented or not.
8. The form, from which the description of development should be taken, for the second application states it is for "*removal or variation of a condition following grant of planning permission*" and "████████████████████
████████████████████
████████████████████". The application form also states that the development was commenced on 2 March 2020 and, most importantly, that it has not been completed. The development carried out at the time of the second application was not therefore the dwelling for which planning permission was being sought.
9. Furthermore, the officer report for ██████████ confirms that the first application had been implemented (or in other words commenced), and that the development was on-going as the officer states, "*the site is currently being developed and is a construction site at present*". It would be reasonable to conclude from this that the dwelling had not been completed at this time, and given the conditions imposed, it was far from nearing substantial completion.
10. From the evidence before me, the development carried out at the date of the second application was made consisted of the erection of a steel frame, and not a dwelling. An application made under s73A would regularise what had been carried out, namely the erection of the steel frame.
11. Taking all the above factors together, I find it more likely than not that the second application for planning permission was made under s73 of the 1990 Act, and not s73A as specified in the Council's decision notice. The result of an application under s73 is the grant of a new planning permission for the same development as previously described but subject to different conditions. This is a new planning permission.
12. Where planning permission is granted for development under s73, the development is deemed as commencing on the most recently commenced (or recommenced) date. In this case, the development to erect the dwelling approved by the second planning permission would be recommenced as it is not in dispute that the development had already commenced. I have not however been provided with

¹ Description taken from the Council's Decision Notice dated 16 September 2020

² Application Form dated 10 July 2020 provided by the appellant and CA

evidence to show whether the development granted by the second planning permission has been recommenced, and if it has, on what date that recommencement occurred.

13. The appellant argues that a CIL exemption can be applied to developments of less than 100 square metres and as the habitable area of the development “*spanned 93.3 square metres*” it would not qualify for CIL liability. The LN however states the development measures 104.49 square metres. Regardless of the conflicting measurements, the claimed exemption is set out in r42(1) of the CIL 2010, and it is confirmed at r42(2) that this exemption does not apply where the development will comprise one or more dwellings. It is not therefore applicable to this chargeable development, which is for a single dwelling.
14. I have no power under r65(7) of the CIL 2010 to withdraw the CA’s LN.

Reasons

15. This appeal relates to notices issued in relation to chargeable development granted planning permission by [REDACTED]. Appeals made under r117 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.
16. The grounds of appeal include that the breach which led to the surcharge did not occur (r117(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 (r117(b)). Given the nature of these grounds, it is appropriate for me to deal with the regulation r117(b) appeal first.

Regulation 117(b) appeal

17. The CA issued an LN to [REDACTED] on 5 October 2020. The CA were notified by email dated 6 October 2020 that [REDACTED] had sold the property to [REDACTED] in January 2020. The CA issued a replacement LN on 9 October 2020 to [REDACTED]
[REDACTED] This is the same address as the appellant has provided in the appeal form. A copy of the LN was also emailed to [REDACTED] and to [REDACTED]’ on 9 October 2020. There is no dispute that the LN meets the criteria set out in r65(1) and (2).
18. R65(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. R65(12) identifies the ‘relevant person’ as the person who submitted a notice of chargeable development, the person who applied for planning permission or the person who applied for approval to discharge a condition on a planning permission requiring further approval. R4(1) confirms ‘owner’ to mean the person who owns a material interest in the land.
19. It is not uncommon for liability for chargeable development not to be assumed by a person. The relevant person may also be the owner of the relevant land. As such, I find it unlikely that the CA must serve an LN on all three persons identified in r65(3) in every case. This matter is not however determinative in this case.

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20. In terms of service of the LN, the CA has relied on information provided by a third party to identify the owner of the relevant land and to provide contact address and email details. [REDACTED] is the address given on the appeal form, so it could be the owner's principal office. Further, the CA's evidence does show that [REDACTED] was the secretary of [REDACTED] at the time the LN was served. While this would seem to suggest the LN was served, I need to determine whether this accords with the legal requirements of service set out in the CIL 2010.
21. R126(1)(e) of the CIL 2010 confirms that CIL documents can be served electronically when an address for service of electronic communications has been given by that person. The CA has produced no evidence to show that they had been given permission to serve documents by electronic communication. The appellant has confirmed they received the CA's email of 9 October 2020 containing the LN, however they also confirm that they gave no permission for communications to be issued electronically. In the absence of permission being given to the CA to carryout electronic communications, I find the service of the LN by email dated 9 October 2020 was not lawful having regard to r126(1)(e).
22. R126(1)(f) of the 2010 CIL 2010 confirms that documents can be sent by post, addressed to the secretary or clerk of the company at their registered or principal office. Where a document is sent by post, but not recorded delivery, it is usual for a 'Certificate of Service' to be provided. Such a certificate would confirm the names, addresses, document(s), method of delivery, date and time, and be verified by the signature of the person who carried out the service. The CA has produced a screen shot listing communications/actions that have occurred in relation to this matter. The entries include reference to the LN being posted to [REDACTED] on 9 October 2020 and the initials 'MN'. This one line entry lacks the detailed confirmation presented in a Certificate of Service. I therefore find the CA has not demonstrated with sufficient precision that the LN was lawfully served by post having regard to r126(1)(f).
23. Based on the evidence available to me, the CA has failed to demonstrate, on the balance of probabilities, that the LN dated 9 October 2020 was served in accordance with r65(3) and r126 of the CIL 2010.

Conclusion

24. For these reasons, I conclude the CA did not serve a liability notice in respect of the chargeable development to which the surcharges relate and the appeal under r117(b) succeeds. I shall quash the surcharges.
25. In this circumstance, the appeal under r117(a) does not fall to be considered.

M Madge

INSPECTOR