Planning Inspectorate

Appeal Decision

No Site Visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2026

Appeal Ref: APP/U1105/L/25/3369140

[redacted]

- The appeal is made under The Planning Act 2008 Section 218 and Regulations 117 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, East Devon District Council ("CA").
- The relevant planning permission to which the Community Infrastructure Levy ("CIL") relates is Council reference [redacted]
- The description of the development granted planning permission is [redacted].
- A Liability Notice (LN) was served on 05 April 2024. The total amount of CIL payable is [redacted].
- A DN was issued on 13 June 2025. A total surcharge of [redacted] was imposed for failure to submit a commencement notice. The total amount payable is [redacted].
- The intended or deemed commencement date given in the DN is 15 June 2022.

Decision

1. The appeal under regulation 117(1)(a) is allowed, and the surcharge imposed is quashed.

Preliminary Matters

2. All references to regulations relate to the CIL 2010. The appeal is brought under regulations 117(1)(a) and 118. The appellant contends that the breach giving rise to the surcharge did not occur and that the CA specified an incorrect commencement date in the DN.

3. The relevant charging schedule confirms residential and out of centre retail development will be charged CIL at the rates specified based on a series of charging zone maps. There is nothing to indicate that CIL will be charged for demolition.

4. Regulation 2(1) defines *"phased planning permission"* as permission that expressly provides for development to be carried out in phases. Regulation 8 determines the time at which planning permission first permits development. While the default position may be that planning permission is first permitted on the day that planning permission is granted for that development, regulation 8(3A)(b) confirms that planning permission first permits a phase of the development on the day final approval is given under any pre-commencement condition associated with that phase. Regulation 8(3B) confirms that a pre-commencement condition is a condition imposed on a phased planning permission which requires further approval to be obtained before a phase can commence.

5. Regulation 9 confirms that the chargeable development is the development for which planning permission is granted. Each phase of a development is a separate chargeable development where a phased planning permission has been granted.

Regulation 118: Deemed Commencement

6. Regulation 69(2)(d) of the CIL 2010 requires a DN to state the *"intended commencement date"* or, where the collecting authority has determined a deemed commencement date, *"the deemed commencement date"*. This appeal concerns the deemed commencement date of 15 June 2022 specified in the DN.

7. The CA contends that the relevant planning permission was commenced by the "[redacted]…". It relies on a Google Street View image, purportedly dated November 2022, showing that demolition adjacent to the site frontage had occurred. Furthermore, the appellant refers to the demolition taking place within 12 months of planning permission being granted in an email to the CA dated 13 June 2025. Even if I were to accept that the demolition works commenced the chargeable development, none of the evidence points to that commencing on 15 June 2022. I therefore find the deemed commencement date specified in the DN to be incorrect and the appeal should succeed.

8. Regulation 118(3) provides that paragraphs (4) and (5) apply where an appeal under this regulation is allowed. Under regulation 118(4), any DN issued by the CA in respect of the relevant development before the appeal was allowed ceases to have effect. Regulation 118(5), however, requires the appointed person to determine a revised deemed commencement date for the relevant development. It therefore falls to me to determine the revised commencement date.

9. The relevant planning permission was granted on 1 April 2022. It grants planning permission for two distinct elements of development; the demolition of the garage and workshop, and the erection of a new dwelling. The planning permission is the subject of six conditions and condition 3 requires: *"No development, other than demolition, shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority."*

10. Given the limited size of the site, the extent of the garage, workshop and footprint of the new dwelling, the required WSI and programme of archaeological work could not be implemented until the pre-existing buildings were demolished. Having regard to regulation 8(3B), works cannot commence on the erection of the dwelling until the WSI has been submitted to, approved and implemented. I therefore find the development to be phased development. Commencing works on the erection of the dwelling in advance of the submission and approval of the WSI would constitute a breach of condition 3 and any work on the erection of the new dwelling would be unlawful.

11. There is no evidence before me that a WSI has been submitted to or approved by the local planning authority. Nor has the required programme of archaeological

works been carried out before, or as part of, erecting the new dwelling. The time at which the relevant planning permission first permits the development has not therefore occurred. I therefore reasonably conclude that the phase of development relating to the erection of the dwelling has not commenced.

12. Furthermore, I understand that planning permission was sought, under application [redacted], to erect gates across the appeal site. The submitted plans show the site as parking and garden/seating space associated with The Old Mill, a single dwellinghouse. Use of the appeal site for parking and outdoor space ancillary and incidental to The Old Mill, a different existing dwellinghouse, has implications for the relevant planning permission. If the site has become part of The Old Mill's planning unit, this may have begun a new chapter in the land's planning history. In such circumstances, the relevant planning permission may be spent, and a further grant of planning permission may be required to erect a dwelling on the land.

13. If the relevant planning permission is not spent, anyone intending to erect the dwelling would still have to comply with condition 3 before works could commence. They would be able to submit the relevant commencement notice and take advantage of any phased payment or exemption available.

14. As the chargeable phase of the development has not commenced, I am unable to determine a revised deemed commencement date. Regulation 69(d) provides for the revised date to be the intended commencement date. However, there is no evidence before me from which an intended commencement date can be identified.

15. For the reasons set out above, I conclude that the appeal succeeds in so far as the deemed commencement date specified in the DN is incorrect. However, in the absence of evidence establishing an intended commencement date for the phase of the chargeable development, I am unable to comply with regulation 118(5) and must decline to determine the regulation 118 appeal.

16. In this circumstance, the CA should withdraw the DN dated 12 June 2025 and issue a new DN once an intended commencement date, or an otherwise correctly determined deemed commencement date, is known.

Regulation 117(1)(a): Surcharges

17. The CA imposed surcharges for failure to submit a commencement notice. Regulation 67(1) requires that notice to be submitted to the CA no later than the day before chargeable development commences.

18. Considering my findings on the regulation 118 appeal, there has been no failure to notify the CA of the intended commencement of chargeable development. Surcharges under regulation 83 cannot therefore be imposed.

19. The appeal under regulation 117(1)(a) succeeds, and the surcharge notice is quashed.

M Madge

INSPECTOR