



Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2018

Appeal ref: APP/Z2830/L/17/1200157

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED]
- A Liability Notice was served by South Northamptonshire Council on 17 January 2017.
- A Demand Notice was served on 12 April 2017.
- A revised Demand Notice was served on 10 November 2017.
- The relevant planning permission to which the CIL relates is [REDACTED], granted on 17 January 2017.
- The description of the development is: [REDACTED]
- The deemed commencement date stated in the revised Demand Notice is 5 April 2017.

Summary of decision: The appeal is dismissed and the Demand Notice is upheld.

Reasons for the decision

1. The appellant submitted a previous appeal¹ against the original Demand Notice which determined a deemed commencement date of 17 January 2017. The appeal was allowed in so far as the Council conceded that the deemed commencement date was incorrect (Regulation 118). They have since served a revised Demand Notice with a revised commencement date of 5 April 2017. However, the main basis of the appellant's case in that appeal was that the development was unlawful as it began without complying with condition 9 (concerning noise protection) of the permission. That being the case, he argued that the development cannot be liable for CIL as lawful development has not yet commenced. However, I was the Decision Officer in that appeal and I clearly disagreed with the appellant's contentions and explained that CIL is not concerned with whether or not a development is lawful for it to be CIL liable.
2. Nevertheless, it appears clear the appellant has seen this appeal as an opportunity to rehearse the same arguments he put forward in the previous appeal, even though they have already been fully tested. As there has been no change in circumstances, I do not propose to revisit those arguments as a conclusion on the

¹ APP/Z2830/L/17/1200110 (issued on 1 November 2017)

matter has already been reached. However, as well as repeating the same arguments, the appellant has on this occasion focused on his interpretation that as a pre-commencement condition has not been satisfied prior to commencement, any works that fall under section 56(4) of the Town and Country Planning Act 1990 does not constitute a "material operation" as there is no lawful development.

3. Regulation 6 lists a set of exclusions that are not to be treated as development for the purposes of section 208 of the Planning Act 2008; unlawful development is not listed as one them. Development is defined in section 32 of the Planning Act 2008, as referenced by section 55 of the Town and Country Planning Act 1990. The definition is not limited to development carried out in accordance with a planning permission. In essence, planning permission is required for a material operation because it constitutes development, but a material operation does not have to be in accordance with a planning permission. A material operation is still a material operation even if the works involved do not have planning permission. Consequently, I do not consider the appellant's interpretation has any credence.
4. As there is no evidence before me that the determined deemed commencement date of 5 April 2017 is incorrect, the appeal under Regulation 118 fails accordingly.

Formal decision

5. For the reasons given above, the appeal is dismissed and the Demand Notice is upheld.

K McEntee