



Appeal Decision

Site visit made on 14 February 2018

by **Mr A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 February 2018

Appeal Ref: APP/L/17/1200136

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117a and 118 of the Community Infrastructure Levy Regulations 2010 as amended.
- The appeal is made by [REDACTED]
- A Demand Notice was issued by Wakefield Metropolitan Borough Council as the collecting authority on 7 August 2017.
- The deemed commencement date of development is stated as 21 July 2017.

Details of chargeable development to which the Demand Notice relates

- The relevant planning permission to which the levy and the surcharge relate is [REDACTED]
 - The description of the development is described in the Demand Notice in the following terms: [REDACTED]
 - The outstanding amount of levy payable, including total surcharges for a failure to submit a Commencement Notice and late payments, is [REDACTED]
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Decision

1. The appeal is dismissed and the Demand Notice issued by the Collecting Authority on 21 July 2017 is upheld.

Inspector's reasons

2. I consider that the main issue is whether the deemed commencement date is correct. An assessment of the relevant planning principles, the case-law and the site history is necessary in order to address the main issue.
3. The Community Infrastructure Levy (CIL) is a tool for local authorities to help deliver infrastructure to support the development of the area. A charging schedule for new development requiring planning permission sets out the levy rates for a charging authority area. Wakefield Metropolitan Borough Council, as the Collecting Authority (the 'CA'), adopted its charging schedule on 1 April 2016. A planning permission for residential development after the schedule came into force is subject to the levy, unless an exemption is granted under the self-build provisions mainly set out in CIL regulation 54B, which sets out the mechanics.
4. For the CIL regime regulation 5(1), amongst other things, sets out the meaning of planning permission and subsection (a) states that it is granted under section (s) 70, 73 or 73A of the Town and Country Planning Act 1990 as amended (the '1990 Act'). Regulation (6) sets out the meaning of development, regulation (7) provides for interpretation of commencement of development, and regulation (8) sets out the time at which planning permission first permits development. Section 70 of the 1990 Act sets out general principles dealing with application for planning permission. Where an application is made to a local planning authority (LPA), it may grant

9. The development allowed by the second permission is significantly different in nature and scale than the previous approved scheme. Apart from some minor variations to the scheme approved in the second permission, I observed that the 'as built' development is more or less consistent with the approved plans. The second permission has clearly been implemented.
10. On the particular facts and circumstances of this case it is apparent to me that, on or before the date of the second application, material operations comprised in that scheme had already begun on the ground. It must therefore logically follow that the application sought planning permission for a part retrospective and part prospective development. In other words planning permission was sought to regularise unauthorised development. The source of the power to grant retrospective planning permission derives from s73A. I therefore find that the second permission is in effect, standalone permission for the carrying out of operational development retrospectively granted under s73A.
11. I find that, for CIL purposes, the chargeable development is derived from the second permission. CIL Regulation 7(5) is engaged where planning permission is granted under s73A. The relevant part states that development for which planning permission is granted under s73A is to be treated as commencing on the day planning permission for that development is granted or modified. The second permission was granted on 21 July 2017. Thus, it follows that the CA has issued a DN with a correctly determined deemed commencement date.
12. Even if an alternative view is to prevail, that is that the second permission has effect as standalone permission for the carrying out of operational development, this line of argument does not assist [REDACTED]. This is because planning permission was granted for chargeable development after a charging schedule had come into force. The undisputed evidence is that a CN had not been submitted in respect of this development.

Other matters

13. A secondary argument advanced is that, if the deemed commencement date is a self-build exemption should have been granted for the chargeable development. This is because a valid application had been submitted to the CA in accordance with CIL Regulation 54(B). I shall not rehearse all of the arguments advanced because such a decision is not within the scope of this appeal.
14. [REDACTED] is frustrated with the system and is unhappy at the handling of the CIL application to this particular case, but he failed to submit a timely CN. None of these matters are relevant or pertinent to this appeal in any event.

Conclusions

15. I have reviewed all of the arguments advanced in support but the submissions are both counter-intuitive and unpersuasive. On the facts and circumstances presented, the CA has correctly determined the deemed commencement date.
16. For all of the above reasons, I conclude that the appeal should fail and the DN is upheld as set out above in paragraph 1.

A U Ghafoor

Inspector