



Appeal Decision

Site visit made on 8 August 2023

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

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/D1265/L/21/3302997

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) and 118 of the Community Infrastructure Levy Regulations 2010 as amended ('CIL Regs').
- The appeal is made by [REDACTED]
- A Liability Notice ('LN') was issued on 9 September 2021. The total amount payable is stated as [REDACTED] 0.
- A Demand Notice ('DN') was issued by Dorset Council (the Collecting Authority ('CA')) on 23 September 2021¹.
- The deemed commencement of development is 18 May 2021.
- The relevant planning permission to which CIL and the surcharge relates is [REDACTED].
- The description of the development is described as follows: [REDACTED]
[REDACTED]
[REDACTED]
- The outstanding amount of CIL payable that the DN relates to is [REDACTED], which includes [REDACTED] surcharge for a failure to submit a Commencement Notice ('CN').

Decision

1. The appeal is dismissed.

Inspector's reasons

2. 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. The Council, as the CA, adopted its charging schedule on 22 October 2022. A planning permission for residential development is subject to the levy after the schedule came into effect unless it is exempt.
3. For CIL Regs purposes, how do we determine if development has begun? Section 56(1)(a) of the principal act² states development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. Sub-section (2) states that, for the purposes of development granted by a planning permission, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
4. Sub-section (4) provides a broad definition of "material operation" but the list is not exhaustive. Section 56(2) does not, as a matter of ordinary language, exclude the possibility

¹ The CA issued a LN dated 10 December 2019. Due to a change in ownership a revised LN was issued on 9 September 2021, but the details of the chargeable development and CIL amount payable remained the same.

² Town and Country Planning Act 1990 (as amended) hereinafter referred to as 'the 1990 Act'.

that the development might in fact be begun in other circumstances. The bar is low, and the digging of a trench or work facilitating a change in the use of a building may be sufficient. CIL Regs 7 administers when a development commences and mimics s56 of the 1990 Act³. However, it is necessary for the works carried out to be comprised in the permission and more than de minimis. The question will be whether the works were done in accordance with the relevant permission and were material as a matter of fact and degree.

5. The facts are that on 9 December 2019, the Council, as the local planning authority ('the LPA'), granted planning permission, subject to eight conditions, [REDACTED] [REDACTED]⁴ (the '2019 Permission'). An accompanying application for listed building consent was also granted⁵. Condition 1) imposed on the 2019 Permission states the approved plans, but conditions 6), and 8) imposed on the listed building consent, respectively require details of sections and elevations of all new windows and doors prior to installation. Subsequently, an application to discharge condition 4), 5), 6) and 7) imposed on the 2019 Permission was submitted and approved by the LPA on 10 March 2021. The application form indicates development had not already started.
6. A further application for full planning permission was granted on 26 August 2021, which is subject to four conditions (the '2021 Permission')⁶. The description of the development permitted is broadly consistent with the terms of the 2019 Permission, but there is a material difference. The former proposed the partial demolition of single storey element and creation of one flat while the latter includes two self-contained flats. The 2021 Permission approved drawing no. 2056-04 rev A does not show a rear door and window at ground floor level. On 31 August 2021, the CA issued a LN pursuant to this chargeable development. However, the CA later changed its mind because after comparing notes made by the authority's Building Control section and following an officer's site visit in June 2021, they determined building work had already commenced pursuant to the 2019 Permission before 18 May 2021. Consequently, the CA withdrew LN issued in August 2021.
7. The appeal building is located on a prominent corner and is visible from various public vantages, due to its location in the street scene. Frontage windows have been lowered and a single solid white door has been installed in the northeast-facing rear elevation at ground floor level. I also observed internal works have been carried out although it seems all building work has stopped. A CN has not been submitted before any work commenced.
8. Essentially, the CA contend that the building operations initiated or implemented the scheme permitted by the 2019 Permission. The appellant submits the work carried out fails to accord with the 2019 scheme, due to the position and design of the rear door relative to the adjacent window. This detail does not correspond with the approved plans. In April 2021, work undertaken was intended to improve marketability of the property. The assertion is that when work started in April, there was no intention to implement the development permitted by the 2019 Permission. However, determining whether development pursuant to a planning permission has commenced, the decision-maker must apply an objective test and the intentions of the person carrying out the development is irrelevant.
9. To my mind, the building work carried out around May 2021, as described in the written submissions, plainly fall within the scope of material operations. This is due to the nature, type, extent, and scale of the internal and external work, especially alterations to the front of the appeal building. The lowered openings and replacement frames, windows and doors

³ The same meaning as that given in s 56(4) of the 1990 Act: 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.

⁴ Application ref [REDACTED].

⁵ Application ref [REDACTED].

⁶ Application ref [REDACTED].

are clearly detailed on the approved plans listed at condition 2) of the 2019 Permission, and subsequently agreed in writing by the LPA via discharge of condition 4).

10. To me, approved drawing no. 1842-04 is particularly instructive. The alterations to the frontage of the appeal building are directly referable and identifiable on the plans. The frontage work complies with the approved details. They significantly change the appearance of the host building, due to the design and layout of the new doors and windows. In comparison to the previous type of openings, which are also illustrated on the submitted plans, the lowered openings and new fenestration materially alters the external appearance of the building as a whole, which, cumulatively, change the overall character and appearance of the building and street scene.
11. Now then, to the northeast elevation, at ground floor level, the plan shows a door and side window. In comparison to the door installed, the design is different due to the layout and type of the proposed door and side window. Nonetheless, the departure appears minor, and the rear elevation is visible from within the site's courtyard: the alterations have little, if any, visual impact on the building or street scene. In any event, the limited nature and scale of the work required to remedy the departure indicates to me that the deviation could, in practice, be easily undone. I find that the divergence from the approved plans does not suggest a materially and significantly different development was commenced or is under construction.
12. Drawing all the above threads together, I find that as soon as internal work began, frontage windows were lowered and new windows and doors installed, the scheme approved by the 2019 Permission commenced. On the balance of probabilities, as a matter of fact and degree, material operations comprised in the approved 2019 scheme had, in fact, commenced on or by 18 May 2021. I therefore find that the CA correctly determined the deemed commencement date, and the CIL Regs 118 ground of challenge must fail.
13. It may be argued that the 2021 Permission is for development that is in part-retrospective-and-part-prospective, though I have already said elsewhere that the scheme permitted is materially different. Nevertheless, the LPA's power to grant permission for work already undertaken is derived from s73A of the 1990 Act. However, this line of argument does not assist the appellant. Even if material operations commenced on 18 May 2021 are referable and comprised in the development permitted by the 2021 Permission, CIL Regs 7(5) is engaged. It states the following: Development for which planning permission is — (a) granted under section 73A...is to be treated as commencing on the day planning permission for that development is granted or modified (as the case may be).

CIL Regs 117(a)

14. This ground of challenge must fail for the reasons given above. Material operations comprised in the 2019 Permission commenced on 18 May 2021 and there is no dispute that a CN had not been submitted. I find that that the claimed breach, which led to the imposition of the surcharge, did occur.

Overall conclusions

15. Having regard to all other matters raised, on the particular facts and circumstances of this case, I conclude that the appeal on CIL Regs 117(a) and 118 should be dismissed.

A U Ghafoor

Inspector