



Appeal Decision

No Site Visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2026

Appeal Ref: APP/N5090/L/25/3365800

- The appeal is made under The Planning Act 2008 Section 218 and Regulation 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, Council of the London Borough of Barnet (CA).
- 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]
[REDACTED]
[REDACTED]
[REDACTED]
- A Liability Notice (LN) was served on 03 June 2025. The total amount of CIL payable is £[REDACTED].
- A DN was issued on 03 June 2025. The total amount payable is £[REDACTED].
- The intended or deemed commencement date given in the DN is 13 February 2024.

Preliminary Matters

1. An access required site visit arranged for 15 July 2026 was cancelled as the appellant could not guarantee access to the interior of all of the building. The need for access to the interior of the building was to establish whether the building has been divided into 3no. self-contained flats.
2. The appellant confirms in their email dated 14 July 2026 that "...access arrangements need to be coordinated with the occupiers of the individual flats, one of the occupiers is currently on holiday...". Furthermore, they claim that after the building works were completed, they occupied the building as a single-family dwelling for well over six months, after which they considered "*converting the property into three flats. That later conversion utilised the same internal floor space...*". As it has been confirmed that the building is no longer in use as a single dwellinghouse and it has instead been converted into 3no. self-contained flats a site visit is no longer necessary as it would not help my deliberations.

Reasons

Regulation 118 Deemed Commencement

3. 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 is against the deemed commencement date calculated by the CA.
4. It is uncontroversial that operational development in the form of extensions was taking place at the property when the application was submitted in respect of the relevant permission. However, planning permission had previously been granted

on appeal for the “ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (the HSE PP)). It is the appellant’s contention that the works being

undertaken at the time the relevant permission was granted were works authorised by the HSE PP.

5. The HSE PP is not the only other successful application made to the local planning authority for development at this property, and I agree with the CA that the property has a complicated planning history. Comparing plans approved under the HSE PP with those approved under the relevant permission, the footprint, external walls and roofs of the various extensions permitted would be one and the same. I note however that the two approved schemes deviate from one another in respect of some window sizes and placements. Identifying which permission was commenced from the initial stages of construction would not necessarily be apparent, however the elevational deviations could, on the balance of probabilities, allow for the implemented planning permission to be identified.
6. Unfortunately, having regard to the as built image provided in the CA’s appeal statement, the external appearance of the development carried out deviates from both the HSE PP and the relevant permission. These deviations include: the roof canopy across the width of the rear elevation at approximate ground floor ceiling height; and the tile hung box dormer on the rear roof slope of the two storey side extension. The approved plans do not therefore, of themselves, provide a means of identifying whether the relevant permission has been commenced or whether some other development has occurred.
7. In addition to the approved plans, regard must be had to what purpose the completed permitted development would serve. The HSE PP permits the extension of an existing dwellinghouse. Whereas the relevant permission permits the extension of the building to facilitate its material change of use to 3no. self-contained flats. The two permissions are therefore for inherently different developments.
8. The appellant has provided no substantive evidence to support his claim that the completed development was occupied as a single dwelling before it was subsequently converted to 3no. flats. Conversely, the CA has provided no evidence to cast doubt on the appellant’s claim. In such circumstances the courts have held that the appellant’s evidence need not be corroborated and I shall therefore give it moderate weight.
9. Since the purpose of a permission granted under section 73A (3) is to validate development carried out in breach of planning control, it is generally accepted that such a permission will take effect on the date the permission is granted. However, that does not necessarily mean that a retrospective permission is implemented (commenced) on that date.
10. In *R. v Mid-Bedfordshire DC Ex p. Grimes* (2000) 80 P. & C.R. 311 the Deputy Judge held section 73A (3) to be permissive rather than mandatory in its effect. To see whether development was permitted by a planning permission, whether granted under section 73A or not, it was necessary to look at the permission as a whole [my emphasis], including both the description of the development and the

conditions imposed. In that case, permission had been granted under section 73A for the retention of a building subject to a condition requiring that it be used solely for agricultural purposes and, if it ceased to be so used, requiring that the entire building should be demolished to ground level and all materials removed from the site within three months of the cessation of agricultural use. The court held that it was not the effect of the permission to make the building lawful no matter to which use it might be put. Until it began to be used for agricultural purposes it remained an unlawful building. It was unlawful, not because the demolition condition in that permission had come into play, but because until its use was changed to an agricultural use, the permission for its retention had not come into effect at all.

11. In the current case, the relevant permission was not just for operational development consisting of extensions to a dwellinghouse, it was for the material change of use of that dwellinghouse into 3no. self-contained flats. The effect of the planning permission was not to regularise the development already carried out regardless of what use it was put to, but to secure its use as 3no. self-contained flats. The operational development works were also not necessarily unlawful as they had the benefit of planning permission granted by the HSE PP, provided the property remained in use as a single dwellinghouse. This lends further weight to the relevant permission being for the use as 3no. self-contained flats. It would therefore be reasonable to conclude that the relevant permission was not, as a matter of fact, commenced until the use as 3no. self-contained flats began.
12. Furthermore, condition 2 of the relevant permission requires the development to be commenced within 3 years of the date of the decision. This leads me to conclude the local planning authority were therefore also of the opinion that the development applied for had not been commenced at the date of the grant of permission.
13. Taking all these factors together, I find that the development was not commenced on the date planning permission was granted under reference [REDACTED]. The deemed commencement date stated as the 13 February 2024 in the DN has therefore been incorrectly calculated.
14. Regulation 118 (5) requires that where an appeal is allowed the appointed person must determine a revised deemed commencement date for the relevant development. As set out above, the completed operational development does not strictly adhere to the plans approved by either the HSE PP or the relevant permission. There is therefore uncertainty as to whether the relevant permission has, as a matter of fact, been implemented. Even if I were to accept that the appellant's confirmation that the building now contains 3no. flats is sufficient evidence of implementation of the relevant permission, I have no evidence relating to when that use began.

Conclusion

15. For the above reasons, I am unable to determine a revised deemed commencement date from the available evidence and to do so without significant further evidence would be likely to cause injustice to either or both parties. As I am unable to determine a revised deemed commencement date in accordance with regulation 118 (5) I have no alternative course of action other than to decline to determine the appeal.

16. Should the CA serve a new demand notice, with a revised deemed commencement date, any earlier demand notice served on the appellant in respect of this chargeable development shall cease to have effect (Regulation 69 (5)).

M Madge

INSPECTOR