



Appeal Decision

No Site Visit

by Mrs Hilda Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2026

Appeal Ref: APP/H1515/L/25/3366419

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 118 of the Community Infrastructure Levy Regulations 2010.
 - The appeal is made by [REDACTED] against a Demand Notice issued by Brentwood Borough Council (the Charging Authority (CA)).
 - A Demand Notice (DN) was issued on 10 June 2025 with a deemed commencement date of 25 March 2024.¹
 - The chargeable development to which the DN relates is "[REDACTED]
[REDACTED]
[REDACTED]".
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Preliminary Matters

1. The chargeable development was granted planning permission at appeal with a decision date of 25 March 2024. The CIL charging schedule was adopted in September 2023 and became effective on 15 January 2024.
2. In the appeal decision (reference [REDACTED]) at paragraph 3 it was stated "*The bungalow referred to in the description of development had, at the time of my site visit, been demolished. I have proceeded on the basis that the scheme has therefore, in part, commenced*".

Appeal under Regulation 118

3. An appeal under Regulation 118 is that the collecting authority has issued a demand notice with an incorrectly determined deemed commencement date.
4. The CA has issued three DN's. The first dated 12 April 2024 specified a deemed commencement date of 17 March 2023. The second dated 24 April 2025 specified a deemed commencement date of 17 March 2023. The CA acknowledged this was an administrative error. The third DN dated 10 June 2025 specified a deemed date of commencement as 25 March 2024. This corresponds with the date that planning permission was granted at appeal reference [REDACTED].
5. Regulation 69(5) states that where a CA serves a DN on a person any earlier DN served on that person in respect of the same chargeable development ceases to have effect.

¹ DN's were issued on 12 April 2024 and 24 April 2025 with a deemed commencement date of 17 March 2023, and 10 June 2025 with a deemed commencement date of 25 March 2024.

6. The appellant states that the demolition of the old building took place on 15 May 2022, prior to the planning application for the chargeable development. I have no substantiated evidence to disagree with this date. The planning application form was dated 20 March 2023. The chargeable development was granted planning permission, at appeal, with a decision date of 25 March 2024.
7. The application form for planning application reference [REDACTED] records at section 3 'No' to the question '*Has the building, work or change of use already started without consent?*'
8. At section 26 of the planning application form the declaration is confirmed, which states '*I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.*' That declaration is dated 20 March 2023. However, the description of development included demolition of existing detached dwelling and that referred to a dwelling which had been demolished in May 2022, well before the application was submitted.
9. Regulation 7(2) explains that 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. This is subject to the provisions of Regulation 7(5)(a) which states that where planning permission is granted under section 73A of the Town and Country Planning Act 1990 (1990 Act) it is to be treated as commencing on the day planning permission for that development is granted. Regulation 7(6) explains that 'material operation' has the same meaning as section 56(4) of the 1990 Act.
10. Section 56(2) of the Act states that development is taken to have begun on the earliest date on which any 'material operation' comprised in the development begins to be carried out. Material operations are defined under subsection 4 and constitute, in the main, forms of operational development except for paragraph (e) which includes any change in the use of any land where the change constitutes material development.
11. The CA refer to planning permission for the relevant development being granted retrospectively under section 73A of the Town and Country Planning Act (as amended) (the 1990 Act). Section 73A grants planning permission for development carried out before the date of an application for that development. The description of development granted planning permission on 25 March 2025 under reference number [REDACTED] is [REDACTED]
[REDACTED]. This development contains two distinct elements both of which have not been carried out as the two new residential dwellings have not been built.
12. The application was submitted under section 62 and the appeal was determined under section 79 of the Town and Country Planning Act 1990 as amended. However, the CA now state that the application was made under section 73A of the 1990 Act for development that had been carried out. I consider that the application and the grant of planning permission was a part retrospective (demolition of the existing detached dwelling) and part

prospective basis (two new residential dwellings). I therefore disagree with the CA that the planning application, granted at appeal, was made under section 73A of the 1990 Act. Although I acknowledge it regularised the demolition of the dwelling. The demolition of the dwelling was not CIL Liabe and was carried out as a separate operation well before the planning application was submitted. The demolition of the dwelling was not part of the proposed building operation for two new residential dwellings as the two dwellings have not been begun.

13. The absence of a time limit condition on the planning permission reference [REDACTED] does not determine that the planning application was pursuant to section 73A. Section 91(1) of the 1990 Act requires that every planning permission granted shall be granted subject to a condition requiring the development to which it relates to be begun within a specified period. Where a time limit condition is not imposed on a planning permission it is deemed to have been imposed requiring that the planning permission is begun not later than the expiration of three years beginning with the date on which the permission is granted or deemed to be granted. An exception to that is if planning permission is granted for the retention of buildings or works or continuous use where it relates to a permission already carried out. The demolition of the dwelling i.e. the retrospective part of the planning permission therefore did not require a time limit condition because that operation had taken place some time before the application. The prospective part of the planning permission had a deemed three-year time limit duration.
14. There is no substantiated evidence that a material operation in relation to the two new dwellings granted planning permission has been carried out.

Conclusion

15. For the reasons given above, I conclude that the deemed commencement date is incorrect. I am unable to determine a revised commencement date on the available evidence as there is no substantiated evidence that there has, as a matter of fact, been any material operation in relation to the erection of the two dwellings granted planning permission under reference [REDACTED].
16. Regulation 118 (5) requires that where an appeal is allowed, the appointed person must determine a revised deemed commencement date for the relevant development. However, there is no power to decide, under Regulation 118, that the development has not in fact commenced. I therefore decline to determine the appeal under Regulation 118 because it does not come within the scope of the regulations.

Hilda Higenbottam

INSPECTOR