



Appeal Decision

Site Visit made on 13 August 2026

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th October 2026

Appeal Ref: APP/B1605/L/25/3369138

- The appeal is made under The Planning Act 2008 Section 218 and Regulations 117 and 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, Cheltenham Borough Council (CA).
- The relevant planning permission to which the Community Infrastructure Levy ("CIL") relates is Council reference [REDACTED] which was granted by appeal reference [REDACTED].
- The description of the development granted planning permission is [REDACTED].
- A Liability Notice (LN) was served on 12 June 2025. The total amount of CIL payable is [REDACTED].
- A DN was issued on 12 June 2025. A total surcharge of [REDACTED] was imposed for failure to assume liability and failure to submit a commencement notice. The total amount payable is [REDACTED].
- The intended or deemed commencement date given in the DN is 06 June 2025.

Background and Preliminary Matters

1. The appeal property has an extensive planning history. Planning permission was granted for the erection of a detached garage with ancillary accommodation/storage under application ref: [REDACTED]. The building subsequently erected was wider and taller than approved, and incorporated a first floor two-bedroom apartment, which has been used for short term letting (Airbnb). The local planning authority served enforcement notices ("ENS") against this unauthorised development. The ENS were subsequently withdrawn.
2. Planning permission was however subsequently granted on appeal for [REDACTED]. [REDACTED]¹. The Inspector is clear in paragraph 5 of their decision that they are dealing with the description of development as set out, which does not include the retention of the building. The schedule of conditions attached to the Inspector's decision also provides for the development to begin within three years, which corroborates that this planning permission granted was for a proposed development.
3. The CA issued an LN and a DN on 12 June 2025, which identify the relevant planning permission as [REDACTED], although it was granted by appeal decision [REDACTED]. The deemed commencement date is identified as 6 June 2025, the date of the Inspector's decision letter.
4. I carried out an access required site visit as the CA had confirmed they would not attend an accompanied site visit. The purpose of the visit was to establish whether

¹ Appeal reference: APP/B1605/W/24/3350209

the building was in use as the standalone residential property granted planning permission on appeal [REDACTED]

5. The building's internal layout does not reflect the internal arrangement approved on appeal, as shown on approved drawing no. 21-336/03 Rev E. Instead, I saw that the interior of the building contains a gym, shower and sauna room, and a multi-purpose living space including kitchen at ground floor level and a self-contained two-bedroomed apartment at first floor level. This is not the development granted planning permission on appeal.

Reasons

6. The appeal has been brought under regulations 117(1)(a), 117(1)(b) and 118 of the CIL 2010. These relate to the breach leading to the imposition of the surcharge having not occurred, the CA failing to issue an LN and the CA having calculated or applied an incorrect commencement date in the DN.

Regulation 118: Deemed Commencement

7. 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 specified in the DN as 6 June 2025.
8. It is the CA's contention that the planning permission granted on appeal [REDACTED] provides for the retention of the building as it stands and it is therefore an application made under s73A of the Town and Country Planning Act 1990 as amended. The Inspector was however clear in their decision that they were dealing with a prospective development proposal. As such, the application could not have been made under s73A, which relates to the retention of development already carried out.
9. It has been held by the court of appeal² that when construing a planning permission, regard may only be had to the planning permission itself and the application plans expressly incorporated into it by reference. It is also held by the courts that there is a strong public interest in being able to rely entirely on what is stated clearly on the face of the planning permission document, without need to investigate its background.
10. Furthermore, in [REDACTED] the Deputy Judge held s73A (3) to be permissive rather than mandatory in its effect. To see whether development was permitted by a planning permission, whether granted under s73A 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 s73A 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

² *Slough Borough Council v SSE & Oury* [1995] JPL 1128

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. Having regard to [REDACTED], the relevant planning permission [REDACTED] does not provide for the retention of the existing building no matter what its use. The relevant planning permission does not take effect until the approved use is commenced. As established above, I saw that the use as a standalone residential property has not yet commenced.
12. I therefore find that the development granted by the relevant planning permission [REDACTED] has not commenced. The deemed commencement date specified in the DN is therefore incorrect and the appeal should be allowed.
13. R118(3) says that paragraphs (4) and (5) apply where an appeal under this regulation is allowed. R118(4) says that all demand notices issued by the CA in respect of the relevant development before the appeal was allowed cease to have effect. R118(5) however states that the appointed person must determine a revised commencement date for the relevant development.
14. As the appointed person, I cannot calculate a deemed commencement date as the chargeable development has not been commenced. R69(d) provides for the revised date to be the intended commencement date. There is however no evidence before me from which I can identify the intended commencement date. I cannot therefore comply with r118(5).
15. For the reasons given above, I conclude the appeal succeeds in so far as the deemed commencement date is incorrect. I cannot correct the DN in accordance with r118(5). It is therefore for the CA to withdraw the DN dated 12 June 2025 and issue a new DN once the intended commencement date or a correct deemed commencement date is known.

Regulation 117(1)(a): Surcharges

16. The CA has imposed surcharges in relation to the failure to assume liability and failure to submit a commencement notice. R31(1) requires a person who wishes to assume liability to pay CIL in respect of a chargeable development to submit an assumption of liability notice. An assumption of liability notice can be submitted to the CA at any time before the chargeable development commences. Further, r67(1) states that a commencement notice must be submitted to the CA no later than the day before the day on which the chargeable development is to be commenced.
17. Given my findings in respect of the r118 appeal, the time has not yet passed whereby an assumption of liability notice can be submitted in accordance with r31(1). A commencement notice can also still be submitted in accordance with r67(1). As such, there has been no failure to claim liability or provide details of the intended commencement of development. Surcharges cannot therefore be imposed in relation to r80 or r83.
18. The appeal under r117(1)(a) succeeds and the surcharges shall be quashed.

Regulation 117(1)(b): Liability Notice

19. There is no dispute that the CA served a liability notice and the appeal on this ground is that the LN was not issued before the DN. There is no requirement in the CIL 2010 for an LN to be issued in advance of a DN.
20. In the case of a planning permission granted under s73A it is more likely than not that the LN and DN would be issued on the same date, as the development would have already been carried out. This scenario was not however necessary in respect of the chargeable development to which this appeal relates. Nevertheless, there is no evidence before me to show the LN was not served in accordance with r65. The appeal under 117(1)(b) therefore fails.
21. Given my findings in respect of the r118 appeal, the appellant can claim liability for the chargeable development, submit a commencement notice and make an exemption application in accordance with the relevant regulations if they wish.

Formal Decision

22. The appeal is allowed as the deemed commencement date is incorrect (r118) and the surcharges imposed are quashed (r117(1)(a)).
23. The appeal under r117(1)(b) is dismissed.

M Madge

INSPECTOR