



Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18th June 2026

Appeal ref: APP/U1105/L/25/3366414

- The appeal is made under Regulation 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED] against a Demand Notice issued by East Devon District Council.
- The relevant planning permission to which the surcharges relate is [REDACTED].
- Planning permission was granted on 24 June 2021.
- The description of the development is "[REDACTED]".
- A Liability Notice was served on 24 August 2021.
- A revised Liability Notice was served on 22 March 2024.
- A further revised Liability Notice was served on 4 April 2024.
- A Demand Notice was served on 30 April 2025.
- A surcharge has been imposed for the alleged failure to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge is [REDACTED].
- The determined deemed commencement date given in the Demand Notice is 18 April 2024.

Summary of decision: I decline to determine the appeal

Procedural matters

1. From the evidence submitted, it is clear that the issue before me to determine is whether the works that have been carried out on the appeal site amount to a material operation, and consequently whether works have commenced on the chargeable development. Whatever impact my findings may or may not have on the status of planning permission [REDACTED] is a separate matter that the appellant may wish to discuss with the Council.

Reasons for the decision

2. Although the appeal has been made under Regulation 118 - *that the Collecting Authority (Council) has issued a Demand Notice with an incorrectly determined deemed commencement date*, it is clear that the basis of the appellant's case is more that the development has not commenced at all for the purposes of CIL. The appellant contends that the works that have been carried out are the "[REDACTED]" [REDACTED], which he argues does not amount to a material operation as defined by Regulation 56(4) of the Town and Country Planning Act 1990 as the pipe did not progress to the foundations (see annex

below, with particular regard to definition (c)). He asserts he was advised that what was carried out was enough to ensure the retention of the planning permission.

3. However, the Council refer to correspondence from the appellant of 5 June 2024 in which he notifies them that works have commenced, and from STROMA, acting for the appellant, confirming this. The Council believe that the appellant's actions, such as discharging pre commencement conditions, claiming a self-build exemption and providing a junction adjacent to the walls of the former mill, indicate a last-minute intention to implement the planning permission in order to ensure its retention before lapsing.
4. 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. The issue before me to decide is whether a material operation has occurred. In a situation such as this I can only reach a conclusion based on the evidence before me and on the balance of probabilities. With that in mind, while I acknowledge the Council's arguments concerning the appellant's actions, as described above, I note they do not state that they viewed the site for themselves to establish precisely what works have taken place. Therefore, there is no evidence before me that counters the appellant's description of the works that have been carried out. That being the case, I consider it reasonable to accept the appellant's contention that the digging of the trench and laying of pipe did not go down to the foundations of a building. Therefore, on the evidence available and on the balance of probabilities, I cannot be satisfied that the works described amount to a material operation as defined in section 56(4) of the 1990 Act, and consequently I cannot conclude that works on the chargeable development commenced.

Conclusion

5. As I have concluded that works have not commenced on the chargeable development, and as the appeal has been made on Regulation 118 alone, I must decline to determine the appeal.

K McEntee

Annex to the decision

Material operations as defined in section 56(4) of the 1990 Act

(a) any work of construction in the course of the erection of a building;

[F9(aa) any work of demolition of a building;]

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.