



Appeal Decision

by **Ken McEntee**

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

Decision date: 15th July 2026

Appeal ref: APP/C1435/L/25/3374476

- 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 Wealden District Council.
- The relevant planning permission to which the Demand Notice relates is [REDACTED], granted on 29 April 2020.
- The description of the permission is "[REDACTED]"
[REDACTED]
[REDACTED]
- A Liability Notice was served on 29 April 2020.
- A Demand Notice was served on 15 October 2025.
- Surcharges have been imposed for the alleged breaches of failing to assume liability and to submit a Commencement Notice before starting works on the chargeable development.
- The outstanding surcharge for failing to assume liability is [REDACTED]
- The outstanding surcharge for failing to submit a Commencement Notice is [REDACTED]
- The determined deemed commencement date given in the Demand Notice is 15 September 2025.

Summary of decision: I decline to determine the appeal.

Procedural matters

1. The Collecting Authority (Council) has conceded that they stated an incorrect commencement date in the Demand Notice (DN) and say they will be issuing a revised one. However, the appellants' agents contend that any revised DN should be served on the proprietor, [REDACTED], who was also the applicant for planning permission. They assert that the current notice is invalid as it was incorrectly served on the appellants, [REDACTED], who are a non-existent entity, and contend that in any event the correct name of the Receivers is [REDACTED]. In response, the Council explain that the DN was served on the appellants as the property had been repossessed and the appellants were appointed as the Receivers. However, that did not necessarily make them the owners of the property. The appropriate party on which to serve the DN if the Council believed [REDACTED] was no longer the owner, was the new owner(s), not the Receivers. Therefore, I agree with the appellants that the DN was incorrectly served and is consequently invalid.
2. Although the appeal has been made under Regulation 118 - *that the 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. With that in mind, the key issue before me to consider is whether the infilling of a pond on the appeal site amounts to commencement of the chargeable development.

Reasons

3. The Council state that the outline permission and subsequent Reserved Matters (RM) consent included the infilling of an existing pond to make way for Plot 1. However, I cannot find anywhere within the description of the development in either approval where it includes the infilling of an existing pond. The infill of the pond is only mentioned as part of the description of the site in paragraph 4 of the Delegated Officer's Recommendation of 29 April 2020. The Council also refer to "the breach being regularised", but I cannot find anything that says the RM approval grants retrospective planning permission for the infilling of the pond. The Council argue that the works on the pond were related to the RM consent as it would otherwise have no other obvious benefit; for example, the infilling was not necessary in relation to any other consent, and the pond was not seemingly causing any problems that necessitated its infill.
4. However, I take the view that these are conclusions based on circumstantial evidence. There is no conclusive evidence before me that demonstrates the works described formed part of the chargeable development. The appellants contend that the works to the pond were carried out independently of the chargeable development, and I can find no evidence to the contrary.
5. Added to this, I note that the Council consider the infilling of the pond to be a material operation as defined by section 56(4) of the Town and Country Planning Act. However, they do not identify which specific definition listed (see annex below) relates to the works carried out here. CIL 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. While this can be open to interpretation, on the evidence before me I cannot be satisfied that the infilling of a pond amounts to a material operation.
6. It appears from the evidence that the pond was infilled by October 2018, prior to submission of the RM application. As no works have taken place on the chargeable development since the RM consent, it follows that the consent is no longer extant as more than two years have lapsed, as per condition 1. Therefore, I cannot conclude that works have commenced on the chargeable development.

Conclusion

7. In view of my conclusions above, and as the appeal has been made under 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.