

# Appeal Decision

by [REDACTED] BSc(Hons) MRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)

Valuation Office Agency



Email: [REDACTED]@voa.gsi.gov.uk

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**Appeal Ref:** [REDACTED]

**Address:** [REDACTED]

**Development:** Demolition of existing rear outrigger and construction of part one, part four storey extension with extended basement area including front lightwells to facilitate the conversion of existing 2 x 1 bed flats to 1 x 1 bed flat on first floor with terrace, 1 x studio on mezzanine level with juliet balcony and 1 x 2 bed flat on 2<sup>nd</sup> floor with a studio flat within the part one element; Provision of internal and external cycle spaces.

**Planning permission details:** Approved by [REDACTED] on [REDACTED] under reference [REDACTED]

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## Decision

I confirm that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ( [REDACTED] ) for the [REDACTED] CIL and £ [REDACTED] ( [REDACTED] ) for the [REDACTED] CIL.

## Reasons

1. I have considered all the submissions made by [REDACTED] (the Appellant) and the [REDACTED], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

- a. The Decision Notice issued by [REDACTED] on [REDACTED].
- b. The CIL Liability Notices (references [REDACTED] and [REDACTED]) issued by the CA on [REDACTED].
- c. The appellant's request for a Regulation 113 review in an email dated [REDACTED].
- d. The CIL Appeal form dated [REDACTED] submitted by the appellant under Regulation 114, together with documents and correspondence attached thereto.
- e. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

- f. Further information in relation to the physical nature of the development at the date of the planning permission provided at my request by both the Appellant and the CA.

2. Planning permission for the development as detailed above was granted under reference [REDACTED] on [REDACTED]. Previous permissions on the site include:

- i) [REDACTED] Erection of a part single, part two storey rear extension to accommodate two self-contained flats (one two bedroom, one three bedroom) rear courtyard and ground floor retail unit to replace the existing ground floor/basement retail unit and three bedroomed flat. Approved on [REDACTED].
- ii) [REDACTED] Construction of a rear extension at second floor level to facilitate the creation of two self-contained residential units (1x one bedroom flat at first and mezzanine levels with a rear roof terrace and a 1 x one bed room flat on the second floor). External alterations including new shop front, with increased basement height, a new light well to the front of the property and roof lights on the main roof slopes. Approved [REDACTED].
- iii) [REDACTED] S73 application to vary/remove conditions/minor alterations (VAR) Variation of Condition 1, approved plans, of planning permission [REDACTED]. Approved on [REDACTED].
- iv) [REDACTED] Enlargement of basement to rear and construction of a single storey rear extension to create a new studio flat with demolition of existing rear toilet and replacement glazed canopy as well as the alteration to the rear service access. Provision of refuse and cycle spaces in courtyard and internal cycle storage. Approved [REDACTED].

3. The permission ref: [REDACTED] was in effect a consolidating permission and approved development that had already been allowed under three earlier permissions as well as some newly proposed changes.

4. The CA issued two Liability Notices on [REDACTED]. These amount to £[REDACTED] for [REDACTED] CIL and £[REDACTED] for the CA's CIL. Both calculations are based on a gross floor space for the development of [REDACTED] square metres (sq m) less existing floor space of [REDACTED] sq m, resulting in a net chargeable area of [REDACTED] sq m.

5. Within the request to the CA for a review of the chargeable amount calculation the Appellant has detailed that he has calculated the area of the original building to be [REDACTED] sq m rather than [REDACTED] sq m. He has also provided a breakdown of the additional floor area approved under each of the four latest planning permissions as follows:

[REDACTED]	-	[REDACTED]	sq m
[REDACTED]	-	[REDACTED]	sq m
[REDACTED]	-	[REDACTED]	sq m
[REDACTED]	-	[REDACTED]	sq m

This gives a total additional floor space of [REDACTED] sq m.

6. The appellant contends that the approval [REDACTED] did not allow any additional units and should not be included in the calculation and so the net chargeable area should be [REDACTED] sq m. In later correspondence the Appellant has slightly amended this calculation to [REDACTED] sq m ([REDACTED] sq m including the additional area permitted under [REDACTED]).

7. The CA did not respond to the appellant's request for a review other than to request further information from him.

8. The Valuation Office Agency received an appeal under Regulation 114 (chargeable amount) on [REDACTED]. The grounds of the appeal are that the net chargeable area has been incorrectly calculated and that different levels of indexation should apply to parts of the development in line with historic consent dates and subsequent commencement of works. The charging schedule rates adopted are not disputed by the appellant.

9. Within the appeal form the appellant has stated that development has commenced. Under Regulation 114(3) this would generally mean that the appeal was invalid however in this case the exception provided by Regulation 114(3A) applies. Regulation 114(3A) states that a person may appeal after relevant development has commenced if planning permission was granted in relation to that development after it was commenced.

10. The CA did not make substantive representations to the appeal other than providing copies of the relevant documentation already exchanged.

11. Regulation 9 of the CIL Regulations 2010 (as amended) states that chargeable development is "the development for which planning permission is granted". In this case the CIL liability under appeal therefore relates to the chargeable development being the entire development allowed by the planning permission [REDACTED]. The fact that parts of the development had already been approved under earlier planning permissions is not for consideration since it is the entire development proposed in the final application that is the development for which planning permission is granted and under Regulation 9 this is therefore the chargeable development. I have therefore calculated the CIL charge below in relation to the entirety of the chargeable development permitted under [REDACTED] on [REDACTED].

12. Regulation 40(7) of the CIL Regulations 2010 (as amended) states that the net chargeable area of the chargeable development should be calculated in accordance with the following formula:

$$G_R - K_R - \frac{(G_R \times E)}{G}$$

Where-

$G$  = the gross internal area of the chargeable development;

$G_R$  = the gross internal area of the part of the chargeable development chargeable at rate  $R$ ;

$K_R$  = the aggregate of the gross internal areas of the following—

- (i) retained parts of in-use buildings, and
- (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

$E$  = the aggregate of the following—

- (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and
- (ii) for the second and subsequent phases of a phased planning permission, the value  $E_x$

13. The legislation therefore allows for the deduction of floor space of 'retained parts' of a relevant building and/or parts of an in-use building that are to be demolished to arrive at a net chargeable area. To qualify as a deduction any floor space must be within a 'relevant building' and Regulation 40(11) states that a 'relevant building' means a building which is situated on the relevant land on the day planning permission first permits the chargeable development. Regulation 8(2) states that planning permission first permits development on the day that planning permission is granted for that development.

14. There is little difference between both party's calculations of the floor area of the chargeable development (G). The CA have calculated a total area of [REDACTED] sq m. The Appellant has not specified a total but the additional floor area he has calculated is [REDACTED] sq m and his existing building calculation is [REDACTED] sq m giving a total of [REDACTED] sq m. The larger discrepancy therefore lies in the calculation of the area of the existing building. The CA have calculated [REDACTED] sq m and the Appellant has calculated [REDACTED] sq m.

15. I have scaled the existing building, as shown on the approved plans, and calculated an area (to include the whole of the rear outrigger) to be approximately in line with that calculated by the Appellant. However on examination of the site visit notes taken by planning officers and the photographs taken at or around the date of the permission provided in response to my request for further information, it appears that the rear outrigger had been demolished by the date of the permission under consideration (i.e. [REDACTED]). The 'relevant building' for CIL calculation purposes should not therefore include the original outrigger as it was already demolished by the date of the permission and would not qualify as a deduction within the calculation of the net chargeable area. As the area of the outrigger was approximately [REDACTED] sq m that would reduce the area of the existing building to approximately [REDACTED] sq m.

16. For this reason I do not consider that the net chargeable area adopted by the CA within the CIL calculations under appeal to be excessive and I therefore dismiss the appeal and confirm the CIL charges of £[REDACTED] for [REDACTED] CIL and £[REDACTED] for the [REDACTED] CIL.

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RICS Registered Valuer  
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[REDACTED]