# Appeal Decision

**by** [redacted]

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

[redacted]

e-mail: [redacted]@voa.gsi.gov.uk.

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**Appeal Ref:** [redacted]

***Address:*** [redacted]

***Development: Conversion of a single family dwelling into*** [redacted] ***involving the erection of a*** [redacted] ***extension and*** [redacted] ***extension.***

***Planning permission details: Planning permission*** [redacted] ***was granted by the*** [redacted] ***on*** [redacted].

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £[redacted]

## Reasons

1. I have considered all the submissions made by [redacted] (the agent) on behalf of the appellant, [redacted] and the representations from the Collecting Authority (CA) [redacted].

2. Planning permission was granted on by [redacted] on [redacted] for 'Conversion of a single family dwelling into [redacted] involving the erection of a [redacted] extension and [redacted] extension' reference [redacted].

3. On [redacted] the CA issued a Regulation 65 Liability Notice (LN) based on a net chargeable area of [redacted] sqm in the sum of £[redacted]

4. The agent requested a Review under Regulation 113 as the CA did not challenge the information he provided prior to the grant of planning permission which he thought indicated that CIL should not be payable and in addition he stated that there should be no CIL liability because the [redacted] and the extensions were below 100 square metres (sqm).

5. The CA provided what they describe as a formal response to the Regulation 113 Review request on [redacted] as follows:-

For developments which involve the creation or deduction of residential dwellings the CIL process is applied. For proposals which involve a conversion with no change of use e.g. single dwelling conversion to 2 x flats (without extending them) and the existing dwelling passes our lawful use test then it would not be liable for CIL. As the proposal involves an extension along with a conversion, then the additional floor space is liable plus a credit has been applied for the existing floor space as the dwelling has been in lawful use for the required period. Should the lawful use test not had passed then the whole building would be liable for CIL.

6. The agent submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be reduced to £[redacted]

The grounds of the appeal can be summarised as follows:-

A Community Infrastructure Levy (CIL) – Determining whether a Development may be CIL Liable Planning Application Additional Information Requirement Form (the CIL Information Form) was completed in [redacted].
This form included two questions as follows:-
Does your development include:

a) New build floorspace (including extensions and replacement) of 100 sqm or above?
b) Proposals for one or more new dwellings either through conversion or new build (except the conversion of a single dwelling house into two or more separate dwellings)?

The reply to both these questions was 'No' and the appellant concluded that there would be no CIL liability. It was assumed that as no correspondence had been received from the CA to the contrary prior to the grant of planning permission that no CIL would be payable, with the first indication of a liability being when the LN was issued.

In addition, the Community Infrastructure Levy (Amendment) Regulations 2011 amended Regulation 6(1) so that *'the change of use of any building previously used as a single dwelling house to use as two or more separate dwelling houses'* should not be treated as development for the purposes of s.208 Planning Act 2008 (liability). Therefore, the conversion should not be treated as development and not be chargeable to CIL.

Given that the change of use is not development and as the 'new build' extensions are below 100 sqm there should be no CIL liability in accordance with Regulation 42, exemption for minor development.

7. The CA submitted representations on [redacted] disagreeing with the appellant's grounds of appeal for the reasons summarised below:-

Under Regulation 40(1) the CA must calculate the CIL liability in respect of the chargeable development and this is the development for which planning permission is granted being the conversion of the house into two flats and also the erection of two extensions. Therefore, as the development is a conversion involving extensions not simply a change of use the exclusion under Regulation 6(1) as amended does not apply.

Regulation 42 states that (1) liability of CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres. (2) but paragraph (1) does not apply where the development will comprise one or more dwellings. The development is a residential conversion involving the creation of a dwelling therefore the exemption under regulation 42 is not available

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations on the representations and the grounds of the appeal:-

9. I do not consider that the CA not indicating prior to the grant of planning permission that CIL would be payable even though they were provided with the CIL Information Form, completed on the basis that CIL would appear not be payable, is a valid ground of appeal. I do not believe that an absence of a response from the CA can be deemed to bind the CA as the completion of the CIL Information Form is merely one part of the administrative process prior to the granting of planning permission and the calculation of the CIL liability. Under Regulation 114 I can only consider whether or not the chargeable amount has been calculated incorrectly.

10. The agent is contending that the change of the use of the existing house should not be treated as part of the development for the purposes of CIL in accordance with Regulation 6(1)(d). Therefore, the chargeable development, before any consideration of whether Regulation 42 minor development exemption applies, only comprises the new extensions.

The CA's view appears to be that the 'chargeable development', which is defined in Regulation 9 as 'the development for which planning permission is granted', is all the development described in the planning permission (i.e. all 'development' as defined in s.55 of the TCPA 1990 which thus required planning permission). However, the definition of development for CIL purposes is different by virtue of Regulation 6 with paragraph (1)(d) being as follows:-

*(1) The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)—*

*(d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses."*

I believe that it is appropriate to adopt the CIL definition of 'development', rather than the s.55 Town and Country Planning Act 1990 (TCPA 1990) definition, so in my view Regulation 9 effectively means that the 'chargeable development' is all the 'development' as defined for CIL purposes in Regulation 6, for which planning permission is granted. Therefore, as the change of use of the existing house to two flats is excluded from the definition of 'development' by virtue of Regulation 6(1)(d) this should not be included in the chargeable development.

11. If the CA's interpretation were correct then I think Regulation 9 would be at variance with Regulation 6, because if a development for which planning permission was granted only comprised a change of use (i.e. there were no extensions) then the 'chargeable development' would still comprise the whole building. If the building had not previously been

in lawful use then the whole floor area would be liable despite Regulation 6, which I believe is not the intention of the Regulations.

12. Although I am accepting that the chargeable development does not include the change of use of the existing house to two flats, this does not mean that I am in agreement with the agent's conclusion. The question is whether there are other works to the existing house that required planning permission, or are the works just installing kitchens, bathrooms, doors and openings etc. that did not in themselves comprise development under either the TCPA 1990 or the CIL definition? I consider this to be a matter of fact and degree with each case being looked at on its own merits.

13. I have looked at the plans that formed part of the planning permission (Condition 2) and the works appear to include removing virtually all of the gable wall to the main part of the house (other than a small section at the front as the extension is set slightly back from the front elevation) and extending out to the side of the property to the site boundary. The extension at ground floor level will include part of a bedroom and bathroom together with a private entrance hall to give access to the first floor. At first floor level it also includes part of a bedroom, an entire bathroom and a small part of the stairwell. The roof is a further hipped slope to the existing hipped roof.

The rear 2 storey flat roofed extension is having its side wall removed and it is being widened to the same width as the existing house with the extension being part of a lounge and 2 bathrooms at ground floor level and part of a lounge at first floor level. In addition, there is a new single storey extension being added to the rear extension to form part of the lounge.

There is also a room being added in the roofspace, and internally the accommodation is being rearranged with new internal partitions etc. and the existing stairs being removed and relocated.

14. Therefore, in view of the substantial nature of the alterations to the existing building I am of the opinion that on balance the chargeable development goes beyond just a change of use from one dwelling to two plus an extension of less than 100 sqm. On the facts of this case the chargeable development goes beyond the change of use covered by Regulation 6 and extends to the whole property.

15. The minor development exemption, Regulation 42 is set out below:-

*(1) Liability to CIL does not arise in respect of a chargeable development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.*

*(2) But paragraph (1) does not apply where the chargeable development will comprise one or more dwellings.*

*(3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.*

As I am of the opinion that the chargeable development extends to the whole of the property Regulation 42(2) is relevant and the minor development exemption does not apply in this case because the chargeable development comprises two dwellings. Therefore, the area of the chargeable development comprises the area of both the existing house and the extensions.

16. The CA have calculated the CIL charge on the basis of the floor area of both the existing property and the extensions. However, they have then deducted the area of the existing

property on the basis that it is an 'in use' building for the purposes of the calculation of the net additional area under Regulation 40(7). Although no evidence has been provided with regard to the previous use of the building I have no reason to question the CA's assumption and can accept that the area should be deducted.

17. The areas proposed by the CA are as follows:-

Chargeable development - [redacted] sqm
In use retained building - [redacted] sqm
Net additional area - [redacted] sqm

I have taken measurements from the plans that have been provided and I am of the opinion that the areas proposed by the CA are reasonable and acceptable.

18. On the evidence before me, having regard to the particular facts of this case, I conclude that the appropriate charge should be based on a net additional area of [redacted] sqm as set out below:-

[redacted]

Net chargeable area - [redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 [redacted])
(Index 1 [redacted])

[redacted]

Net chargeable area - [redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index [redacted])
(Index [redacted])

Total Charge

[redacted] = £[redacted]
= £[redacted]
Total = £[redacted]

19. My calculation of the total charge differs slightly from that in the LN because I believe the CA have miscalculated the adjustment for indexation in their calculation.

[redacted]
Valuation Office Agency
[redacted]