

# Appeal Decision

by [REDACTED]

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

[REDACTED]

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Appeal Ref: [REDACTED]

[REDACTED]

**Development: Conversion of first and second floor levels into [REDACTED] including extensions at first floor and at second floor level to rear and creation of third floor with front, side, and rear roof terraces.**

**Planning permission details: Planning permission [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] of [REDACTED] on behalf of the appellant [REDACTED] and I have also considered the representations made by the Charging Authority (CA) [REDACTED]. In particular I have considered the information and opinions presented in the following submitted documents:-

- (a) Planning permission decision letter dated [REDACTED].
- (b) The CA's Liability Notice dated [REDACTED].
- (c) The CA's Decision Notice on review of the CIL chargeable amount dated [REDACTED].
- (d) Completed CIL Appeal form dated [REDACTED] containing the Grounds of Appeal.
- (e) Additional supporting documents submitted with the CIL Appeal:-
- (f) Copies of all approved plans and elevations as listed at condition 2 of the planning permission dated [REDACTED].

(g) The CA's representations dated [REDACTED] including a copy of a previous Valuation Office Agency decision on a CIL Appeal, reference [REDACTED], dated [REDACTED].  
(h) [REDACTED] comments on the CA's representations received on [REDACTED].

2. Planning permission was granted by [REDACTED] on [REDACTED] for the 'Conversion of first and second floor levels into [REDACTED] including extensions at first floor and at second floor level to rear and creation of third floor with front, side, and rear roof terraces'.

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice LIA1054 in the sum of £[REDACTED] based on net additional floorspace of [REDACTED] square metres (sqm) as follows:-

[REDACTED]

4. The appellant requested a review of the calculation of the chargeable amount on [REDACTED]

5. The CA issued their decision notice on the review on [REDACTED] and amended the CIL charge to £[REDACTED] based on the calculations set out below:-

[REDACTED]

Notwithstanding the calculations above, the review stated the chargeable amounts to be as follows:-

[REDACTED]

6. On [REDACTED] Mr [REDACTED] on behalf of the appellant submitted a CIL Appeal under Regulation 114 (a chargeable amount) proposing the CIL charge should be £[REDACTED], but there was no calculation as to how this figure was arrived at. The grounds of the appeal can be summarised as follows:-

- i) The extent of the chargeable development should be as described in the planning permission being 'Conversion of first and second floor levels into [REDACTED] including extensions at first floor and at second floor level to rear and creation of third floor with front, side and rear roof terraces.' The permission clearly refers to above ground level works only. Therefore, the inclusion of the [REDACTED] at basement and ground floor levels in the calculation is incorrect.
- ii) The net change in area should only be for the above ground level residential scheme that has been approved.
- iii) [REDACTED] CIL charges appear to be the wrong way around.

7. The CA submitted representations on [REDACTED] which can be summarised as follows:-

(a) As the approved plans as stated at condition 2 of the planning permission included both the basement and ground floors these floors should form part of the chargeable development.

(b) As the approved plans included details of what was being demolished, as opposed to being retained, they were able to use this information to determine the values of Kr and E within the formula at Regulation 40(7). In addition, the plans also provided information for

them to calculate G and Gr and the CIL charge was subsequently calculated correctly in accordance with Regulation 40.

(c) The calculation of the All-in Tender Price Index figure for 1 November 2014 had been calculated incorrectly on the Liability Notice and should be revised to 256 as being the figure for 1 November 2014, as published on 1 June 2015.

(d) The CA accepted that the chargeable amounts had been inverted in the review report and should be as follows:-

[REDACTED]

8. A colleague of Mr [REDACTED] in [REDACTED] submitted comments on the CA's representations, dated [REDACTED] as set out below:-

Could you please explain why the existing floors have been omitted as 0 percent retained and the [REDACTED] m2 (floor being retained) has been noted as demolished in the calculation for Regulation 40 (7)? Page 12 of the [REDACTED] Review Report.

I think there is an error on this part as stated we are retaining the existing floors which have been used as residential floor space previously (prior to the proposed planning application) and infilling on the 1<sup>st</sup>, 2<sup>nd</sup> floor while the 3<sup>rd</sup> floor is new throughout.

9. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal.

10. The planning permission decision letter clearly indicates that consent was granted for the conversion of the 1<sup>st</sup> and 2<sup>nd</sup> floors with extensions and a new 3<sup>rd</sup> floor. However, as the decision letter refers at condition 2 to the approved plans and these include all the floors, the CA has assumed that the chargeable development for the purposes of the Regulations comprises the proposed floor area on the upper floors together with the ground floor and basement areas. The definition in Regulation 9(1) of the chargeable development is as follows:-

*9.—(1) The chargeable development is the development for which planning permission is granted.*

11. I am of the opinion that having reviewed the planning permission decision letter and the plans it is reasonable to conclude that for the purposes of calculating the CIL charge the chargeable development should only extend to the proposed conversion and extensions to the upper floors including the new 3<sup>rd</sup> floor. I am aware that there are some alterations to be carried out to the ground floor in respect of the access and the stairs to the upper floors. However, these are of a minor internal nature and do not affect my decision regarding the extent of the chargeable development.

12. In terms of the existing floorspace on the 1<sup>st</sup> and 2<sup>nd</sup> floors the CA have deemed this to be floorspace to be demolished as part of the proposed development on the basis that the approved plans appear to refer to the internal and external walls on the 1<sup>st</sup> floor and 2<sup>nd</sup> floors, except for the front elevation and flank wall, being 'removed/demolished'. As there is agreement between the CA and appellant that the existing floorspace is 'in-use', and I have determined that the chargeable development only comprises the works to the upper floors there is no need for me to distinguish between whether the floorspace will be demolished or retained as it does not affect the calculation of the CIL charge given the formula set out in Regulation 40(7) as set out below:-

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

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  $E_x$  (as determined under paragraph (8)), unless  $E_x$  is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

13. There appears to be agreement to the existing and proposed floor areas on the upper floors as set out below:-

Existing floorspace - [REDACTED]  
Proposed floorspace - [REDACTED]

I have taken check measurements from the plans and can confirm that the above areas appear to be reasonable. Therefore, the net additional area liable to CIL is [REDACTED] sqm.

14. I am able to agree with the CA that the All-in Tender Price Index figure for 1 November 2014 had been calculated incorrectly on the Liability Notice and should be revised to 256 as being the figure for 1 November 2014, as published on 1 June 2015. It is well known that the Index for a particular date does change as more information becomes available after the date so I do not think that it was unreasonable for the CA to adopt the rate published on the 1 June 2015 rather than the 1 November 2014.

15. On the evidence before me I conclude that the appropriate charge in this case should be based on a net additional area of [REDACTED] sqm as set out below:-

[REDACTED]  
[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

RICS Registered Valuer  
Valuation Office Agency

[Redacted]