

# Appeal Decision

by [REDACTED]

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

[REDACTED]

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**Appeal Ref:** [REDACTED]

**Address:** [REDACTED].

**Development:** *The construction of a roof and side extension to create an additional dwelling.*

**Planning permission details:** *Planning permission [REDACTED] was granted [REDACTED]*  
[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]  
[REDACTED]

## Reasons

1. I have considered all the submissions made by [REDACTED] on behalf of the appellant, [REDACTED] and the representations from the Collecting Authority [REDACTED].
2. Planning permission was granted on [REDACTED] by the [REDACTED] on behalf of the [REDACTED] (application reference [REDACTED], appeal reference [REDACTED] for 'the construction of a roof and side extension to create an additional dwelling'.
3. On the evidence submitted the relevant planning history is essentially as follows:-

- i. Prior Approval was granted on [REDACTED] for a change of use of the basement and ground floor from B1(a) offices to C3 ([REDACTED])
- ii. Planning permission was refused on [REDACTED] for the construction of a roof and side extension to create an additional dwelling, reference [REDACTED]. Although not referred to in the description of the development this application included [REDACTED]
- iii. Planning permission was granted on [REDACTED] for the [REDACTED], reference [REDACTED]. Although not referred to in the description of the development this application included plans to convert 2 maisonettes on the 1<sup>st</sup> and 2<sup>nd</sup> floors into 2 flats.
- iv. Planning permission was granted on [REDACTED] by the [REDACTED] on behalf of [REDACTED] (application reference [REDACTED], appeal reference [REDACTED]) for the construction of a roof and side extension to create an additional dwelling.

4. On [REDACTED] the CA issued a [REDACTED] Liability Notice (LN) based on [REDACTED] area of [REDACTED] in the sum of £ [REDACTED].

5. The CA received an [REDACTED] from the agent on [REDACTED] stating 'In my opinion your calculations and demands are incorrect and we have appealed against your notice. Please find our submission attached'. I do not have a copy of the submissions. I consider this was a request for a review of the calculation of the chargeable amount.

The CA then entered into [REDACTED] correspondence with the agent and the appellant including an email dated [REDACTED] in which they stated 'As per my email to [REDACTED] we have reviewed the regulations and do not agree with your interpretation. We have determined that [REDACTED] is chargeable and request that your client settle the CIL amount by [REDACTED] to avoid any further action being taken'. A final email dated [REDACTED] from the CA stated that they would not discuss the matter further. I consider that a decision was issued in respect of the request for a review and it confirmed the CIL charge in the LN.

6. The agent submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge [REDACTED] to £ [REDACTED] based on a [REDACTED] sqm, dated [REDACTED].

The grounds of the appeal are as follows:-

1. *I note that extensions under 100m2 are not eligible for CIL under the minor development exemption and in this case the total GIA is below this figure. There is however a charge for new dwellings less than 100m2 and it is our contention that the CIL should be calculated on the basis of the GIA of [REDACTED] only. We calculate this to be [REDACTED]m2.*
2. *Our planning application for [REDACTED] on which the CIL GIA of [REDACTED]m2 was calculated was [REDACTED] in [REDACTED]. My client therefore submitted a revised planning application [REDACTED]. No CIL was liable for this application for the [REDACTED]m2 to allow [REDACTED]. Following the planning consent [REDACTED] the [REDACTED] and was virtually completed [REDACTED]. In [REDACTED] my client [REDACTED].*



[redacted] to allow [redacted] As the [redacted]  
[redacted] at [redacted] level is [redacted] within [redacted] then this is  
included in our calculation of the GIA of [redacted] m2.

7. The CA submitted representations on [redacted] contending that the appeal was invalid and their calculation of the chargeable amount was correct and these can be summarised as follows:-

### 1. The appeal was invalid.

The CA contended that [redacted] then the appeal was invalid and should be dismissed. I assume that the CA are referring to Regulation 114(3) which states that 'A person may not appeal under this regulation if the relevant development has been commenced'. The CA provided evidence [redacted] that [redacted] indicating [redacted] that had been installed [redacted] in accordance with the plans attached to the relevant [redacted] and not in accordance with [redacted]

### 2. Calculation of chargeable amount

- i. The [redacted] for [redacted] does not apply as the development is [redacted].
- ii. The chargeable development is the development for which planning permission was granted which means [redacted] is permitted, not on part only. The CA view is that the entire development has been carried out in accordance with the relevant [redacted].

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. The CA is contending that the appeal is invalid as the development had commenced at the date of the appeal. The grounds of the appeal clearly indicate that the appellant has [redacted] as per the approved drawings for the relevant [redacted] so confirming that the development had commenced at the date of the appeal. However, Regulation 114 (3A) states that 'A person may appeal under this regulation after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced'. It is clear that [redacted] had been built before the granting of the relevant planning permission [redacted] and although the appellant indicates the works were carried out in accordance with a different planning permission [redacted], the works are similar or the same as in relevant planning permission [redacted] granted on appeal. In addition, the CA have indicated that the [redacted] in the [redacted] are in accordance with the plans attached to the relevant planning permission [redacted] although as the [redacted] this is not conclusive evidence. However, on balance I consider that there is sufficient evidence to reasonably conclude that this is retrospective planning permission for the purposes of the CIL Regulations. Therefore, I am of the opinion that the appeal is valid.

10. The agent is contending for the chargeable development to only include that part of the development which was carried out after the grant of the relevant planning permission [redacted], being [redacted] on the basis that [redacted] was granted planning permission and [redacted] under planning permission [redacted] and no CIL charge was applicable as the area was under 100 sqm. However, Regulation 9 (1) states that 'The chargeable development is the development for which planning permission is granted' and the relevant planning permission granted on appeal includes the entirety of the side extension in accordance with the plans

referred to in the appeal decision. In addition, the wording of the appeal decision clearly indicates that the [redacted] considered the whole of the application and did not just have regard to [redacted]. Therefore, I am of the opinion that the chargeable area comprises a [redacted]

11. I would also point out that if I had accepted the appellant's argument that the relevant development only comprised the [redacted] and [redacted] then I would have considered the appeal to be invalid as it would not have been a retrospective planning permission given the [redacted] had been commenced at the date of the appeal, and the charge would remain as set out in the LN.

12. I have taken measurements from the plans that have been provided and I consider that the GIA of the chargeable development is [redacted] sqm.

13. 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]

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

Plus indexation = £ [redacted]

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

[redacted]

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

Plus indexation = £ [redacted]

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

Total Charge

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

[redacted]  
Valuation Office Agency  
[redacted]