# Appeal Decision

**by [redacted] MRICS**

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

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**Appeal Ref:** [redacted]

**Address:** [redacted].

**Proposed Development:** Erection of ancillary building comprising [redacted] and [redacted] with [redacted] and [redacted] in [redacted] above following demolition of existing [redacted]. Amendment to consent [redacted]. (Retrospective).

**Planning permission details:** Granted on appeal by the Planning Inspector on [redacted] under reference [redacted] (original planning application reference [redacted]).

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

## Reasons

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

2. Planning permission for the above development was granted by the Planning Inspector on [redacted], following an appeal by the appellants against an enforcement notice issued by [redacted]. The Council implemented its CIL Charging Schedule on [redacted].

3. It is understood that prior to the grant of planning permission the recent planning history was essentially as follows:-

- [redacted] – Planning permission (reference [redacted]) was granted for demolition of an existing [redacted] building and the erection of an ancillary

building with [REDACTED] and [REDACTED]. The existing [REDACTED] was demolished in [REDACTED] and the new ancillary building was constructed. However, the new building differed from the approved drawings.

- [REDACTED] – Planning permission (reference [REDACTED]) for the erection of an ancillary building comprising [REDACTED] and [REDACTED] with [REDACTED] in the [REDACTED] above following demolition of existing [REDACTED], was refused. This was a retrospective application seeking approval for an amendment to the consent granted under reference [REDACTED].

- [REDACTED] –The Council served an enforcement notice (reference [REDACTED]) requiring demolition of the new ancillary building, which they now described as being tantamount to a new dwelling.

- [REDACTED] – The Planning Inspector quashed the enforcement notice (appeal reference [REDACTED]) and granted planning permission for the ancillary building as constructed (appeal reference [REDACTED]). The Inspector considered that there was no evidence that the new building was in use as a separate dwelling house. However, differences between the building constructed and the drawings approved on [REDACTED] (reference [REDACTED]) were not de minimis and the building constructed did not therefore benefit from the extant planning permission. In paragraph 26 of his decision the Inspector went on to say that "The Council has brought to my attention the recent adoption of the Community Infrastructure Levy. However, as this appeal relates to an ancillary building the levy is not applicable".

4. Following the grant of planning permission the CA issued a CIL Liability Notice on [REDACTED] in the sum of £[REDACTED]. This is based on a chargeable area of [REDACTED] square metres @ £[REDACTED] per square metre.

5. On [REDACTED] the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the chargeable amount should be nil.

6. The Appellants contend that the CIL charge calculated by the CA is incorrect because:-

a. CIL as detailed in the Charging Schedule is not applicable to the relevant building. They contend that the CA issued a vexatious claim for which there was no basis in so far as annexe buildings are not, as a matter of fact, detailed in the Charging Schedule. This was a view properly exercised by a Planning Inspector and supported after the relevant appeal decision. This appeal stands despite attempts by the CA to have the decision changed. The appellants contend that CIL was never meant to be a mechanism for householder development.

b. If that position is not accepted, the CA's calculation is erroneous in so far as it must reasonably have regard to the building which was replaced. It would, therefore, be exempt as the residual floor space and the residual Gross Internal Area (GIA) is below the threshold limit where charging would apply.

c. There is an injustice brought about by the timeline in so far as it related to the commencement of development, the date of the planning decision and the instigation of the CIL Charging Schedule. The course of events is such that the appellant could not possibly have sought an exemption in so far as the CIL Charging Schedule did not exist at the time of commencement. Nevertheless, this is a wholly self-contained domestic annexe which would have been

exempt had the Schedule been in place on commencement and the appellant would have properly exercised their right to self-build exemption.

7. The CA contend that their calculation of the chargeable amount is correct because:-

a. The Council implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge. As the development is for a residential annexe of over 100 square metres it is liable to CIL.

b. The floor space of the previous building which was in lawful use before it was demolished in [redacted] cannot be taken into account when calculating the CIL charge because Regulation 40 defines an 'in use' building as 'a building which (i) is a relevant building, and (ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development. Furthermore Regulation 40 defines a 'relevant building' as 'a building which is situated on the relevant land on the day planning permission first permits the chargeable development'. As planning permission first permitted this development on [redacted] and the previous building was demolished in [redacted] the previous structure cannot be taken into account.

c. As this was a retrospective planning permission which was granted on appeal against an enforcement notice the commencement date of the development is deemed to be the date the planning application was granted on appeal - [redacted] [redacted]. This is in accordance with regulation 7(5)(b) of the CIL Regulations 2010 (as amended) which states that 'development for which planning permission is granted or modified under section 177(1) of TCPA 1990 (grant or modification of planning permission on appeals against enforcement notices), is to be treated as commencing on the day planning permission for that development is granted or modified (as the case may be).'

8. With regard to the first ground of appeal (paragraph 6(a) above) the CIL Charging Schedule clearly provides for a CIL charge on 'residential development'. Although 'residential development' is not defined in the Charging Schedule I consider that the ancillary building in this case can reasonably be described as 'residential development'. The Charging Schedule does not exclude 'annexe buildings' or 'householder development' but such development may be exempt from CIL if it qualifies for the exemption available for residential annexes or extensions under the CIL (Amendment) Regulations 2014 (which came into force on 24 February 2014). If CIL was never meant to apply to such development then there would have been no need to introduce the exemption contained in the 2014 Regulations. If the exemption in the 2014 Regulations is not claimed then a residential annexe or extension will only be exempt if the gross internal area of the new build on the relevant land will be less than 100 square metres (Regulation 42 – Exemption for minor development). It does not appear to be in dispute that the gross internal area of the new annexe building in this case is [redacted] square metres so the exemption for minor development does not apply. In my opinion the area of the chargeable development to be taken into account when calculating the chargeable amount under Regulation 40 is therefore [redacted] square metres. I note the comment made by the Planning Inspector in paragraph 26 of his decision that "as this appeal relates to an ancillary building the levy is not applicable" but consider that this may have been based on a belief that the building would be exempt under the 2014 Regulations. However, under the CIL Regulation 2010 (as amended), I do not believe it is the Planning Inspector's responsibility to determine whether or not a development is liable to CIL or to calculate the chargeable amount.

9. With regard to the second ground of appeal (paragraph 6(b) above), I agree with the CA's contention as set out in paragraph 7(b) above. As planning permission first permitted this

development on [redacted] and the previous building was demolished in [redacted] the previous structure cannot be taken into account when calculating the chargeable amount under Regulation 40.

10. With regard to the third ground of appeal (paragraph 6(c) above), I can to some extent understand why the appellants consider that the timeline of events result in some injustice here. Clearly when planning permission for the annexe building was eventually granted it was just 7 days after the CIL Charging Schedule had come into effect. It was at this date too late for the appellant to apply for the exemption available for residential annexes or extensions under the CIL (Amendment) Regulations 2014 because a claim must be submitted before commencement of the chargeable development. Additionally, because this was a retrospective planning permission, the previous building had been demolished before the date on which planning permission was granted and the area of that building could not therefore be taken into account when calculating the chargeable amount under Regulation 40. However, on an appeal under Regulation 114 I can only consider whether the chargeable amount has been calculated incorrectly. For the reasons given above I consider that the CA have correctly calculated the charge in accordance with Regulation 40.

11. On the evidence before me I conclude that the appropriate charge in this case should be £[redacted].

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]