anal Daaiaian

_	Appear Decision	
b'	MRICS	
	Appointed Person under the Community Infrastructure Levy Regulations 2010 (as nended)	
Va	luation Office Agency - DVS	
е-і	mail: @voa.gov.uk.	
A	opeal Ref: 1759300	
PI	Planning Permission Reference:	
Lo	ocation:	
W	Development: Proposed two storey side extension and single storey extension with attic room above, glazed entrance to front and rear and two storey rear extension. Replacement of roof.	
D	ecision	
Ιc	ecision letermine that the Community Infrastructure Levy (CIL) payable in this case should be £ 0 ero pounds).	
l c (z	etermine that the Community Infrastructure Levy (CIL) payable in this case should be £ 0	
l c (z	etermine that the Community Infrastructure Levy (CIL) payable in this case should be £ 0 ero pounds).	
l c (z	etermine that the Community Infrastructure Levy (CIL) payable in this case should be £ 0 ero pounds). easons I have considered all the submissions made by (the Appellant) and as the Collecting Authority (CA), in respect of this matter. In particular, I have considered the	

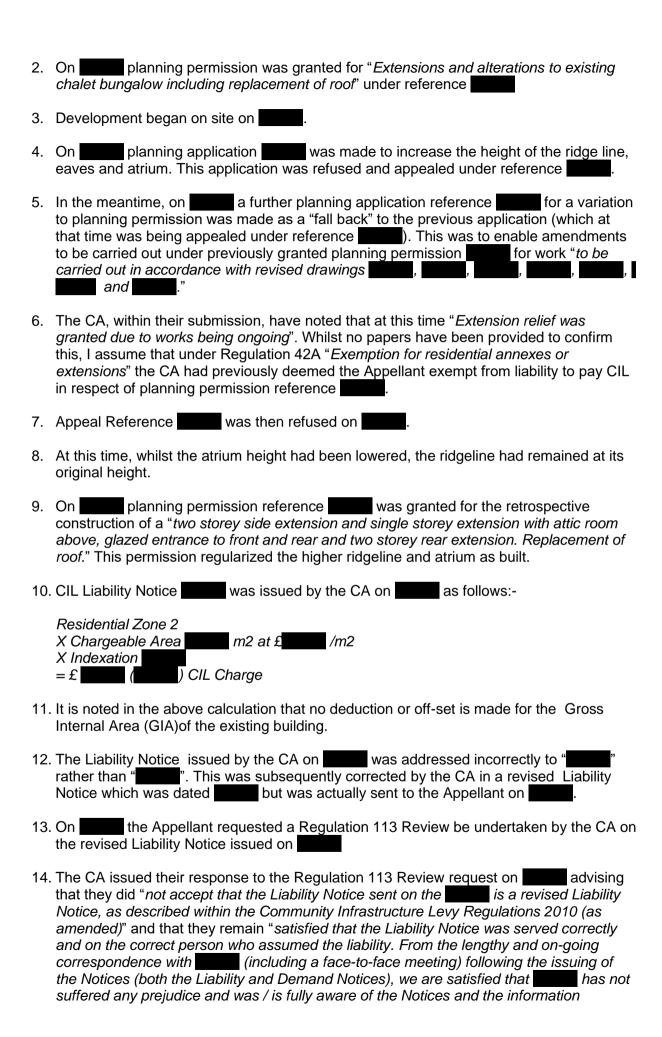
together with documents and correspondence attached thereto. i. The CA's representations (including Appendices 1-10) to the Regulation 114 Appeal j. Further comments on the CA's representations prepared by the Appellant and dated k. The Appellant's response dated to specific questions raised by the Appointed Person by email on and copied to the CA, who confirmed on that they had no further comments to make.

h. The CIL Appeal Form dated submitted by the Appellant under Regulation 114,

f. The Appellant's request dated for a Regulation 113 review.

g. The CA's response to the request for a Regulation 113 review, issued on

CIL liability.



OFFICIAL

contained within (including any formal appeal routes). Therefore, the SDNPA will not be revising the Liability Notice dated and the request for a Regulation 113 review is declined as it is out of time."

15. A CIL Appeal form dated was submitted by the Appellant to the VOA on Validity of the Appeal

16. With regards to the issue of the validity of this Regulation 114 Appeal; the CA had amended a typographical error on their Liability Notice (the Appellant's surname was misspelt as "Drummer"), but are otherwise of the view that the Liability Notice sent via email on was identical, save the corrected surname, to the Liability Notice served on

- 17. The CA argue that *CIL Regulation 65* does not define what constitutes a 'revised liability notice' other than to stipulate at *Regulation 65(4)* that a charging authority must issue a revised notice if the chargeable amount changes or the charging authority issues a new instalment policy which would change the instalment arrangements which relate to the chargeable development. Neither of these are relevant to this particular case. Therefore, it is the CA's position that the typographical correction does not result in a revised Liability Notice being issued.
- 18. The CA further comment that they had extensive engagement with the Appellant, and it is their position that this clearly demonstrates the Appellant was fully aware of the serving of the Liability Notice and the appeal options available at that time. They also dispute that any confusion was caused to the Appellant by correcting the typographical error. The email dated states that the original Liability Notice had been corrected to address the typographical error, not that a revised Liability Notice had been issued.
- 19. The Appellant notes that Regulation 65(2) of the CIL Regulations 2010 (as amended) states that '(2) a liability notice must (c) state the date on which it was issued'. They note there is no definition under the CIL Regulations on what constitutes a 'revised liability notice' or anything to indicate that, once issued, a Liability Notice can be revised without affecting the effective date of the Liability Notice. They further note that Regulation 65(5) states that 'A collecting authority may at any time issue a revised liability notice in respect of a chargeable development' and that '65(8) where a collecting authority issues a liability notice any earlier liability notice issued by it in respect of the same chargeable development ceases to have effect'. The appellant therefore argues that any issuing of a revised Liability Notice has the effect in the Regulations of becoming a new Liability Notice, with the previous Notice ceasing to have effect.
- 20. The Appellant further argues that just because they were aware of such a notice, this does not negate the fact that the original Liability Notice was addressed to someone other than the person that assumed the liability, which they feel is acknowledge by the CA in the act of issuing a revision. The Appellant therefore argues that any change made to the Notice to amend who the notice is served upon represents a "revised" Liability Notice, and automatically replaces all previous liability notices. This revised notice also outlines who the liable party is, as the more recent one would supersede the previous version.
- 21. The Appellant therefore states that their appeal is made against the revised Liability Notice issued and distributed on and submitted within 60 days of that date. They further state that given the retrospective nature of the application this appeal can be submitted in line with Regulations 114 (2) and (3A).

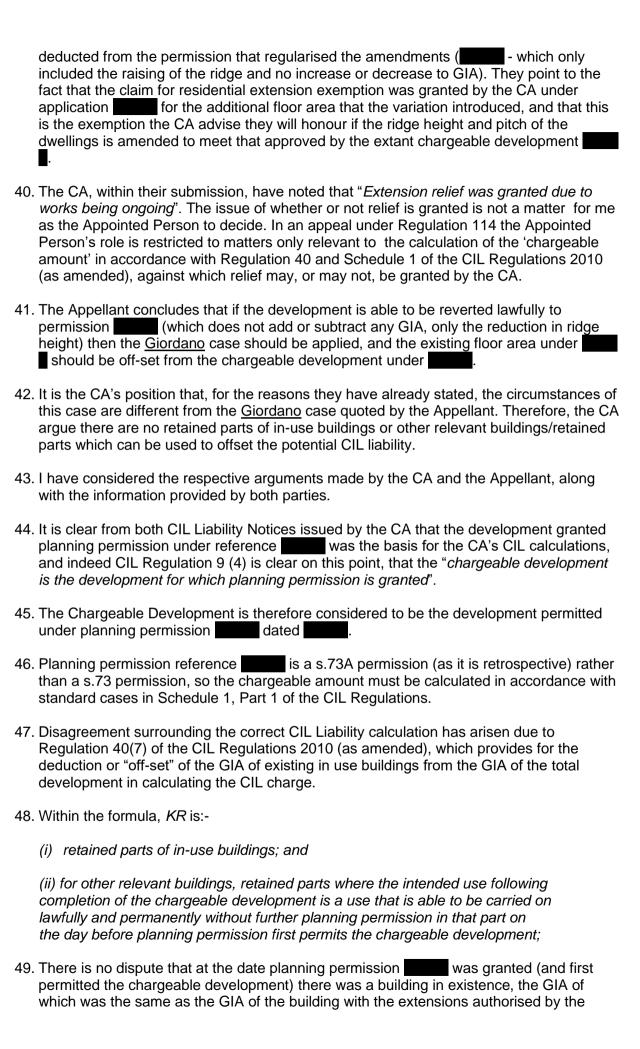
- 22. Regulation 114 (2) requires that an "An appeal under this regulation must be made before the end of the period of 60 days beginning with day on which the liability notice stating the original chargeable amount was issued."
- 23. Regulation 114 (3A) further states "A person may appeal under this regulation after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced."
- 24. With regards to Regulation 114 (2) above; whilst the CA's amendment to the original CIL Liability Notice dated was only minor, involving a correction to the Appellant's name, in my view the notice sent on has to be regarded as a new Notice. This new Liability Notice was therefore the Notice which the Regulation 113 review request related to and thus the "liability notice stating the original chargeable amount" for the purposes of Regulation 114(2). As it was issued by the CA on this is taken to be the date from which the 60 day period for a valid appeal to be made should start.
- 25. With regards to Regulation 114 (3A) above; the planning permission granted in relation to the development (reference was a second was retrospective, whilst development had already commenced this is not an issue that could prevent an appeal being submitted in line with Regulation 114 (3A) due to the intention of the planning application being to correct/regularize works already commenced under a previous permission.
- 26. The Regulation 114 Appeal dated is therefore considered to be valid.

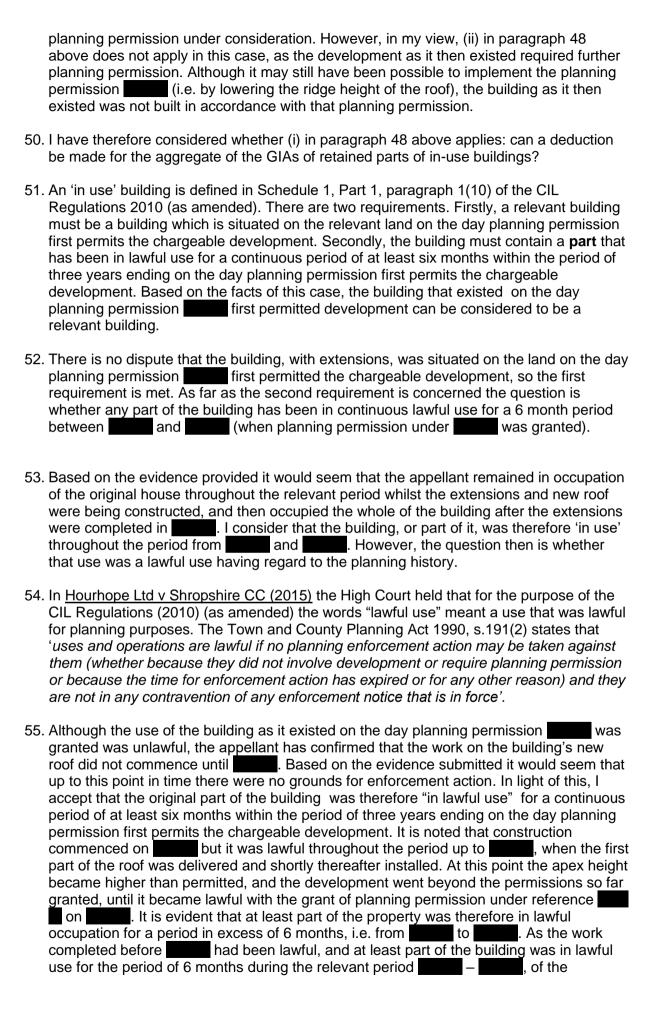
The Chargeable Amount

- 27. The dispute over the calculation of the chargeable amount relates to what, if any, GIA of existing buildings can be set off against the GIA of the chargeable development.
- 28. The appellant argues it is their understanding that the CA accepts that applications were commenced and therefore remain extant and lawfully implementable for planning purposes, and that when issuing the revised liability for application the existing floor area at the time of the planning application being determined should have been considered to represent 'in-use' floor area and off-set from the CIL liability.
- 29. The CA's view is that planning permission had been granted for an extension to the property under application reference (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application approved under (and a subsequent variation of condition application application approved under (and a subsequent variation of condition application a
- 30. The CA state that planning permission granted on followed the dismissed appeal and was for the retrospective construction of a two storey side extension and single storey extension with attic room above, glazed entrance to front and rear and two storey rear extension, and replacement of roof. It is for this permission that the CIL chargeable amount arises.
- 31. The Appellant refers to Schedule 1(6) (Formerly Regulation 40(7)(ii)) of the CIL Regulation 2010 (as amended) that states, "the aggregate of the gross internal areas of... (ii)... retained parts [of other relevant buildings which are now in-use buildings] 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 date before planning permission first permits the chargeable development", and argues this means that if a development is commenced and subsequently a developer applies for a new amended development through an application for the same use class, the floor space of the relevant development subject to

latter application's floor space calculations. 32. The Appellant argues that applying this interpretation, as supported by the Court of Appeal decision in R (Giordano Ltd) v London Borough of Camden [2019] EWCA Civ 1544, the floor space from applications and which are accepted as having been commenced, and therefore remained extant at the time was submitted and approved. The floor area approved under these extant planning permissions should therefore be deducted from the CIL liability arising from the amended development's floor space under planning permission in accordance with Schedule 1(6) of the Regulations, and ratified in Giordano. 33. The Appellant further contends that as did not approve any additional floor area over that already approved under the CIL liability must therefore have equated to £Nil because the original application under reference was granted prior to a CIL Charging Schedule, and application reference benefitted from a self-build exemption for the additional floor area, reducing the CIL liability from £ 34. I have not been given sight of any correspondence or documentation relating to any earlier calculation of CIL liability at £ referred to above. 35. The CA confirms there is no dispute between the parties that planning permission was obtained to rectify a development on site which had already been carried out without the benefit of planning permission (i.e. it was a retrospective permission), nor does the appellant dispute the sam of proposed GIA used to calculate the chargeable amount. 36. It is the CA's position that the development on site was not made lawful until the day on which planning permission was granted on and therefore there was no floor space which could be used to off-set the potential CIL liability. 37. The CA advise that the Appellant has received correspondence from the CA as the Local Planning Authority (via Change an agent for the CA) which states 'the development as built on site is materially different from the proposal that was shown in planning and therefore it is considered that the permission could not have been implemented. They state that whilst it is acknowledged that a residential extension exemption claim was submitted by the Appellant, it was the view of the CA at the time the Liability Notice was issued () that this claim was not valid as the development on site had commenced and the planning permission granted was to approve those retrospective works. It is the CA's view that exemptions can only be awarded prior to commencement, as per CIL Regulation 42B(2)(a). It is also the CA's position that 42B(3A) are not relevant in this case as the development on site was not built in accordance with any of the previous planning permissions and was not made lawful until the granting of permission on 38. The Appellant argues that it is clear from the images and plans provided under the CA's submission that the difference in development that lies between the approved original application (which varied the) is the increase in ridge height only. They hold the view that evidence submitted previously establishes that the Local Planning Authority and the CA accepted that the chargeable development under was commenced and can be reverted to as an extant chargeable development. They state that apart from the increase in ridge height (and therefore increase in roof pitch) no other differences in the elevations exist. They argue it must therefore be considered that application was commenced. 39. The Appellant's view is that if the CA would allow the reversion to , then it follows that the floor space of this development remains extant. As such, this floor space must be

the original planning permission must be granted as relief as 'in-use' floor area from the





extended building that existed on qualifies as an 'in use building' and the GIA of the building should therefore be off-set against the GIA of the chargeable development.

- 56. As is a s.73A permission, CIL should be calculated with reference to Schedule 1, Part 1, of Community Infrastructure Regulations 2010 (as amended).
- 57. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £ 0 (zero pounds) calculated thus:-

Residential Zone 2
Proposed GIA ______ m2
Less Existing GIA ______ m2
= 0m2 Chargeable Development at £_____ /m2
X Indexation ______ = £ 0 (zero) CIL Charge

DipSurv DipCon MRICS RICS Registered Valuer Valuation Office Agency 14 June 2021