# Appeal Decision

## by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency (DVS)
[redacted]

Email: [redacted]@voa.gov.uk

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**Appeal Ref: 1767864**

**Planning Permission Ref. [redacted] approved by [redacted]**

**Location: [redacted]**

**Development: Use and extend the original walls, and use the original foundation slab, of the former garage and car port to create on the same site a two storey hipped roofed end of terrace dwelling; change of use from agriculture to front hardstanding and rear garden.**

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### Decision

I confirm that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £[redacted] ([redacted]) and dismiss this appeal.

### Reasons

1. I have considered all the submissions made by [redacted] of [redacted] on behalf of the appellants, [redacted], and the Collecting Authority (CA), [redacted] ([redacted]) in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:

a. The Planning Decision issued by [redacted] on [redacted].
b. The CIL Liability Notice issued by the CA on [redacted].
c. The CA's response to the appellant's request for a review dated [redacted].
d. The CIL Appeal form submitted by the appellant as a Regulation 114 Chargeable Amount Appeal dated [redacted], together with documents and correspondence attached thereto.
e. The CA's representations to the appeal with 3 appendices received on [redacted].
f. The appellants' comments on the CA's representations received on [redacted].

2. Planning permission for the abovementioned development was granted on [redacted]. On [redacted] the CA issued a Liability Notice in the sum of £[redacted]. This was based on a chargeable area of [redacted] square metres for a 'Residential Zone 2' development charged at £[redacted] per square metre (sq m), plus application of an indexation factor of [redacted].

3. The appellants requested that the CA review the calculation of the chargeable amount under Regulation 113. The CA issued its decision on the review on [redacted] maintaining that the charge was correct. The appellants submitted a CIL Appeal to the Valuation Office Agency under Regulation 114 (chargeable amount) on [redacted] contending that the chargeable amount should be nil.

4. The appellants have expanded upon their conclusion of a nil charge within an appeal statement explaining that the ground floor of the development had no requirement for planning permission for residential use owing to a determination made in 1987 (under s.53 of the 1971 Town and Country Planning Act) whereby it was determined that "planning permission was not required for the residential use of the adjoining cottage to be extended into what was then a garage and car port". This area now comprises the ground floor of [redacted]. The appellants are therefore of the opinion that the ground floor is exempt from a CIL charge as an 'in-use' area and it follows that the first floor is exempt as a minor exemption since it is less than 100 sq m.

5. Together with their appeal statement and comments on the CA representations, the appellants have provided the following documentary evidence in support of their view:

1) Copy of the Planning Decision Notice.
2) Location Plan, Site plan and elevations.
3) Copy of the Local Authority Review.
4) Copy of the Liability Notice.
5) Copy of an Enforcement Notice.
6) 2 photographs, of garage and dwelling.
7) Local Land Registry extract.
8) Floor plans of the garage and car port.

6. The appellants' case is focused upon the fact that there had been an earlier s.53 Determination that "bestows a lawful residential use on the ground floor of [redacted]". It is the appellants' view that under Regulation 42(1) the ground floor should be exempt as 'minor development' and also that it should be exempt as it had been in lawful use for more than 6 years continuously. The remainder of the house (the first floor) is less than 100 sq m and therefore, in their opinion, should also attract zero CIL liability as minor development.

7. The appellants consider that the CA's case relies on the Enforcement Notice and that this ceased to have effect on the day that the permission was granted, 5 days before the Liability Notice was served and the CA should not have regard to it. They are also of the opinion that no part of the planning permission is retrospective.

8. In its representations the CA details that the 1987 determination that the appellants refer to is application reference [redacted] and related to Bungalow 1, the property now adjacent to [redacted]. This application sought clarification on whether an 'extension of living accommodation into garage' required planning permission. As such the CA is of the opinion that this determination related to an extension of Bungalow 1, not a separate new dwelling, and furthermore it did not extend to the carport area.

9. The CA explain that this appeal is in relation to a retrospective permission for a 4 bed dwelling that had been in existence since [redacted] and was subject to an enforcement notice requiring demolition since [redacted]. The CA does not dispute that there was a building on the site of the chargeable development at the date of the permission ([redacted]) however it is of the view that this building, or any part of it, cannot be regarded as having a lawful use for the purposes of considering it as a deduction for CIL purposes. The Council argues that [redacted] was, and remains, subject to an extant Enforcement Notice and therefore the lawful position at this site is as a cleared site.

10. Furthermore the CA is of the view that the development fails to qualify for a minor development exemption under regulation 42(1) as the exemption does not apply where the development comprises one or more dwellings.

11. Having fully considered the representations made by the appellant and the CA, I record my observations regarding the grounds of the appeal in the following paragraphs:

12. It appears to be common ground that [redacted] was developed in [redacted] without planning consent and that the flank walls and foundation slab of the previous garage and car port were used in the construction of the ground floor. The enforcement notice that later ensued required the demolition of the dwelling although this was never actioned and on [redacted] an application was made to regularise the existing development as a dwelling and the development was therefore retrospectively approved on [redacted]. The appellants state that no part of the planning permission is retrospective but this permission is for the retention of an existing dwelling and it is, in my opinion, therefore retrospective in nature.

13. There appears to be no dispute as to the gross internal area of the chargeable development, nor the chargeable rate or the indexation factor. Essentially the dispute is whether any existing floor area should be deducted within the CIL calculation as being in lawful use; and should the development (or any part of it) qualify as a 'minor exemption'.

14. Regulation 9 of the CIL Regulations 2010 (as amended) states that chargeable development means "*the development for which planning permission is granted*". The CIL liability herein under appeal therefore relates to the retrospective development allowed by the planning permission [redacted] which, in summary, permits the retention of a 4 bed dwelling on the site.

15. Regulation 40 (Schedule 1 Part 1 Para 1(6)) of the CIL Regulations 2010 (as amended) allows for the deduction of certain existing floorspace from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace includes "*retained parts of in-use buildings*" and 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*".

16. In this case planning permission was granted on [redacted] and at that date there is no dispute that a 4 bed dwelling existed on the land. However to qualify as a deduction within the CIL calculation the building (or retained part thereof) must be "in-use". An "*in-use building*" means a building that "*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*". In this case none of the building on the land had been in lawful use during the period of three years prior to the planning permission as the dwelling had been built without planning permission and moreover was subject to an enforcement notice. The appellant is of the view that the ground floor should still qualify owing to the s53 Determination in respect of residential use dating from [redacted] however, whilst this determination confirmed residential use, it was in respect of an extension to the adjoining cottage and related to the garage only, it did not confirm the lawful use of the ground floor as part of a separate 4 bed dwelling.

17. Similarly, the ground floor does not qualify under the second criteria of "*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*". Again, whilst part of the ground floor had a confirmed residential use in [redacted] this was as an extension to the adjoining cottage which is not the intended use following completion of the chargeable development. The retrospective permission was required to regularise the

planning situation in respect of the dwelling at [redacted] and therefore on the day before planning permission the continued use of the ground floor as part of a 4 bed dwelling could not have been carried on lawfully and permanently.

18. In respect of a minor development exemption, Regulation 42(1) of the CIL Regulations 2010 (as amended) states "*Liability to CIL does not arise in respect of a development if, on completion of the development, the gross internal area of new build on the relevant land will be less than 100 square metres*". However Regulation 42(2) then states "*But paragraph (1) does not apply where the development will comprise one or more dwellings*." In this case the development will comprise a dwelling and hence the minor development exemption does not apply.

19. Based on the facts of this case and the evidence before me I conclude that there should be no deductions for in-use areas or a minor development exemption and the CA correctly calculated the CIL charge shown in the Liability Notice at £[redacted].

20. I therefore confirm a CIL charge of £[redacted] ([redacted]) and dismiss this appeal.

[redacted]

**[redacted] BSc (Hons) MRICS**
**RICS Registered Valuer**
**Valuation Office Agency**
**22 June 2021**