

# 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: 1773288**

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

**Location: [REDACTED]**

**Development: Change of use of part of dwelling to provide an independent dwelling known as "[REDACTED]" together with alterations to elevations.**

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## Decision

I confirm that the Community Infrastructure Levy (CIL) payable in respect of the development is £[REDACTED] ([REDACTED]) and hereby dismiss this appeal.

## Reasons

1. I have considered all the submissions made by the appellant, [REDACTED] and the representations from the Collecting Authority (CA) [REDACTED].
2. Planning permission was granted by [REDACTED] on [REDACTED] for 'Change of use of part of dwelling to provide an independent dwelling known as "the cottage" together with alterations to elevations' reference [REDACTED].
3. On [REDACTED] the CA issued a Regulation 65 Liability Notice (LN) based on a net chargeable area of [REDACTED] square metres (sqm) in the sum of £[REDACTED].
4. The appellant wrote to the CA on [REDACTED] contesting the application of surcharges in the Demand Notice, that the Demand and Liability Notices had been correctly served and requesting a review of the calculation of the chargeable amount in view of the submission of a subsequent application made under Section 96A of the Town and Country Planning Act 1990 (non-material amendment).
5. The CA conducted a review of the chargeable amount under Regulation 113 of the CIL Regulations 2010 (as amended) and provided a formal response on [REDACTED]. The response explained that matters in relation to the application of surcharges and the default liability were outside the scope of the review but the CA addressed the calculation of the chargeable

amount stating that it measures the gross internal area (GIA) of a chargeable development using the methodology set out in the RICS Code of Measuring Practice (6th Edition) which provides that GIA is the area of a building measured to the internal face of the perimeter walls at each floor. Accordingly, the CA maintain that the deemed net area of the permitted development (██████) is ██████ sqm. The CA decision on its review was the confirmation of the original chargeable amount of £██████, as stated in the Liability Notice.

6. The appellant submitted CIL Appeals to the Valuation Office Agency under Regulation 114 (chargeable amount), Regulation 115 (Apportionment of Liability) and Regulations 116A (residential annex or extension) proposing the CIL charge should be reduced to £██████ (██████) (although this later appears, within the appellant's further comments, to be amended to an opinion of £██████), or £0 (nil) if the claim for a residential extension exemption is accepted. The appellant did not submit a copy of the decision of the CA on the claim for a residential exemption and there was no apportionment of liability shown in the Liability Notice so the appeal has been accepted as being valid under Regulation 114 (chargeable amount) only.

7. The grounds of the appeal can be summarised as follows:-

- The chargeable amount includes an area of the roof void. This should not form part of the GIA measurement. The appellant has measured the disputed loft area as being ██████ m x ██████ m, that is ██████ m and is therefore of the opinion that the CIL liability should be reduced by £██████.

8. Moreover since the development has not commenced the appellant considers that a subsequent application for a non material amendment made under S.96(a) of the TCPA 1990 which changes the access to the disputed roof void/loft cupboard to a hatch access in the ceiling below should be taken into account thereby removing the loft cupboard from the development. The appellant has also submitted a copy of a redacted CIL appeal decision in support of his view. In that case that appointed person decided that a void in the roof space, which was accessed by a loft ladder only, should not be included as part of the GIA.

9. The CA notes that it has measured the net chargeable area in accordance with Schedule 1 of the CIL Regulations 2020 (as amended) and the GIA of the chargeable development is measured using the methodology set out in the RICS Code of Measuring Practice (6<sup>th</sup> Edition). The CA has submitted copies of the approved plans indicating that the GIA of the net chargeable area of the proposed development is ██████ sq m. The plans include the disputed area as "Loft/Eaves Storage" and it is shown with a door access from the landing. The CA comment that the area was not included in the existing floorplans.

10. In respect of the appellant's view that the non material amendment application should be taken into account, the CA notes that the application has not been determined and is still pending consideration but furthermore argues that it would be contrary to Schedule 1 of the CIL Regulations 2010 (as amended) to calculate the chargeable amount for ██████ on the grounds of 'indicative' plans submitted in support of an undetermined application pursuant to Section 96a.

11. I have sought further comments and it appears that both parties are in agreement that the alterations are substantial and that the development forms a CIL liable development notwithstanding the operation of Regulation 6(1)(d) and the fact that the planning permission is for the change of use of part of dwelling to provide an independent dwelling.

12. It therefore falls for me to decide the net chargeable area in relation to this development, and specifically if the disputed loft area should be included. The CIL regulations stipulate that CIL calculations are to be based on gross internal area (GIA). Both parties appear to accept that the RICS Code of Measurement Practice 6th Edition (May 2015) is the principal source of guidance for the measurement of buildings. The definition of GIA is provided within the

Code as follows: “GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level”.

13. I am satisfied that the plans presented by both parties indicate that the disputed loft/eaves area falls within the perimeter wall of the first floor, the perimeter wall being in line with that of the en-suite adjacent to it. The approved plans indicate that the access to the loft storage area is by a doorway from the landing rather than as a loft void accessed by a loft ladder, as is currently the case and as is proposed by the subsequent non-material development application. Under Regulation 9(1) the chargeable development is the development for which planning permission is granted, i.e. [REDACTED]. Development in accordance with the approved plans is a condition of the approval and hence the net chargeable area must be calculated in accordance with those approved plans. I do not consider that the regulations allow regard to be had to plans submitted within a subsequent non-material amendment application, irrespective of whether development has commenced.

14. I therefore consider that loft cupboard area in dispute should be included in the GIA in this instance and the net chargeable area calculated by the CA at [REDACTED] sq m is correct. There appears to be no dispute as to the rates and indexation adopted within the calculation and I therefore confirm a CIL charge of £[REDACTED] and hereby dismiss this appeal.

[REDACTED]

Valuation Office Agency  
05 October 2021