## **Appeal Decision**



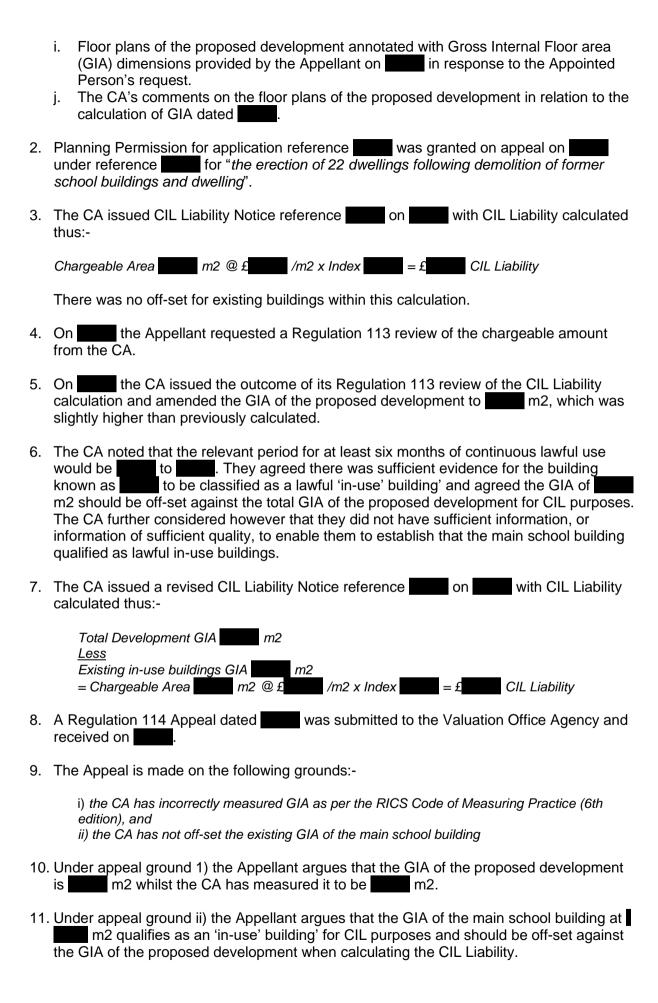
an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)

Valuation Office Agency - DVS Wycliffe House Green Lane Durham DH1 3UW

Appe Pland Local Deve schol	@voa.gov.uk.	
Pland Local Devession	e-mail: @voa.gov.uk.	
Deve scho	Appeal Ref: 1779549  Planning Permission Reference:  Location:  Development: The erection of 22 dwellings following demolition of former school buildings and dwelling.	
Deve scho ————————————————————————————————————		
Decis		
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(	ermine that the Community Infrastructure Levy (CIL) payable in this case should be $\mathfrak L$	
Reas	sons	
C	nave considered all the submissions made by the Appellant (the Appellant) and the collecting Authority (CA) in respect of this matter. In particular, I have considered the formation and opinions presented in the following documents:-	
a.	Planning Permission reference for application reference issued on	
b.	CIL Liability Notice reference issued by the CA dated at £ CIL liability.	
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e.	The amended CIL Liability Notice reference issued by the CA dated at £ CIL liability.	
f. g. h.	The CIL Appeal Form dated submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.  The CA's representations to the Regulation 114 Appeal dated.	

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- 12. Both parties agree that can be classified as an 'in-use' building for CIL purposes and that the GIA of can be classified as an 'in-use' building for CIL purposes m2 should be off-set against the GIA of the proposed development when calculating the CIL Liability.
- 13. With regards to appeal ground i) The GIA of the proposed development: The CA's view is that in accordance with The RICS Code of Measuring Practice (6th Edition) party walls should be included in GIA where buildings are formed of multiple dwellings, as The Code states "Areas occupied by internal walls and partitions" should be included in GIA. They note that the Appellant's annotated floorplans show the GIA of each dwelling/plot rather than the complete floor level for each building, which is contrary to The Code.
- 14. The Appellant responds that The Code states, when measuring GEA (Gross **External** Area), that "Party Walls in shared ownership are to be measured to their central line...." Therefore they argue that The Code recognises that party walls are in effect perimeter walls and when measuring to GEA one would measure up to the central line. They argue that it must therefore follow that when measuring to GIA (Gross **Internal** Area) Party Walls are also treated as perimeter walls and the GIA should be measured to the internal face of the party walls at each floor level.
- 15. The CA also argues that The Code requires that "columns, piers, chimney breasts, stairwells, lift wells, other internal projections, vertical ducts, and the like" should be included in GIA measurements. Accordingly, the CA consider they have correctly included the fireplaces and chimney breasts shown on the approved floorplans in their GIA calculation.
- 16. The Appellant disagrees that fireplace recesses should be included and argues that a fireplace recess is not a chimney breast that projects internally within the internal face of the perimeter wall. A fireplace recess which projects externally beyond the internal face of an external wall should not be included when calculating GIA as The Code states under 2.18 that perimeter wall thicknesses and external projections are excluded. The Appellant asserts that a fireplace recess is therefore within the perimeter wall thickness and is an external projection and should therefore be excluded from the GIA.
- 17. The CA also argues that The Code states that all areas, regardless of headroom, should be included in GIA measurements. They hold the view that the floor area occupied by the bay windows should be included in GIA, stating "Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level" and therefore they consider that the face of the perimeter wall begins at the point of the window frame.
- 18. The Appellant argues that a 'projecting bay window' (often termed an "oriel window") is an external projection beyond the internal face of the internal perimeter wall which does not extend to floor level. Therefore, they assert that it should be excluded from the GIA calculations. They also argue that a 'standard window frame' which is sited within the perimeter wall should be excluded from the GIA calculations, as it does not extend to floor level and projects beyond the internal face of the perimeter wall. They argue that The Code clearly defines that when measuring "GIA is measured to the internal face of the perimeter walls at each floor level", and they disagree with the CA's view that the face of the perimeter wall begins at the face of the window frame. The appellant argues that The Code clearly states in note GIA 4 "Internal face means the brick/block work or plaster coat applied to the brick/block work".
- 19. The Appellant notes that a projecting bay is where the perimeter wall projects beyond the internal face of the main perimeter wall, forming a multi-sided projection that extends to floor level. They reason that a projecting bay is different to a projecting bay (oriel) window, the key difference being that a projecting bay (oriel) window does not extend to floor level. A projecting bay does extend to floor level however, and therefore they agree

- it would be correct to include the area up to the internal face of the perimeter wall of the projecting bay within the GIA Calculations.
- 20. The CA notes that The Code excludes canopies from GIA, but the Appellant has excluded all porches from their measurements. The CA disagree with this approach, as some of the porches are more substantial than a 'canopy' and are bounded by more than two walls and therefore result in measurable floorspace: for example, Plots 10 and 11. Where this is the case, the CA have included the porch areas within the GIA measurements.
- 21. The Appellant disagrees and argues that porches are an external feature and are not only external to the perimeter walls, but also are external projections. The porches of the approved drawings are open on at least one side and therefore cannot be considered internal. They argue that The Code states:
  - (2.18) (Excludes) Perimeter wall thicknesses and external projections (2.20) (Excludes) Canopies.

The Appellant asserts that porches should be treated as canopies, as both serve the same purpose and provide protection to an entrance to a building. Due to the open nature of porches the area cannot be measured as GIA when measured at floor level, as there is no perimeter wall on at least one side to measure to. Furthermore, supporting posts, dwarf/full height walls are external projections which the code excludes from GIA.

- 22. For all the above reasons the Appellant disagrees with the CA's interpretation and application of The Code and asserts that the CA's GIA calculation of m2 is incorrect. The Appellant proposes that their GIA calculation of m2 is a fair and accurate interpretation and application of The Code. The Appellant's calculations of the GIA have been prepared using the original digital (CAD) based drawings and a digital polyline method to calculate the resultant GIA (as opposed to measuring paper or pdf copies, which they believe is less accurate, and was the approach taken by the CA).
- 23. Regarding internal walls and partitions, The RICS Code of Measuring Practice 6th Edition section 2.1 states that areas occupied by internal walls and partitions should be included in GIA. Furthermore, Note GIA 2 Separate buildings further states that "GIA excludes the thickness of perimeter walls, but includes the thickness of all internal walls. Therefore it is necessary to identify what constitutes a separate building".
- 24. The RICS Code of Measuring Practice sets out the method of calculating GIA but it does not give guidance on what is to be measured for CIL purposes. As Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 Standard cases 1 (3) refers to the GIA of "the chargeable development" this would in my opinion point to calculating the GIA of the whole development, treating the two halves of each semi-detached dwelling and the four self-contained apartments in each block as one building in each case, and thus treating a party wall as an internal partition to be measured through for GIA purposes.
- 25. The Appellant's reference to the measurement of Gross External Area (GEA) is noted, but Gross Internal Area (GIA) is the measurement method being applied here and any interpretation of / guidance on the application of GEA is therefore of no relevance.
- 26. Regarding whether fireplaces and chimneybreasts should be included within GIA, The RICS Code of Measuring Practice 6th Edition (May 2015) 2.0 defines GIA as the "area of a building measured to the internal face of the perimeter walls at each floor level" with further reference to Note GIA 4 regarding what is meant by "internal face" and states GIA:

## Includes:-

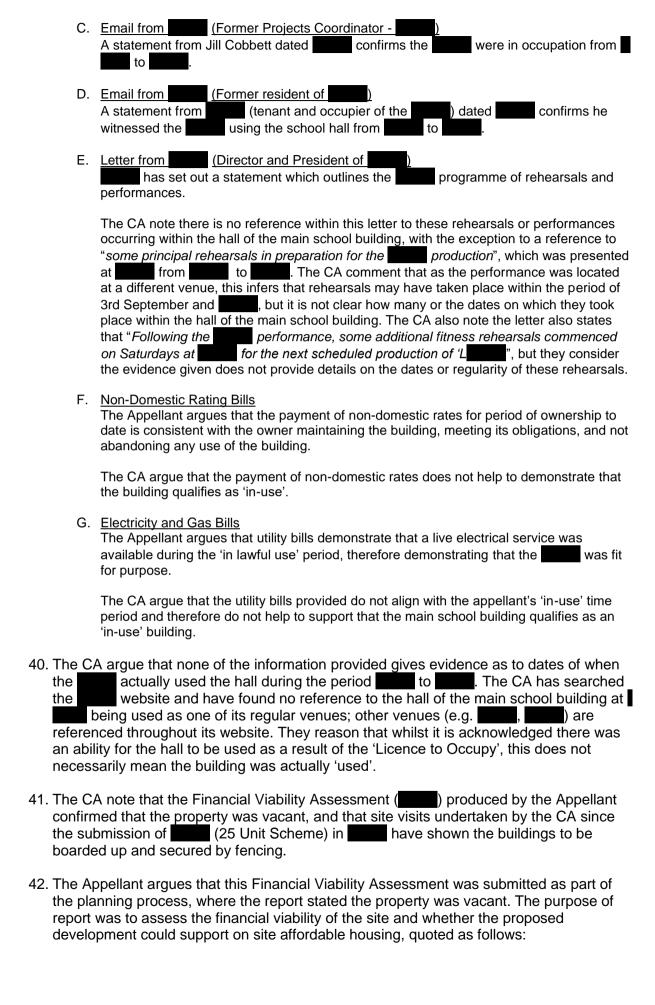
Areas occupied by internal walls and partitions

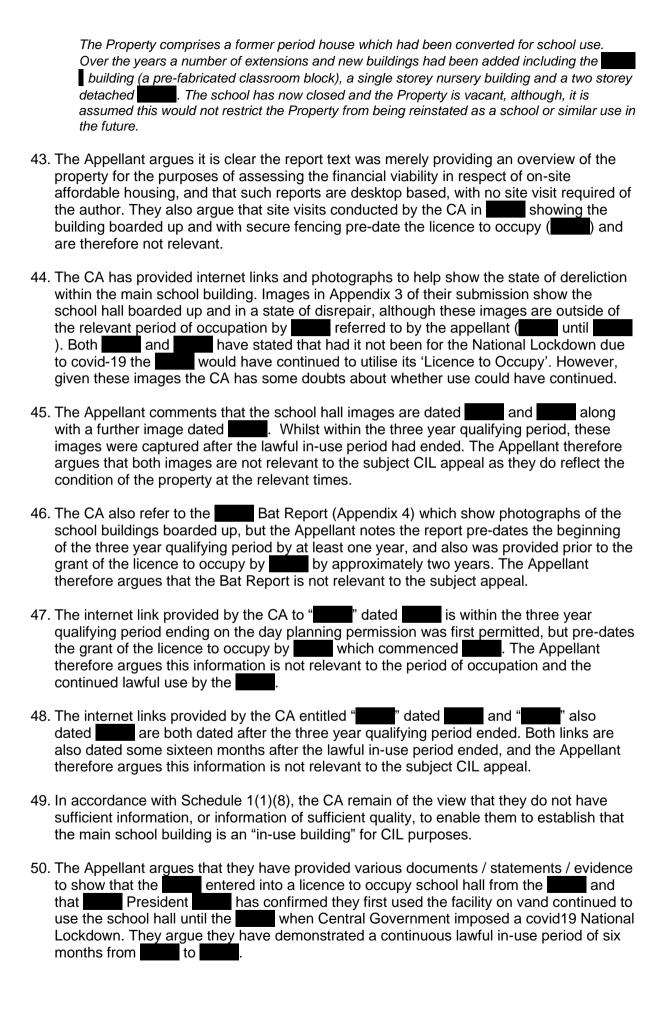
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

## Excludes:-

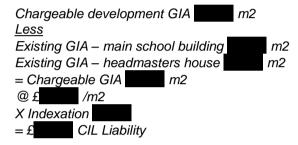
- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fires
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property
- 27. The RICS Code specifically excludes "external projections", and "External open-sided balconies, covered ways and fires" and in my opinion this would apply to externally projecting fireplace recesses, which must therefore be excluded from the GIA.
- 28. Similarly, with regards to a projecting bay (oriel) window, the fact that such structures do not continue down to floor level and are a form of external projection corresponds with those areas of a building specifically excluded from GIA in The RICS Code as being "external projections". As such, it is my opinion that projecting bay / oriel windows should be excluded from GIA.
- 29. Regarding the matter of whether porches should be included within GIA, it is noted by both parties that The RICS Code only specifically excludes "Canopies", and the Appellant has argued that a porch fulfils the same purpose as a canopy and is also a form of "external projection" and as such should be excluded from GIA.
- 30. Porches are not specifically mentioned as being either included or excluded from GIA in The RICS Code, but it does include an example at illustrating how to calculate the GIA of a loading bay by measuring to the internal face of a supporting pillar. This loading bay has walls to three sides and is open sided to the front. This example indicates that it is possible to measure GIA to the inside face of a supporting pillar in the absence of a wall. This would also imply that a loading bay would define some form of boundary. Having an area within a boundary does not require walls but only a structure of some kind that can provide a recognisable form of "boundary". This would seem to be supported by example D, and it is therefore my opinion that the same approach can be applied to the measurement and inclusion of a porch within the GIA.
- 31. It is therefore my view that neither the CAs or Appellants' GIA calculations have correctly applied The RICS Code.
- 32. The Appellant's GIA of m2 incorrectly excludes the thickness of internal walls and partitions within individual pairs of semi-detached houses and individual blocks of four

self-contained apartments, which must be included in GIA as being part of "the chargeable development which would in my opinion be the GIA of the whole building in each case. Similarly, their GIA calculation incorrectly excludes porches, which in my opinion should be included within GIA. 33. The CA's GIA of much m2 incorrectly includes externally projecting fireplace recesses and projecting bay (oriel) windows, which in my opinion must be excluded from GIA due to their being "external projections". 34. The difference in measured area between the CA's and Appellant's GIAs equals m2. This is partly due to the incorrect inclusion of externally projecting fireplace recesses and projecting bay (oriel) windows within the CA's GIA of 35. From a review of the plans, the areas to be deducted are:-Projecting fireplace recesses: m2 total Projecting bay (oriel) windows: m2 total Total: m2 36. Therefore the correct GIA of the proposed development is:m2 (as per the CA's calculation of GIA) Less m2 (total GIA of the projecting fireplace recesses and projecting bay (oriel) windows) = m2 GIA of the proposed development 37. With regards to appeal ground ii) Whether the main school building is a relevant inuse building: The Appellant considers that the main school building should be deducted as part of the calculation of the chargeable amount, and refers to Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) which defines an "inuse building" as a building which: (i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development); (ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development. 38. In accordance with the above, the relevant period of "at least six months" of continuous lawful use would fall within the three year period to 39. The Appellant has provided a range of documentation regarding the use of part of the main school building:-A. Licence to Occupy ( are permitted to occupy the area edged in red on Plan 2 for "two and half hours on a Tuesday and Thursday or each week" for and area edged in red on Plan 2, which is contained within the west of the main school building. The 'Licence to Occupy' gave the the ability to use part of the main school building for up to five hours each week. The CA remain of the view, however, that they have not been presented with any evidence that this licence was actually pursued on a weekly basis. B. Statement from (The Appellant and Director of This states that the main school building has been in-use for a continuous period from the until the by

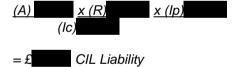




- 51. The Appellant also states that their appeal representations show there was a specific process making the school hall 'fit for purpose' prior to the granting of the licence to occupy to from As indicated in statement, the boarding up of the school and fencing the main part of the school were undertaken to protect the property and did not prevent use of the school hall by the school hall by the provide access to the school hall, including a fire escape route to the rear. This is further explained in the statement by which explains how the hall was made ready and suitable for use by
- 52. The Appellant notes that used the school hall for rehearsals, not their actual public productions, and the venue for a rehearsal would not be publicly advertised on the website, whereas a production venue such as or the would be publicised in order to attract the public to attend the show. The Appellant argues the fact that made use of the school hall is established through the statements submitted and the CA do not appear to have evidence contradicting this.
- 53. The Appellant proposes that CIL Liability should be calculated on the basis of:-

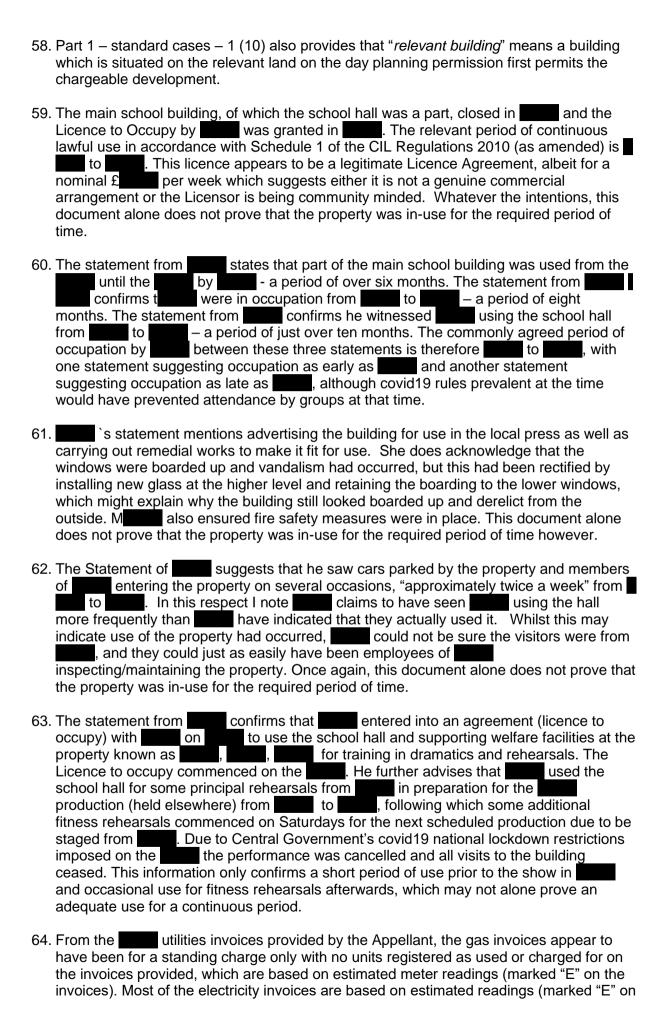


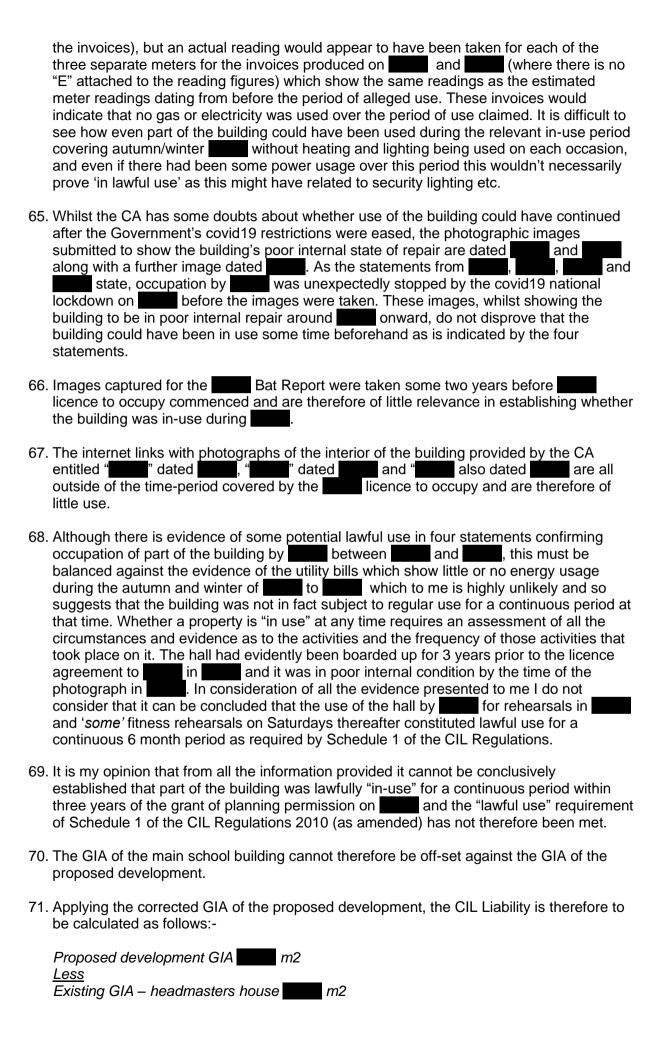
- 54. The CA has measured the proposed GIA as m2. In calculating the chargeable area, the CA has off-set the existing m2 GIA of the "Headmasters House" in accordance with Schedule 1 of the CIL Regulations 2010 (as amended). As such the chargeable area is m2.
- 55. In accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) the CA calculate CIL Liability to be:

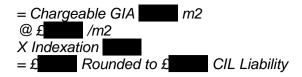


## Where:

- R is the CIL rate in £/sqm
- A is the net increase in gross internal floor area (sqm)
- Ip is the All-in Price Index for the year in which planning permission was granted
- Ic is the All-in Price Index for the year in which the charging schedule started operation
- 56. Disagreement surrounding the issue of identifying the lawful in-use buildings has arisen from Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.
- 57. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 standard cases 1 (10) provides that an "*in-use building*" means a building which 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.







72. The CIL Liability is £ ( ).

DipSurv DipCon MRICS RICS Registered Valuer Valuation Office Agency 21 December 2021