Appeal Decision

by MRICS

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

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

e-mail: @voa.gov.uk.

Appeal Ref: 1780261

Planning Permission Reference:

Location:

Development: Variation of Condition 5 Attached to Planning Permission (Variation of condition 8 (approved plans) attached to planning permission (proposed demolition of existing detached house and erection of a replacement dwelling and implementation of landscape master plan)).

Decision

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

Reasons

1. I have considered all the submissions made by (the Appellant) and Dacorum Borough Council as the Collecting Authority (CA), in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-

   a. Planning permission granted on the for "*Proposed demolition of existing detached house and erection of a replacement dwelling and implementation of landscape master plan.*"
   b. CIL Demand Notice dated issued by the CA at £ CIL liability.
   c. CIL Relief Claim Decision Notice issued .
   d. CIL Acknowledgement Notice dated issued by the CA in respect of a Commencement Notice dated .
   e. Variation of condition granted by the CA on under reference .
   f. Planning permission granted at date of registration on in a Decision Notice issued by the CA dated .
   g. CIL Demand Notice dated issued by the CA at £ CIL liability.

h. CIL Form 1 "CIL Additional Information" submitted by the Appellant dated [redacted].
i. The Appellant's request dated [redacted] for a Regulation 113 review.
j. The CA's decision on the Regulation 113 review dated [redacted].
k. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
l. The CA's representations to the Regulation 114 Appeal dated [redacted] together with the Appellant's response dated [redacted].

Background

2. The Appellant submitted a planning application on [redacted] and planning permission reference [redacted] was granted on the [redacted] for the "*Proposed demolition of existing detached house and erection of a replacement dwelling and implementation of landscape master plan.*"

3. On [redacted] the CA issued CIL Liability Notice [redacted] for planning application [redacted] with CIL calculated as follows:-

   Residential Zone 2 – [redacted]
   Total Development GIA [redacted] *m2*
   <u>*Less*</u>
   Existing GIA [redacted] *m2*
   = [redacted] *m2 chargeable area*
   @ £ [redacted] */m2*
   Indexed at [redacted]
   = £ [redacted] *CIL Liability*

4. On [redacted] the CA issued a CIL Relief Claim Decision Notice in respect of planning application [redacted] confirming the granting of self-build relief for the full amount of CIL Liability.

5. On [redacted] the CA issued a CIL Acknowledgement Notice in respect of a Commencement Notice dated [redacted] submitted by the Appellant that *"noted that the anticipated development commencement date is* [redacted]".

6. A variation of condition 8 (approved plans) was granted by the CA on [redacted] under reference [redacted]. This permission included a plan showing a different version of the North Elevation central roofscape in drawing [redacted]. This omits the lift shaft and natural lead detailing to the above roof that had previously been approved under the Condition 2 approval.

7. Planning Application [redacted] was submitted on [redacted] for variation of condition 8 (approved plans) attached to planning permission [redacted]. Permission [redacted] was granted as at the date of its registration on [redacted] in a Decision Notice issued by the CA dated [redacted] – this refers to (amongst other drawings) [redacted] (North Elevation). A copy of this drawing was not provided to the Appointed Person, but it is assumed this drawing does include the amended roof detailing.

8. On [redacted] the CA issued CIL Liability Notice [redacted] for planning application [redacted] with CIL calculated as follows:-

   Residential Zone 3 – [redacted]
   [redacted] *m2 chargeable area*
   @ £ [redacted] */m2*
   Indexed at [redacted]
   = £ [redacted] *CIL Liability*

9. Within the above Liability Notice the development was described as "*Variation of Condition 5 Attached to Planning Permission ██ (Variation of condition 8 (approved plans) attached to planning permission ██ (proposed demolition of existing detached house and erection of a replacement dwelling and implementation of landscape master plan))*".

10. CIL Form 1 – Additional Information – was submitted by the Appellant to the CA dated ██ ██ in connection with planning reference ██.

11. A request for a Regulation 113 review of the chargeable amount was then submitted by the Appellant to the CA dated ██ stating "*the ██ planning permission (ref ██ ██ - the "██ Permission") relating to the building at Three fields (the "Building/the Development") which appears to be the subject of the CIL liability Notice in relation the Development was not framed as a completely new and independent planning permission eliminating the previous permissions of ██ (ref: ██ granted on the ██ (the "Original ██ Permission")) and ██ (a variation of condition 8 (approved plans) granted on ██ under ref: ██ ("the ██ S. 73 Permission")).*"

12. The Regulation 113 review request also stated "*Moreover, and in the context of all of the facts outlined above, leading planning counsel ██ of ██ advised in ██ that a further S.73 planning application contemplated by the ██ S.73 Permission was quite unnecessary in the circumstances. This is very clear from counsel's opinion of ██ ██ (provided to the planning authority) where he expressly stated that "the overall effect of the change in the roof-scape is capable of being considered minor or indeed non-material (in accordance with the factors set out in section 96A of the TCPA 1990) in terms of the development as a whole*".

13. On ██ the CA issued the outcome of its Regulation 113 review. They note:-

    "Schedule 1 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out how the levy should be calculated for amended planning permissions;

    (1) Where a planning permission (B) for a chargeable development, which is granted under section 73 of TCPA [Town and Country Planning Act] 1990, changes a condition subject to which a previous planning permission (A) for a chargeable development was granted, then –
    (a) Where the notional amount for B is the same as the notional amount for A, the chargeable amount for the development for which B was granted is the chargeable amount shown in the most recent liability notice or revised liability notice issued in relation to the development for which A was granted.

    This is the process that ██ correctly followed for permission granted under ref: ██ ██".

14. The CA then further state:-

    "The regulations clearly state that this relates only to chargeable development which is granted under section 73 of TCPA 1990.

    The permission granted under reference ██ relates to development that has already been carried out and is wholly retrospective, it has therefore been permitted under section 73A and is not subject to the same process.

    Furthermore, it is not possible to apply self-build relief to permissions that have been granted under section 73A.

The liability has been calculated in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and as such, I consider the CIL liability to be correct."

15. An Appeal dated ██████ against the chargeable amount was submitted to the VOA on ██████.

Appeal Grounds

16. The appeal is made on six grounds:-

A: A section 73 Application was not needed.
B: The ██████ Permission was a s.73 Minor amendment to existing permissions - not a s.73A permission as the CA submits.
C: The CA had set in place a process for preserving the CIL Exemption which was fully complied with in the ██████ planning application process.
D: There is no basis for applying the recent Gardiner case to the facts of the Three fields case.
E: Three Fields is akin to the case of Giordano v London Borough Council.
F: The CA's decision is an oppressive, irrational and abusive exercise of a tax-charging power by the CA.

17. ***Regarding appeal ground A: Section 73 Application was not needed***: The Appellant contends that the CAs objection regarding the roof-scape was unjustified, as they had previously approved it in ██████. The roof scape, as built, had been notified to the CA in submissions relating to the ██████ Permission and before the application for the ██████ s.73 Permission and the application for the ██████ Permission were made, and then granted as part of the discharge of the "materials" conditions.

18. The house was 95% built at the time of the ██████ Permission and the CA had only identified the roofscape as an issue on the main house. Despite this, they required this to be formalised through a new s.73 Application. The Appellant argues this was unnecessary and could have been dealt with by description under s.96A TCPA 1990.

19. The Appellant argues that their barrister advised that a s.73 Application was not needed for the roof-scape, but they made the s.73 planning application anyway in order to preserve the excellent working relationship they had with the CA.

20. The CA comments that whilst the Appellant reasons that the ██████ application was not needed, this falls outside the remit of the CIL appeal, as planning permission was sought and granted in line with what was built, where the previous permissions did not.

21. The Appellant argues that the planning permission covers the whole development (including the conditions subject to which the development was permitted). Therefore, they reason that if the decision issued in ██████ was a s.73A approval that would mean the development as it stood on the day of permission must have been regarded by the CA as being complete. The Appellant confirms the development was not complete however, so concludes the use of the s.73A cannot be correct.

22. The Appellant refers to the case of Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868 and feels this supports their position.

23. ***Regarding appeal ground B: The ██████ Permission was a s.73 Minor amendment to existing permissions - not a s.73A permission as the CA submits***: The Appellant confirms that at the time of the ██████ planning application the house was 95% completed in compliance with both the original ██████ and 201██████7 s.73 planning permissions, except for the "roof intrusion", which the CA were fully aware of. The Appellant therefore argues that those two earlier permissions were still "*extant, operative*

and subsisting" as the application, and the ▇▇▇ permission both referred to them and relied on them as a variation of conditions and not as a new standalone permission in its own right.

24. The Appellant argues that the facts are consistent with the case of Lambeth v SSHCLG [2019] UKSC 13 where a subsequent s.73 application does not eradicate and replace existing planning permissions. They argue that as both the original ▇▇▇ and ▇▇▇ s.73 permissions both exist and benefit from a CIL exemption it is "*absurd*" to suggest that this minor application to regulate an amended roof scape removes the entire CIL exemption for a property that was 95% constructed, and to treat an application for minor works as a new and retrospective application to fully replace all of the subsisting permissions for the entire house is not correct in the context of Lambeth.

25. The Appellant also points to the Liability Notice issued by the CA in ▇▇▇, where the definition of "Development Description" refers to both the original permission and the s.73 ▇▇▇ permission as being part of and directly relevant to the ▇▇▇ permission and the development as a whole.

26. The CA argues that the ▇▇▇ planning application is retrospective and was granted under Section 73A TCPA 1990. They refer to a photograph of the development taken on ▇ ▇▇▇ prior to the grant of the ▇▇▇ application and the fact that the Appellant advised on ▇▇▇ that they were approximately eight weeks away from practical completion, prior to the grant of the ▇▇▇ permission.

27. The Appellant comments that the planning permission relates to a complex private dwelling granted against application ▇▇▇ on ▇▇▇ with eight conditions, and was subsequently amended (under s.73) to vary the approved plans (Condition 8) under application ▇▇▇ granted on ▇▇▇, again subject to five conditions. They contend that the current permission reference ▇▇▇ thus encapsulates the house and the extensive gardens, whilst excluding the pool house and maintaining the restrictions on further development and parking and could not have been considered completed at the date of permission being granted as at ▇▇▇.

28. The Appellant has provided a summary of the remaining works at ▇▇▇, which in their opinion demonstrate that the project was not complete in ▇▇▇. They further contend that if the CA follow the decision in the Lambeth case it is clear that the ▇▇▇ application formed part of a cumulative and holistic set of s.73 applications relating to a new build that already qualified for a CIL exemption.

29. ***Regarding appeal ground C: The CA had set in place a process for preserving the CIL Exemption which was fully complied with in the ▇▇▇ planning application process***: The Appellant contends that, as with the Lambeth case, the 2021 permission for Three Fields was framed as a permission to make minor variations to the earlier permissions – in Lambeth it related to use, and in Three Fields it is a minor variation to a roof-scape. The Appellant also states that in the case of Three Fields the CA had established a clear process in the previous s.73 Application whereby the CIL exemption was preserved.

30. In making the application for the ▇▇▇ permission the Appellant argues they followed the exact process previously approved and advised by the CA, which had hitherto preserved the CIL exemption when the former s.73 application had been made in ▇▇▇ . In this regard the process for continuing the CIL self-build exemption was confirmed and in an email to the Appellant on ▇▇▇ following the earlier grant of ▇▇▇ Permission the CA stated:

"As the s73 application did not result in a change of floor space, there has been no need for us to create a new record or make a new calculation for CIL Liability. On that basis

our records continue to be held against the original application number. I am advised that this is acceptable practice. I have made a note on the system so all should be well."

31. The Appellant confirms that there was no increase in the floor space, and so in conformity with the ██████ email and the Lambeth decision there was "*no need for the CA to create a new record*", which would be the same outcome and position as with the ██████ permission. They argue that the ██████ Permission made it clear that there was no increase in the GIA of the building, which was confirmed in the new CIL Form 1 submitted in respect to this permission.

32. ***Regarding appeal ground D: There is no basis for applying the recent Gardiner case to the facts of the Three Fields case***: The Appellant states they consider it likely that the CA has applied the decision in the recent case of Gardiner v Hertsmere Borough Council [2021] EWHC 1875 (Admin) to the facts of this case, but that the facts of Gardiner are fundamentally different to those relating to Three Fields. They point out that in Three Fields a self-build exemption had been in place from the outset and has been preserved through the linked planning applications without any increases in GIA.

33. They argue that the original planning application in Gardiner had not initially proceeded under a self-build housing exemption at all, but instead involved partial demolition and extension exemption – there never was a new build CIL exemption. In the second application in Gardiner the applicants purported to gain a self-build exemption post commencement of development. In the case of Three Fields the self-build exemption has been in place since the inception of development and so to compare the two cases on this basis would be wrong. In Gardiner the existing planning application was terminated, the applications were not linked, and a completely new permission was necessary – this is clearly not applicable to Three Fields where the previous planning consents were not terminated, and indeed the ██████ permission does not make sense without reference to the two earlier permissions, both of which had a full CIL exemption. Also, there was a substantial increase in the size of the development on the second application in Gardiner – this has not been the case on Three Fields where the GIA remains constant.

34. The CA state they have not based their calculation on the Gardiner case, and that CIL liability has been calculated purely in line with the CIL Regulations. They argue that the Appellant notes that a Planning Inspectorate appeal decision (██████) supports that where subsequent permissions are granted the commencement date cannot be artificially set. They propose that this argument does not apply in cases where permission is granted under S.73A TCPA 1990 in line with regulation 7(5) Commencement of Development:

    "Development for which planning permission is granted under section 73A of TCPA [planning permission for development already carried out] is to be treated as commencing on the day planning permission for that development is granted or modified."

35. The Appellant reiterates that they do not consider the permission was granted pursuant to s.73A and was not a completed development as at ██████.

36. ***Regarding appeal ground E: Three Fields is akin to Giordano v London Borough Council***: The Appellant refers to the case of Giordano Limited v London Borough of Camden [2019] EWCA Civ 1544, where the authorised development was lawfully commenced within 3 years of the grant of permission which remained extant but was not completed, as the Claimant elected to modify the development part way through construction. They note that although Giordano lost the initial case they appealed against the decision and the Court of Appeal found unanimously in their favour. They argue that this decision supports their view that no CIL is chargeable in the current case.

37. The Appellant argues that, as in Giordano, the development as part built could still be lawfully completed under the prior ██████ or s.73 ██████ permissions, thus the requirements of CIL Regulations - Schedule 1(6) are met, which is that the use permitted by the ██████ planning permission under which CIL has been assessed as payable is a use that can already be carried on lawfully under the prior permissions. Hence, the part constructed element should not form part of the chargeable area – resulting in a £0 (nil) CIL liability. They contend that at the time of the ██████ permission the residential use was firmly established at Three fields both before and after the grant, and thus any CIL calculation further to Giordano should have accepted that no new chargeable area existed.

38. The CA argues that Giordano is substantially different to Three Fields primarily because the amended permission in the Giordano case was granted prior to the work being carried out. They contend that whilst the appellant argues that the statement '*a building will also be able to get credit where planning permission would not be required for the building to be used in the same way as the completed development will be used'* is applicable to Three Fields, this is incorrect and taken out of context of the regulations.

39. The CA argue that the existing house under ██████ had been demolished prior to the grant of the ██████ permission, and as such its GIA cannot be off-set. They contend that the new dwelling had not been built in line with the approved plans, and as such cannot be considered to be a relevant building and cannot be accounted for within the CIL formula.

40. The Appellant argues that Giordano had commenced their development for six flats, but not fully implemented that first 2011 permission. Then there was a second permission in 2017 to vary the number of flats downwards to only three. Within the Court of Appeal 2019 decision on Giordano it clearly sets out the rationale for calculating CIL, stating that the correct interpretation of CIL Regulations - Schedule 1(10) must be that there were only two types of 'relevant buildings' – those that have been in lawful use for the requisite continuous six-month period and those not required to have been in lawful use, but in which the intended use is able to be carried on: "*It excludes a liability to pay CIL under a newly granted planning permission where the landowner is already lawfully entitled to use the same floorspace in the same way, and presumptively with the same burden on local infrastructure, and, in a case such as this, without paying CIL. And it achieves this without obliging the owner of the premises, before it can avail itself of the "statutory deduction", to have carried out all the works required to adapt or convert the building for the use in question under a prior planning permission, and to incur the cost and delay in doing that, only to have to undo some or all of those works after the new permission has been granted*'.

41. The Appellant considers the development under ██████ was the same use as that existing on the day prior to the grant of planning permission - a residential dwelling with no increase in floor space - but that if ultimately CIL is to be assessed this must take into account the relevant building that existed on the site on that date, immediately prior to the grant of permission and to be retained by the new permission.

42. ***Regarding appeal ground F: That the CA's decision was an oppressive, irrational and abusive exercise of a tax-charging power by the CA***: The Appellant argues that, given the facts and the differences between the Three Fields situation and those of the Gardiner case, the exercise of the power and discretion by the CA cannot be justified on any basis, and that no reasonable authority could have rationally exercised those powers in this way.

43. The CA state they have acted in line with the Community Infrastructure Levy Regulations 2010 (as amended), and that CIL liability is assessed on a case-by-case basis in line with the Regulations. They state that a seemingly minor difference can have a substantial

effect on the liability due or the application of relief and, given the frequent amendments to the Regulations, it is unwise to take advice that has been given on a previous permission and apply it to a different application.

Consideration of the appeal grounds

44. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

45. Appeal grounds A, B and C involve the matter as to whether planning application reference ██████ was a stand-alone retrospective s.73A permission, where the chargeable amount must be calculated in accordance with standard cases in Schedule 1, Part 1 of the CIL Regulations, or a s.73 permission where Schedule 1, Part 2 would apply.

46. Appeal ground D involves whether application of the case of Gardiner v Hertsmere Borough Council [2021] EWHC 1875 was relevant, but as the CA have stated that they have not based their calculation on the Gardiner case, and that CIL liability has been calculated purely in line with the CIL Regulations, the Appellant's argument that they do not consider the permission was granted pursuant to s.73A is dealt with under Appeal grounds A, B and C.

47. Appeal ground E relates to the relevance of the decision in the case of Giordano Limited v London Borough of Camden [2019] EWCA Civ.

48. Appeal ground F relates to the Appellant's view that the CA have behaved unreasonably or irrationally in reaching their decision on the matter of CIL Liability, whilst the CA state they have acted in line with the Community Infrastructure Levy Regulations 2010 (as amended), and that CIL liability is assessed on a case-by case-basis in line with the CIL Regulations. As the basis of this appeal ground will be addressed by the Appointed Person in their decision regarding the matter of CIL Liability, this particular appeal ground will not be specifically addressed any further.

49. The appeal grounds therefore to be addressed by the Appointed Person are A, B, C and E, which collectively address the question as to whether planning permission ██████ upon which the CIL Liability has been calculated by the CA is a stand-alone s.73A retrospective planning permission or a s.73 permission for minor variations to earlier permissions, along with the Appellant's proposal that the case of Giordano Limited v London Borough of Camden [2019] EWCA Civ 1544 should be considered.

50. For a retrospective s.73A permission the chargeable amount must be calculated in accordance with standard cases in Schedule 1, Part 1 of the CIL Regulations, whereas for a s.73 permission Schedule 1, Part 2 of the CIL Regulations in relation to amended planning permissions would apply.

51. With regard to the planning application submitted and granted under permission ██████, the CA's view is that works carried out under earlier planning permissions ██████ and ██████ were not undertaken in accordance with those permissions. They state that the subsequent application ██████ was for retrospective works. It is for this s.73A permission that the CIL chargeable amount arises.

52. The Appellant refers to the case of Finney v Welsh Ministers & Ors (Rev 1) [2019] EWCA Civ 1868 where the Court of Appeal determined that "*On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions*"*. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development."*

This appeal decision does not, on the face of it, appear to have any direct application in the matter of CIL Liability in the present case however.

53. The Appellant's argument is that when planning permission [redacted] was granted the house was 95% complete in compliance with permissions [redacted] and [redacted] except for the roof intrusion, which the CA were aware of. The Appellant therefore argues that those two earlier permissions were still "*extant, operative and subsisting as the application*", and permission [redacted] referred to and relied upon them as a variation of conditions and not as a new standalone permission in its own right.

54. The Appellant contends that the works would need to have been completed in order to require retrospective s.73A planning permission, and as they were not complete the CA should not have treated this as a standalone retrospective permission.

55. The Appellant argues that, as in the Lambeth case, their request for permission [redacted] was clearly intended to make minor variations to the earlier planning permissions. They confirm there was no increase in the GIA, which would be the same outcome and position as with permission [redacted]. They argue that permission [redacted] made it clear that there was no increase in the GIA of the building, which was confirmed in the new CIL Form 1 submitted in respect to this permission.

56. CIL Form 1 – Additional Information – was submitted by the Appellant to the CA dated [redacted] as part of their Regulation 113 review request after planning permission [redacted] had been issued on [redacted]. The form does, however, at Section 5. Condition(s) – Removal/Variation - refer to minor material amendments and refers to "*The North Elevation and its definitive clarification*". The Decision Notice issued by the CA dated [redacted] refers to (amongst other drawings) [redacted] (North Elevation). A copy of this was not submitted to the Appointed Person, but it is assumed this drawing does include the roof intrusion detailing omitted from the earlier permission [redacted]. On this basis it would appear the CA has treated application [redacted] as a s.73A retrospective application (as the roof intrusion had not been included in the earlier permission) rather than as a s.73 application for minor amendments to that earlier permission.

57. The Planning Permission [redacted] document describes the development as a "*Variation of Condition 5 Attached to Planning Permission [redacted] (Variation of condition 8 (approved plans) attached to planning permission [redacted] (proposed demolition of existing detached house and erection of a replacement dwelling and implementation of landscape master plan))*". From this wording, along with the wording included in the CIL Form 1, it would appear the CA were aware of the circumstances when they treated application [redacted] as retrospective under s.73A, even though it would appear to have made no impact upon the proposed GIA of the development and appears, from the information seen by the Appointed Person, to have concerned materials and other design features only.

58. In Lambeth v SSHCLG [2019] UKSC 13 it was determined that a subsequent s.73 application does not eradicate and replace existing planning permissions. Planning permission [redacted] has, however, been treated by the CA as a retrospective s.73A permission instead, which differs from the facts of the Lambeth case.

59. The Appellant argues that by applying the Court of Appeal decision in R (Giordano Ltd) v London Borough of Camden [2019] EWCA Civ 1544, the existing GIA from permissions [redacted] and [redacted] (which had commenced and therefore remained extant at the time [redacted] was submitted and approved) should therefore be off-set from the GIA of the development in permission [redacted], in accordance with Schedule 1(6) of the Regulations, and ratified in Giordano.

60. It is the CA's position that the chargeable development under planning permission [redacted] was granted retrospectively on [redacted], and therefore there was no existing floor space which could be used to off-set the potential CIL liability.

61. The Appellant argues that it is clear from the wording and plans referred to under permission [redacted] that the only difference in the development compared to approved permission [redacted] (which varied the [redacted] original permission [redacted]) is in the roof detailing. They hold the view that other evidence establishes that the CA accepted that the chargeable development under [redacted] was commenced and can be reverted to as an extant chargeable development. They state that apart from the roof detailing no other significant differences exist. In effect, they argue it must therefore be considered that application [redacted] was commenced.

62. Section 73 of the TCPA 1990 provides a power to determine an application for planning permission to develop land without compliance with conditions previously attached, and s.73A provides for a grant of planning permission for development already carried out, to include that carried out without complying with some condition subject to which planning permission was granted.

63. It is clear from the CIL Liability Notice issued by the CA that the development granted permission under reference [redacted] was the basis for the CA's CIL calculation, but is described as a "*Variation of Condition 5 Attached to Planning Permission* [redacted]" and a "*Variation of condition 8 (approved plans) attached to planning permission* [redacted]". CIL Regulation 9 (1) is clear on this point, that the "*chargeable development is the development for which planning permission is granted*".

64. At Three Fields development would appear to have been carried out in breach of a condition of an earlier planning permission (with regard to the plans regarding the roof design), which required the latest planning permission [redacted] to regularise the development.

65. S73A 1 and 2(c) allows permission to be granted retrospectively for development carried out "*without complying with some condition subject to which planning permission was granted*" and so I consider that in allowing planning approval for [redacted] the planning authority was exercising a power under section 73A of the TCPA 1990, as it was allowing for a variation to the plans in accordance with development that had already been carried out.

66. As such, the chargeable amount must be calculated in accordance with Schedule 1, Part 1 – Standard Cases - of the CIL Regulations.

67. Therefore the CIL Liability is calculated using rates and indices at [redacted] relevant at the date of planning permission [redacted] as:-

Residential Zone 3 – [redacted]
[redacted] *m2 chargeable area*
@ £[redacted] */m2*
Indexed at [redacted]
= £[redacted] *CIL Liability*

68. In the Three Fields case no relief for self-build exemption was requested or granted under permission [redacted].

Self-Build Relief

69. The issue as to whether or not self-build relief is granted is not a matter for me as the Appointed Person to decide. In an appeal under Regulation 114 the Appointed Person's

role is restricted to matters only relevant to the calculation of the 'chargeable amount' in accordance with Schedule 1, Part 1 or 2 of the CIL Regulations 2010 (as amended), against which relief may, or may not, be granted by the CA.

Decision on CIL Liability

70. 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 £[redacted] ([redacted])

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
22 December 2021