

# Appeal Decision

by [REDACTED] 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: [REDACTED]@voa.gov.uk.

---

**Appeal Ref: 1782295**

**Planning Permission Reference: [REDACTED]**

**Location: [REDACTED]**

**Development: The erection of a house as rebuild of existing following approved [REDACTED] to include slightly raised roof with dormer windows together with a replacement rear extension and new / adapted window & door openings to all elevations**

---

## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]) and hereby dismiss this appeal.

## Reasons

1. I have considered all the submissions made by [REDACTED] (the Appellant) and [REDACTED] 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 [REDACTED] for “Alterations and extension to existing dwelling” granted on [REDACTED].
  - b. Planning permission [REDACTED] for “the erection of a house as rebuild of existing following Approved [REDACTED] to include slightly raised roof with dormer windows together with a replacement rear extension and new / adapted window & door openings to all elevations” granted on [REDACTED].
  - c. CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £[REDACTED] CIL liability.
  - d. The Appellant’s request dated [REDACTED] for a Regulation 113 review.
  - e. The CA’s decision on the Regulation 113 review dated [REDACTED].
  - f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
  - g. The CA’s representations to the Regulation 114 Appeal dated [REDACTED] together with the Appellant’s response dated 1 [REDACTED].

## Background

2. A Planning Application was submitted on [REDACTED] for “Removal of existing tiled roof and replacement with new roof of similar profile with 2 dormer windows; removal of existing conservatory and replacement with small glazed extension; minor adjustments to size and location of external windows and doors”.
3. Planning Permission reference [REDACTED] for “Alterations and extension to existing dwelling” was granted on [REDACTED] and development commenced in [REDACTED].
4. Following partial demolition of the original structure, a further planning application was submitted on [REDACTED] and permission [REDACTED] was granted on [REDACTED] for “the erection of a house as rebuild of existing following Approved [REDACTED] to include slightly raised roof with dormer windows together with a replacement rear extension and new / adapted window & door openings to all elevations”.
5. CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] with CIL liability calculated as:-

C3 dwellings

Proposed development GIA [REDACTED] m2

X £ [REDACTED] /m2 CIL Rate

X indexation [REDACTED]

= £ [REDACTED] CIL liability

6. The Appellant requested a Regulation 113 review on [REDACTED].
7. The CA concluded their Regulation 113 review and emailed the Appellant on [REDACTED] to advise “Whilst the development has commenced under a previous planning consent, that consent sees ‘alterations and extension to existing dwelling’, and any demolition would be regarded as partial to facilitate that. The actual extent of demolition which has taken place prior to the grant of planning permission [REDACTED] appears much greater. Building control application – [REDACTED] (registered [REDACTED]) ‘Demolish existing dwelling and erect new dwelling’ confirms the intention to demolish the whole existing property. A site visit undertaken on the [REDACTED] (day after planning consent of [REDACTED]) confirmed no signs of the existing structure and rebuilt walls on new foundations.”

The CA then further state “The area of the original buildings that had been demolished prior to the grant of planning permission cannot be considered to be a ‘relevant building’ and cannot therefore be netted off from the area of the new development....My decision is that the charge of £ [REDACTED] has been calculated correctly.”

8. An appeal against the chargeable amount was submitted to the VOA on [REDACTED].

## Appeal Grounds

9. The basis of the Appellant’s appeal is that the original building Gross Internal Area (GIA) should have been deducted as an “in-use” building when the CIL chargeable area was calculated. The Appellant therefore believes that the CIL amount payable should be £0 (zero).
10. The first planning permission [REDACTED] enabled “Alterations and extension to existing dwelling”, with development commencing sometime in [REDACTED].
11. The CA advise that a member of the public warned them that work to demolish the original dwelling was taking place on site. The planning officer contacted the Appellant’s

architects to advise that they “do not have planning permission for this as the planning granted was only for extensions and alterations to the existing dwelling as a householder development.”

12. The Appellants responded that they “would be reinstating as existing albeit in accordance with the approved plans for the extensions and alterations” and that they would “submit a full application for planning permission which would be for the demolition of existing dwelling and erection of replacement dwelling (albeit with the plans to accord with the approved enlarged dwelling).” The Appellants further advised that “as the builders were on site, it would be too costly...to wait”.
13. The CA advised the Appellants that ongoing works would “proceed at their own risk as they do not have planning permission for the development”. The CA further advised the Appellants that “a neighbour did object on the application and would likely complain should they proceed with this [demolition]”.
14. A further planning application [REDACTED] was then submitted on [REDACTED] to regularise the demolition work.
15. Enforcement site visits were carried out by the CA on [REDACTED] and [REDACTED]. Photographs taken on each site visit show the foundations and floor slab remain, but only part of the external walls appear to remain on each photograph with no ceiling or roof structure, and with any remaining structure open to the elements.
16. The CA state that a further site visit carried out on [REDACTED] by the planning enforcement officer indicates the wall to the north had been demolished and partially rebuilt. The CA sent a letter to the Appellant that same day stating that planning permission had not been granted yet for the demolition and that any works which continued were at their own risk. The letter also suggested that the applicant should consider “the pace at which development was taking place”. A photograph taken during this visit shows substantial demolition of two of the elevations had taken place, and rebuilding work was underway.
17. Planning application [REDACTED] was validated and allocated to a planning officer on [REDACTED].
18. Images on Google Street View dated [REDACTED] show the garage and parts of the side elevation south were still standing, plus parts of the internal walls behind the garage.
19. A site notice was attached by the CA to the front gates of the site on [REDACTED] - a photograph taken at this time shows a fenced-off building site with a partially demolished building – some walls remain standing, but no roof other than a garage door and walls with minimal roof structure remaining above, although much of any remaining structure in the photograph is masked by foliage.
20. Planning permission [REDACTED] was eventually granted on [REDACTED] for “the erection of a house as rebuild of existing following Approved [REDACTED] to include slightly raised roof with dormer windows together with a replacement rear extension and new / adapted window & door openings to all elevations”.
21. The CA advise that a CIL Officer visited the site at 1200hrs on [REDACTED] to establish what work had been carried out, but the site was closed with no builders present at the time. Two photographs were taken of the front of the site from the road looking at the front elevation west and show that the garage, the area behind it and the internal walls had been demolished. The CA note that these were the areas that had still been standing when the enforcement officer visited the site on [REDACTED].
22. Considering the photographic evidence available, the CA does not believe that it would have been possible to demolish the garage and other areas of the side elevation south

between the grant of permission [REDACTED] on [REDACTED] and the CIL Officer's site visit on the following day [REDACTED].

23. The Appellant states that these walls remained in situ on the day permission was granted and that the contractor was only told on that day to proceed with the demolition, which he then did immediately. They have provided a photograph referenced "[REDACTED]" as evidence to support this. However, the photograph taken by the CIL officer at 1200hrs on [REDACTED] shows that all this area had been demolished and the new walls were under construction, with the area cleared of the demolished building material, garage door, bricks, timbers, windows etc.
24. The CA argues that demolition of the remaining walls of the original dwelling building must have taken place prior to the date planning permission was granted on [REDACTED].
25. The Appellant argues that whilst the precise extent of new and retained structure that existed on the [REDACTED] is contested, the replacement building sits on exactly the same footprint as the existing building, evidenced by the fact that existing foundations have been retained together with all the external walls up to a level approximately 150mm above ground and part of the ground floor slab. They state it was always the intention to retain these, subject to their sufficiency. The Appellant therefore argues that this is not a new-build house under the terms of the CIL regulations, but rather a house that has been re-built off existing walls and footings.
26. The Appellant therefore considers that the dwelling should be classed as a 'relevant building' for CIL purposes as its footprint clearly remained on the relevant land on the day planning was granted, such that its original GIA can be easily ascertained.
27. The Appellant argues that the CA only pointed them to the risk that building work might prove to be abortive if planning permission were not granted, not to potential CIL charges. They argue that there was no mention that CIL charges might become due if the existing building were demolished to such an extent that it could not be included in any CIL calculations.
28. The Appellant further argues it was some 14 weeks after validation of planning application [REDACTED] and more than 6 weeks after the statutory time limit for issuing a decision before the CA requested submission of a CIL form, which the Appellant immediately then submitted. The Appellant argues that as this was not raised in conversation, emails or through the review of validation documents by the planners, it is hard to see how the applicant could have been aware that CIL might be payable.
29. The Appellant confirms that at the time of the enforcement officer's visit on [REDACTED] the rear wall, the north gable wall and part of the front wall had been taken down and partially rebuilt, but argues that consent had already been given for major alterations to the property: the (west) rear wall and extension were consented under the previous planning permission [REDACTED] whilst the (north) gable wall demolition was a key reason for the later planning application [REDACTED]. They state that when the roof was removed it became apparent that the walls could not be left, as they were structurally unsafe. Having taken them down, the decision was made to rebuild the wall off the existing footings. They state that consent had already been given under permission [REDACTED] to adjust openings in part of the (east) front wall, and that once the roof was removed they considered it prudent for structural/safety reasons to remove this stretch of wall and rebuild it on the existing footings so it could be tied into the replacement north gable wall adjacent.
30. The Appellant argues that photographs submitted by the CA following the enforcement officer's visit on [REDACTED] reflect the above situation but fail to show the walls remaining on that date, and thus give a misleading impression as to the extent of demolition. They state these walls can be seen on Google Street View images of the same date as noted

already, and more fully in their own site photographs taken in [REDACTED] which show that all walls that could safely be retained, together with the slab, foundations and other key elements were intact on that date, and more importantly the majority remained intact until the end of [REDACTED].

31. The Appellant contends that the delay caused by the CA in reaching a decision on planning application [REDACTED] was instrumental in the subsequent decision that a CIL charge should be levied. The Appellant notes the CA's contention that the Appellant continued with demolitions against CA advice, but argues that the situation on site was complicated and pausing construction whilst awaiting planning approval was not viable as it raised significant safety concerns for the contractor and financial implications for the Appellant. They further argue that the only risk the CA made them aware of was that of abortive work having not planning permission, not that the work might fail to meet CIL criteria and incur a CIL levy.
32. The Appellant notes that the planning approval [REDACTED] issued on the [REDACTED] included a CIL demand, which demonstrates the CA had already decided that no deduction should be made for an existing building, despite the fact that no visit had been made to the site since the enforcement officer visited on [REDACTED]. They argue that as this visit contained "*only partial and inconsistent information*" as to the extent of demolition, the CIL assessment was made on an incorrect assumption. They argue that no request to inspect the site was made by CIL officers, and thus the site was only ever inspected by the CIL team with restricted visibility from the roadway. They contend that Google Street View images show the front elevation to be mainly intact in [REDACTED], but this has been ignored in the CA's decision making. They further contend that the previous planning permission [REDACTED] allowed alterations to the single storey dwelling including demolition and rebuilding of all parts of the building except for three out of its four existing external walls, all of which had consent for alterations, and that the later planning application [REDACTED] for full demolition was made following the advice of planning officers when it became apparent that it was unfeasible and unsafe to retain these remaining three walls, which only became fully apparent once construction was underway.

### **Consideration of the appeal**

33. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.
34. It is clear from the CIL Liability Notice issued by the CA that the development permitted under reference [REDACTED] was the basis for the CA's CIL calculation, described as "*the erection of a house as rebuild of existing following Approved [REDACTED] to include slightly raised roof with dormer windows together with a replacement rear extension and new / adapted window & door openings to all elevations*". CIL Regulation 9 (1) is clear on this point, that the "*chargeable development is the development for which planning permission is granted*".
35. The extensive demolition work would appear to have been carried out in breach of the earlier planning permission [REDACTED], which required the later planning permission [REDACTED] to regularise a revised proposed development. Planning permission [REDACTED] is a new full permission for the erection of a house as a rebuild and does not merely change a condition of an earlier permission.
36. As such, the chargeable amount must be calculated in accordance with Schedule 1 - Part 1 – *standard cases* - of the CIL Regulations.
37. Disagreement surrounding the issue of "in-use buildings" has arisen due to 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.

38. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – *standard cases* – 1 (10) defines an “in-use 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);*

*And*

*(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.*

39. Before the matter of whether the structure in question can be considered as a “relevant in-use building”, it must be established if indeed that structure was a “building”.

40. The CA does not believe that a relevant building existed on site at [REDACTED] - the date planning permission was granted. They argue that although the CIL regulations do not quantify how much of a building must remain to qualify as a relevant building, they do not believe that foundations can be classed as a relevant building for the purposes of CIL. They point out that at the time planning permission was granted the original building had been demolished down to foundations and that rebuilding of many of the walls for the new dwelling had already started. Based on the evidence available to them, the CA do not agree that the original building was situated on the relevant land on the day that planning permission was granted.

41. The Appellant argues that whilst the precise extent of new and retained structure that existed on the [REDACTED] is contested, the replacement building sits on exactly the same footprint as the existing building, evidenced by the fact that existing foundations have been retained together with all the external walls up to a level approximately 150mm above ground and part of the ground floor slab. They state it was always the intention to retain these, subject to their sufficiency. The Appellant therefore contests that this is not a new-build house under the terms of the CIL regulations, but rather a house that has been re-built off existing walls and footings.

42. The Appellant considers that the dwelling should be classed as a ‘relevant building’ as its footprint clearly remained on the relevant land on the day planning was granted, such that its original GIA can be easily ascertained for CIL purposes.

43. Whilst Schedule 1 of the CIL Regulations 2010 (as amended) discusses the types of building not to be included for CIL purposes, it does not define what a “building” is.

44. The Planning Act 2008 defines “building” as having the meaning given by section 336(1) of the Town and Country Planning Act 1990, which defines “building” as something that “*includes any structure or erection, and any part of a building, as so defined*”. However, the definitions in the Planning Act are not applicable for CIL purposes, being specifically excluded from Part 11 of the Planning Act 2008 which references CIL.

45. In the absence of any clear guidance from Schedule 1 of the CIL Regulations 2010 (as amended) as to what a “building” is, the only obvious option available is to refer to the dictionary for a clear definition as to what constitutes a “building”.

46. The *Pocket Oxford English Dictionary (POED)* definition of a building is “*a structure with walls and a roof*”.

47. The Appellant advises that site investigations were carried out late 2020, and from the information provided it would appear that initial demolitions had begun by [REDACTED].

48. Photographic evidence submitted by both parties shows:-

- On [REDACTED] the majority of the wall around the main entrance doorway down to approximately 1 metre had been removed along with parts of the walls either side, with no roof structure or ceiling left in place.
- By [REDACTED] the wall alongside the neighbouring property had been removed to approximately 2 metres height and by [REDACTED] there was no wall to one side of the property and evidence that new block walling had been constructed upon the existing footings to at least two sides – new block walling had replaced the wall and fireplace existing in the photograph taken on [REDACTED], indicating that the original wall had been completely demolished beforehand.
- Google Street View images captured in [REDACTED] show only the garage and remnants of the garage roof / ceiling above and by an unspecified date in [REDACTED] the garage walls remained along with remnants of the garage roof/ceiling woodwork, one newly constructed visible wall (the same wall as that shown in the [REDACTED] and [REDACTED] photographs) is clearly in place and there appears to be no rear elevation in place above a single layer of blockwork resting on the footings.
- When a site notice was placed on the gateway to the site on [REDACTED] a photograph shows the garage was still in place but no roof existed to the main dwelling and at least some of the walls had been demolished, whilst photographs taken on [REDACTED] (the day after planning permission [REDACTED] was granted) are hampered by a slightly restricted view of the structure, but only newly constructed walls would appear to be in place at that time, with no previously existing walls apparent in the parts of the building footprint visible in that photograph.

49. By [REDACTED] only the newly constructed walls would appear to be in place, with little or no original structure remaining. This was the only structure in place when planning permission [REDACTED] was granted on [REDACTED]. Considering the information submitted by both parties it is evident that substantial demolition works had been undertaken, leaving no adequate structure as a 'relevant building' in place at that date for the purposes of considering off-set of GIA within the CIL calculation.

50. Applying the *POED* definition of a building, it is my opinion that what was left of the original dwelling on the relevant date did not amount to a "building". I therefore consider that the CA are correct not to make a deduction for the area for the original building.

51. As there was no existing building in place, it is therefore of no consequence whether the lawful use criteria regarding any relevant in-use building is satisfied or not.

52. The Appellant argues that as the matter of CIL was not raised by the CA until issue of their Liability Notice they cannot see how they could have been aware that CIL might be payable. The CA confirm that CIL has been charged on development of C3 dwellings in the [REDACTED] area since [REDACTED], with information readily available on their website. The onus would therefore rest with the applicant and their advisers to make themselves aware of the planning application process and other planning related matters, including CIL, when engaging in the planning and development process. This is not a matter for consideration in relation to an appeal against the calculation of the chargeable amount.

53. The GIA of the proposed development is calculated as [REDACTED] m<sup>2</sup> GIA, and neither the Appellant or CA would appear to indicate any disagreement with this figure. Similarly, there appears to be no dispute in relation to the area charge or to the indexation rate used in calculating CIL Liability.

## Decision on CIL Liability

54. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £ [REDACTED] ([REDACTED]) to be appropriate and hereby dismiss this appeal.

[REDACTED] DipSurv DipCon MRICS  
RICS Registered Valuer  
Valuation Office Agency  
10 January 2022