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: 1801243

Planning Permission Reference: [redacted]

Location: [redacted]
Development: "Application for variation of condition 2 of planning permission [redacted] in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof space."

Earlier permission [redacted] had been granted for "Demolition of existing single storey house and erection of a detached four-bedroom two storey house with revised location of vehicle access."

Decision

I determine the CIL charge of £[redacted] ([redacted]) as calculated by the Collecting Authority to be appropriate and hereby dismiss this appeal.

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) and [redacted] 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 reference [redacted] dated [redacted] for "*Demolition of existing single storey house and erection of a detached four-bedroom two storey house with revised location of vehicle access*."
    b. Grant of Self Build Exemption by the CA dated [redacted].
    c. A planning officers delegated report issued on [redacted] in respect of [redacted].
    d. Planning permission [redacted] granted on [redacted] "*Application for variation of condition 2 of planning permission [redacted] in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof-space.*"
    e. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
    f. The Appellant's request to the CA dated [redacted] for a Regulation 113 review of the chargeable amount.

g. The CA's response dated [redacted] to the Appellant's request for a Regulation 113 review.
h. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
i. The CA's representations to the Regulation 114 Appeal dated [redacted] together with the Appellant's response dated [redacted].

Background

2. The CA issued Planning Permission reference [redacted] on [redacted] for "*Demolition of existing single storey house and erection of a detached four-bedroom two storey house with revised location of vehicle access*."

3. On [redacted] the CA issued CIL Liability Notice reference [redacted] for the sum £nil taking into account approved self-build exemption from the CIL Charge to the sum of £[redacted]

4. On [redacted] the Appellant submitted an application for the removal or variation of a condition, stating this to be a "*minor material amendment*" in the form of "*New windows to side elevation and loft room with rooflights to pitched roof*" and confirming that the development had commenced on [redacted].

5. A planning officer's delegated report was prepared on [redacted] in respect of this later application reference [redacted] seeking "*consent for amendments to the approved scheme with additional windows/rooflights. The rooflights are in connection with the provision of rooms in the roof-space. The application follows refusal of a previous application ([redacted]) which also sought amendments to the original consent*."

6. The CA issued A Notification of Grant of Permission to Vary Condition reference [redacted] on [redacted] for "*Application for variation of condition 2 of planning permission [redacted] in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof-space.*"

7. On [redacted] the CA issued CIL Liability Notice reference [redacted] as follows:-

   All residential development
   Proposed GIA [redacted] m2
   CIL Rate £[redacted] indexed to £[redacted]
   CIL Liability £[redacted]

8. On [redacted] the Appellant requested a Regulation 113 review be undertaken by the CA.

9. On 2[redacted] the CA issued the outcome of its Regulation 113 review commenting "*Whilst I note that the original planning permission was the subject of a self-build exemption, the works carried out on site have not been in accordance with this planning permission. As a result of a complaint regarding the building works, you were invited to submit an application to regularise the works carried out on site by submitting a variation of condition application to allow for minor material amendments to the original permission. The relevant provision allowing a new planning permission to be issued under planning permission ref: [redacted] is Section 73A of the Town and Country Planning Act 1990. Whilst there are provisions within the Community Infrastructure Levy Regulations 2010 (as amended) for self-build relief to be carried over to the new permission, the regulations state:*

   Carry over of relief in relation to certain section 73 permission
   58ZA.- (1) Where-
   (a) any relevant relief has been granted in relation to a development (D);

(b) planning permission (B) is later granted under section 73 of the TCPA 1990 in respect of that development; and
(c) the amount of the relevant relief calculated in accordance with this Part of the Regulations that the development is eligible for has not changed as a result of B,
Anything done in relation to an application for the relevant relief made in relation to D is to be treated as if it was done in relation to the development that B relates to.

(2) In this regulation "relevant relief" means-
(a) an exemption for residential annexes or extensions;
(b) an exemption for self-build housing;
(c) charitable relief;
(d) social housing relief."

10. The CA then concluded "*You will note from the above that this provision only allows relief to be carried forward for a Section 73 permission and that no such provision exists for a permission granted under Section 73A which is when works are being granted planning permission retrospectively. As some of the works granted under planning permission* [redacted] *had already been carried out on site, it is not possible for a commencement notice to be served in advance of commencing building works and as such, the property is now liable for CIL*."

11. A regulation 114 Appeal against the chargeable amount was submitted to the Valuation Office Agency dated [redacted].

Appeal Grounds

12. The appeal is made on the basis that the property should not be subject to a CIL charge as permission reference [redacted] was a s.73 variation to the earlier planning permission [redacted], which itself had been granted a self-build exemption. The Appellant argues that the existing self-build exemption granted by the CA should also cover permission [redacted] as a s.73 variation permission under Reg. 58ZA resulting in a CIL liability of zero pounds.

Consideration of Appeal Grounds

13. The Appellant argues that the development was commenced under the original planning permission [redacted], and they had applied for a minor variation of condition 2 under s.73 Town and Country Planning Act 1990 (TCPA 1990) in relation to side elevation windows and a loft room with roof lights to the pitched roof.

14. The Appellant states that the Planning Officer delegated report of [redacted] recommended grant of this variation under s.73 and not retrospectively under s.73A as proposed in the CA's Regulation 113 review response.

15. The Appellant also contends that the self-build exemption granted along with the earlier permission should be carried across to later permission [redacted] by virtue of Regulation 58ZA.

16. The CA state the view that whilst work commenced on site, which implemented planning permission [redacted], the works carried out were not in accordance with the approved plans. They comment that the changes relate primarily to the number of window openings and rooflights incorporated into the development, which exceed the openings shown on the original approved plans.

17. The CA note that Condition 2 of permission [redacted] required the development to be carried out in accordance with the approved plans, and the changes that were evident on site generated the need for a further planning application to be submitted.

18. The CA argue that in planning law a s.73 or 73A permission represents a new grant of planning permission which is independent of the original permission. This effectively means that either permission could be carried out on site, but at the time of granting planning permission under [redacted] the building constructed on site departed from the original approved plans and therefore some elements of the building (e.g. rooflights and some other openings) were being granted retrospectively.

19. The CA cite s.73A of the TCPA 1990:-

    73A Planning permission for development already carried out.
    (1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
    (2) Subsection (1) applies to development carried out-
    (a) Without planning permission;
    (b) In accordance with planning permission granted for a limited period; or
    (c) Without complying with some condition subject to which planning permission was granted.

20. It is the view of the CA that subsection 2(c) of s.73A is relevant to this case.

21. The CA note that within the application form provided to seek a variation to the original planning permission the agent confirmed, on behalf of the applicant, that works commenced on the building on [redacted] and therefore it must be concluded that the development for which the applicant now seeks a further self-build exemption (following a further grant of planning permission) had commenced prior to this new permission being granted. Given this, it is the view of the CA that the main issue for consideration is whether a self-build exemption can be granted for a development which is retrospective (s.73A TCPA 1990).

22. It is the view of the CA that s.58ZA TCPA 1990 which deals with the carry-over of relief in relation to certain s.73 permissions does not apply where works have already commenced on site and permission is granted under s.73A. Given that works have commenced on site, it would also not be appropriate for a new claim for a self-build exemption to be submitted and approved as such claims can only be made in advance of development commencing. It is for this reason that the CA consider the charge contained within the CIL demand notice to be correct.

23. The CA also cite Regulation 116 (self-build relief) of the CIL regulations, where subsection (3) states:-

    "An appeal under this regulation will lapse if the relevant development is commenced before the appointed person has notified the appellant of the decision on this appeal."

24. The CA argue that as relevant development had already commenced, the right to appeal under Regulation 116 has lapsed.

25. The Appellant states that the project had begun in [redacted], but at the time of the subsequent variation application it was only part built and not even weather tight. No works under the [redacted] permission were commenced before that permission was granted on [redacted]. The Appellant made the later application to vary a condition of the original permission so that he could optimise use of the loft area. The later application was made on [redacted], suffixed by the CA as "VCON" (not "RET" or any similar 'retrospective' suffix) and after dialogue with the planning team was revised on [redacted] before being recommended in the Delegated Officer Report dated [redacted] as s.73 and formally granted on [redacted] in accordance with s.73(2)(a) TCPA1990.

26. The Appellant contends that works on site were partially completed and "*the rooflights and some other openings*" mentioned in the Delegated Officer Report were part of the

onsite construction process facilitating “buildability”, easing the movement of materials around the property, particularly in light of the refusal of a neighbour from allowing any access via the adjacent property. The Project Manager, [redacted], has advised that these temporary openings were essential in moving structural members into the building and to support the scaffolding itself due to the restriction enforced by the neighbour who would not permit any access on their land.

27. The Appellant further notes that the Delegated Officer Report states that whilst some openings may have been formed, these were boarded over at the time of the site visit on [redacted]. The appellant states that if permission [redacted] had not been approved the construction of the roof coverings would have been completed in accordance with the original permission [redacted].

28. The Appellant notes that the CA have submitted two photographs to support their contention that works were completed, thus necessitating a retrospective planning permission, but the first image is dated [redacted] which was a month after permission [redacted] was granted, whilst the second image from street level (dated [redacted]) is obscured by the presence of scaffolding and shows the roof in its very early stages showing the ‘felt’/vapour barrier and cross battens in advance of the tile roof covering being installed, along with the gable walls still under construction. The Appellant argues that from the angle of the photograph this could be mistaken to be a completed tiled roof, but this is not the case and no rooflight was built and installed at this time.

29. The Appellant has submitted a series of photographs provided by the project architect (Appendix 2 to their submission) to illustrate the actual status of the project in [redacted], as well as subsequent images from [redacted]. From these they argue it is evident the rooflights were not constructed or in-situ on [redacted], which they suggest is further corroborated by the Delegated Officer Report as above stated.

30. The Appellant argues that it is too simplistic and inappropriate for the CA to consider permission [redacted] related to completed works, when in fact the development was far from complete and remains unfinished to this day. They note that this matter was considered by Higginbottom LJ in R. (on the application of Giordano Ltd.) v London Borough of Camden Council [2019] EWCA Civ 1544 at [paras. 37-39] in that it is unnecessary for an earlier permission to be fully built out before transposing into a subsequently granted permission.

31. The Appellant contends that the earlier works under permission [redacted] were subject to a self-build exemption under Reg.54A/B and Reg.58ZA facilitates the continuance of any earlier relief where a subsequent s.73 amendment is granted after the commencement of the original project. They believe that the CA has erred in their calculation of CIL primarily by incorrectly seeking to recategorize a s.73 permission under s.73A.

32. The Appellant notes that the CA states that a right to make a Regulation 116 appeal has lapsed. The Appellant contends that their appeal is made under Reg.114(3A) that allows the appeal to challenge the calculation of the CIL amount where a subsequent permission ([redacted]) is granted after commencement of the original permission. The CIL amount to be calculated must take account of Reg.40, Schedule 1 and Reg.58ZA such that this s.73 grant must benefit from the continuance of the previously granted self-build exemption, as intended by the legislators, pursuant to Statutory Instrument 2019/1103.

33. The Appellant cites the case of Lawson Builders Limited v SSCLG [2015] EWCA Civ 122 where it was held that the permission granted took effect at the date of the grant as a retrospective planning permission because “*the development had been completed and the existing breach was irremediable*”. They note that as the development in Lawson was completed in breach of a precondition imposed under their existing planning permission, and it was impossible to remedy such breaches (as the development had been brought

into use before meeting preconditions for doing so, as stipulated in the existing permission in Lawson), it was properly held that the only source of power to grant the planning permission retrospectively in order to regularise the breach was under s.73A, and not s.73.

34. The Appellant argues, however, that the judgement of [redacted] stated that "*section 73 enables an application to be made whether the development has not yet commenced, or is in progress, or has been completed. If the development has not yet commenced, a new grant of permission will take effect prospectively. If the development is partially completed the permission may take effect prospectively…*". They therefore argue that in planning terms it is entirely possible for this permission to be under either s.73 or s.73A and not mandated to only be possible under s.73A. As the subject works were undertaken prospectively from the grant of permission [redacted] they argue it is more appropriately a s.73 grant given the statement in the Delegated Officer Report.

35. The Appellant contends that the CA recommended (within the Delegated Officers Report) that the applicant pursue a s.73 application, and then having granted that permission the CA could not subsequently and retrospectively "re-classify" the planning permission as being made under s.73A after it had made the grant of permission under s.73.

Consideration of the Decision

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

37. The key matter to be considered here is whether planning permission [redacted] was granted prospectively in accordance with s.73 Town and Country Planning Act 1990 (TCPA 1990) or granted in accordance with s.73A due to the permission being given retrospectively "… *for development carried out before the date of the application*" or for development carried out *"(c) Without complying with some condition subject to which planning permission was granted*".

38. It appears to be common ground that if approval [redacted] was a s.73 permission, then self-build relief already granted under earlier approval [redacted] could be transferred to the later permission in accordance with Reg.58ZA.

39. If, however, approval [redacted] was a s.73A permission then the CIL regulations do not allow the self-build relief to be carried over to the new, later planning permission.

<u>Was permission [redacted] pursuant of s.73 or s.73A TCPA 1990?</u>

40. In deciding upon whether permission [redacted] might be in accordance with s.73A it must be considered whether development under this permission commenced before the date of application ([redacted]) and whether such development breached Condition 2 to the earlier permission [redacted] which states "*The development shall be carried out in accordance with the following plans and documents:* [redacted]*;* [redacted]*;* [redacted]*.*"

41. Development commenced on [redacted] under the previous permission [redacted] and the Appellant states they were only developing in line with the existing permission at that time, awaiting the grant of the later permission [redacted] before instigating the proposed amendments.

42. Where there has been a breach of a condition and development carried out without planning permission, as at the date of the application, any permission granted to regularise that breach will be pursuant to s.73A powers. The development does not need to have been completed in order for s.73A to apply. An application under s.73 concerns matters which prospectively would contravene planning conditions if they are not first

amended. If the contravention of planning conditions has already occurred, then the application will be determined pursuant to TCPA 1990 s.73A instead.

43. It is noted that both the Delegated Report dated [redacted] and earlier email correspondence between [redacted] at the CA and [redacted] of [redacted] ([redacted]) between [redacted] and [redacted] refers to the application (eventually submitted on 14 January 2022) as being under s.73. This may have been the intention of the Appellant, but the actual circumstances as to what had been constructed (and when) must be considered. Furthermore, the decision notice itself does not state under what authority the approval is being granted.

44. The CA photographs within their case submission letter to the Appointed Person (AP) dated [redacted] include a photograph dated [redacted] showing the loft area with three Velux windows in-situ but, as already noted by the Appellant, this image was captured a month after permission [redacted] was granted. The photograph therefore only proves that by [redacted] the Velux windows first permitted on [redacted] had been installed, but not when the installation took place.

45. The other photograph dated [redacted] shows the front elevation from ground level with gables to either side of the main front roof slope, which has a brown/tan colour surface with two grey squares higher up the slope towards the apex. When compared to the architect's photographs taken on the same date (contained within Appendix 2 to the Appellant's response of [redacted] to the CA's submission) it is evident that the other roof slopes were at that time in the process of being covered with grey slate-effect tiles over brown/tan wooden roofing battens. It is therefore apparent that the CA photograph of the front elevation and roof slope shows an un-tiled roof with only the wooden battens and sarking felt in place. Furthermore, the two grey squares suspected by the CA as being Velux window openings already in place at that time are, in fact, clearly shown by one of the Appellant's architect's photographs in Appendix 2 to be two sections of roofing felt (or similar) loosely attached over the roofing battens. In addition, it is apparent that neither of these squares is at the point on the roof slope indicated for the proposed Velux window opening shown on the architects' drawings.

46. It is noted that access to the proposed loft cinema room in plan [redacted] under later permission [redacted] is via a continuation of the stairwell already proposed in the earlier permission [redacted] drawing [redacted]. No evidence has been provided to indicate to me as to when the loft access portion of the staircase was constructed, and it is assumed from the drawings that the originally intended access prior to the amended use of the loft in later drawings had been via a loft hatch and ladder. No loft access is indicated on the earlier drawing [redacted].

47. The Delegated Officer Report of [redacted] states in relation to three rooflights on the roof slope facing [redacted] "*At the time of my site visit ([redacted]* **[assumed to be [redacted]]** *) the windows had been partially provided (location/frame provided but no glazing with the opening blocked)*" and in relation to two rooflights over the stairwell "*As with the higher level windows, the framework of these was provided at the time of my site visit but they were not glazed (and were blocked)*".

48. The Appellant has advised that "*the rooflights and some other openings mentioned by the CA were part of the onsite construction process facilitating buildability – easing the movement of materials around the property, particularly in light of the refusal of the one neighbour from allowing any access via the adjacent property. The Project Manager, [redacted], has advised that these temporary openings were essential in moving structural members into the building and to support the scaffolding itself due to the restriction enforced by the unhelpful neighbour that would not permit any access on their land*" and "*Had the* **[redacted] [later]** *permission not been approved the construction of the roof coverings would have been completed in accordance with the original permission – which*

for a live construction site was always a possible and viable outcome, up until the works are completed."

49. The above statement is supported by un-dated photographs submitted by the Appellant (Appendix 1 of their response dated [redacted] to the CA's submission) showing the scaffolding to the side elevation being supported via a beam with one end entering through the external blockwork of the structure via a breach in the blockwork of similar shape and size to a window opening.

50. It would seem to me that it may have been possible for the Velux windows within the loft space to have been installed within the time-period between grant of permission [redacted] on [redacted] and before the CA photograph was taken on [redacted] that shows the loft area with three Velux windows in-situ. This is not proven by the evidence submitted however, and it remains unclear as to how access to the loft before [redacted] would have been possible, whether by external scaffolding, an internal loft hatch and ladder, or by a continuation of the staircase from the first floor (as indicated in the later plans). It would appear, however, that the wall opening created in the west elevation as per the [redacted] proposal was more in the nature of an additional window opening rather than merely an opening to accommodate a scaffolding beam as suggested by the Appellant.

51. The question therefore remains as to whether Condition 2 of the earlier permission [redacted] had been breached.

52. The later permission [redacted] included ten Velux style loft windows not included within the earlier permission [redacted]. The earlier permission also contained no proposed loft floor space, whilst the later permission [redacted] has a considerable portion of the loft allocated to a cinema room with the remainder marked "storage". The earlier permission [redacted] contained only one window to the first-floor west elevation shown on drawing [redacted], whilst the later permission [redacted] contains two windows to this elevation shown in drawing [redacted] (dated [redacted]), whilst first floor plan [redacted] (also dated [redacted]) indicates three windows – the third being at the stairwell. This third window was later deleted from the plans, as noted in the Delegated Officer Report of [redacted].

53. Email exchanges between the CA and [redacted] of [redacted] ([redacted]) on behalf of the Appellant refer to the evolving plans during the latter part of 2021: On [redacted] advises that "*on elevation the only change will be installation of Velux roof windows no more than 4 per elevation*". However, the west elevation on subsequent drawings for [redacted] contained three windows (later amended to two) in addition to the roof slope Velux windows, whereas there was only one window to the west elevation on the drawings for the original planning permission [redacted].

54. On [redacted] advised the CA by email that "*No alterations to the first floor layout is required, the staircase to the loft fits in tidy.*" and then on [redacted] "*We would also like to form a non-opening window to the side of the property*". On [redacted] from the Local Authority Planning Department emailed to advise [redacted] "*I have today visited the adjoining property and I am concerned to note that provision for the window already appears to have been made. No planning application has been granted for a side window and I would advise that no further work should be undertaken on any element of the scheme that does not have consent. I do have concerns with provision of a window in the location that I observed whilst on site and its impact on the adjoining property.*" and [redacted]: "*The window to the flank has been set out however we plan to block this until the relevant permissions are in place*". This window opening would appear to be the hole created (as argued by the Appellant) for the end of the temporary scaffolding support beam to be contained/supported within the building. The Delegated Report also appears to suggest that there was an additional window present at the date of the officer's inspection on [redacted]: "*The application includes a new window to a first-floor bathroom and this is shown to be non-opening, to be obscured to* [redacted] *level 5 and to have a*

minimum CIL height of 1.85m. (The cil height was lower than this at the time of my site visit and will require alteration)."

55. The Appellant has referred to Lawson Builders Ltd v SSCLG [2015] PTSR 1324 which concerned the development of two dwellings. Permission had been granted in 2004 for the dwellings subject to conditions including some conditions concerning various highways works. Parts of these conditions applied both prior to commencement of development and prior to the occupation of the dwellings. The dwellings were completed, and one of the two properties was occupied in breach of the conditions. A further planning permission was sought to remove or vary the relevant conditions. The application was granted in 2010 on appeal and new conditions were imposed requiring completion of specified works within a period from the grant of the permission. The issue arose as to whether this second permission had been granted pursuant to s.73 or s.73A of the TCPA 1990. The Court of Appeal held that as there had already been a breach of a pre-condition attached to the previous planning permission, the source of the power to grant permission came from s.73A.

56. The Appellant seems to be of the view that the development in Lawson was held to have been granted under s.73A only because it had been completed and had been brought into use. This is not correct, and it is of no relevance that in this current case the development was yet to be fully completed. In Lawson at paragraph 27 the Court of Appeal made clear that a grant of planning permission under s.73A may be both prospective and retrospective. This is also consistent with the statutory wording of s.73A(2)(c) which states: "*the planning permission which may be granted includes planning permission for development carried out before the date of the application…without complying with some condition subject to which planning permission was granted*" with emphasis on the word "includes".

57. Regulation 5 of the CIL Regs defines the term planning permission as including *"(a) planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA 1990".*

58. Regulation 9(1) of the CIL Regs defines "chargeable development" as "*the development for which planning permission is granted*".

59. Where permission is granted pursuant to s.73A it exists as a fresh planning permission, rather than an amendment to the existing planning permission.

60. The development permitted by [redacted] is the "*Application for variation of condition 2 of planning permission* [redacted] *in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof-space*" as stated in the description of development. It is my view that this was granted part retrospectively for the development already carried out, and part prospectively for the remaining development yet to be undertaken. It was therefore granted under s.73A because there was existing development carried out without planning permission, as in Lawson.

61. This existing development carried out without planning permission comprised the additional window opening to the west elevation, which is in excess of the opening that would have been required if this was merely intended to provide an entry point for the scaffolding beam, when [redacted] was granted on [redacted]. Furthermore, the email of [redacted] from [redacted] architects to the Local Authority Planning Department states "*The window to the flank has been set out however we plan to block this until the relevant permissions are in place*", which clearly demonstrates the intend for this to be a window and not just a temporary opening to support the scaffolding. The Appellant claims that this opening was made as part of the on-site construction process for 'buildability' and moving structural members into the building. This would appear unlikely when it is evident that there was a much larger opening remaining unbricked in one of the gables at the front of the property.

62. Reg 40 therefore provides that for a s.73A permission the CA must calculate the amount of CIL payable ("chargeable amount") in respect of a chargeable development in accordance with the provisions of CIL Regulations Paragraph 1 of Schedule 1 in respect of 'standard cases'.

$$\frac{R \times A \times Ip}{Ic}$$

Where:
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
IP = the index figure for the calendar year in which planning permission was granted;
and
IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.

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

£[redacted] x [redacted] m2 x [redacted]
[redacted]

= £[redacted] CIL Liability

Self-Build relief

64. Whether an exemption or relief should be applied to the chargeable amount, to determine the overall liability for CIL, does not fall for consideration in a Regulation 114 appeal, and the matter of whether the self-build exemption granted on the earlier permission [redacted] remains available to the later permission [redacted] is not an issue the Appointed Person can determine under a Regulation 114 appeal. Nevertheless, it appears to be common ground that if approval [redacted] is s.73A permission, then self-build relief already granted under earlier approval [redacted] cannot be transferred to the later permission in accordance with Reg.58ZA.

65. There is an appeal mechanism under Regulation 116B, where a CA has granted an exemption for self-build housing, in relation to the value of the exemption. In this case, in relation to planning permission [redacted], there has been no such exemption granted for self-build housing and therefore there can be no appeal under Regulation 116B to consider whether the value of an exemption was correct.

Decision on CIL Liability

66. On the basis of the evidence before me and having considered all the information submitted in respect of this Regulation 114 appeal, I therefore determine the CIL charge of £[redacted] ([redacted]) as calculated by the Collecting Authority to be appropriate and hereby dismiss this appeal.

J[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
26 September 2022