

# Appeal Decision

by [REDACTED] MRICS VR

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: 1822214**

**Address:** [REDACTED]

**Proposed Development:** Erection of 2 dwellinghouses, [REDACTED]

**Planning Permission details:** Granted by [REDACTED] on [REDACTED], under reference [REDACTED].

---

## Decision

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

## Reasons

### Background

1. I have considered all the submissions made by the appellant, [REDACTED] of [REDACTED] and the submissions made by the Collecting Authority (CA), [REDACTED].

In particular, I have considered the information and opinions presented in the following documents:-

- a) CIL Appeal form dated [REDACTED].
- b) Grant of Conditional Planning Permission [REDACTED], dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED].
- d) The CA's Regulation 113 Review, dated [REDACTED].
- e) The CA's Statement of Case e-mail document dated [REDACTED].
- f) Appellant's comments on the CA's Statement of Case e-mail (dated [REDACTED] and accompanied by various PDFs of e-mail traffic between the Appellant and the CA, between [REDACTED] to [REDACTED]).

### Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED].
3. On [REDACTED], the CA issued a Liability Notice (Reference: [REDACTED]) for a sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] m<sup>2</sup> and a Charging Schedule rate of £[REDACTED] per m<sup>2</sup>, including indexation. The stated [REDACTED] indexation was [REDACTED] and the calculations shown in the Liability Notice are as follows: - .

[REDACTED]

$$[REDACTED] \text{ m}^2 @ \text{£}[REDACTED] \text{ per m}^2 \text{ (Residential) } \times \text{ index } [REDACTED] = \text{£}[REDACTED]$$

Mayoral CIL ([REDACTED]).

$$[REDACTED] \text{ m}^2 @ \text{£}[REDACTED] \text{ per m}^2 \text{ ([REDACTED] General) } \times \text{ index } [REDACTED] = \text{£}[REDACTED]$$

Total CIL ([REDACTED])    £[REDACTED]

4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [REDACTED], stating that it was of the view that its original decision was correct and should be upheld.
5. On [REDACTED], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect. I note that on the Appellant's submitted CIL Appeal form, the Appellant has erroneously ticked the Regulation 116, 116A or 116B - Exemption and Relief Appeals box; for clarification, this Appeal only relates to Regulation 114 (chargeable amount).
6. The Appellant's appeal can be summarised to three core points:-

Firstly, the Appellant disputes the floorspace of the chargeable area in the CIL calculation, contending that it should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be off-set against the chargeable area).

Whilst connected to the first dispute, the Appellant's secondary dispute is a difference in the GIA of the development; the Appellant contends that the area should be [REDACTED] m<sup>2</sup> ([REDACTED] m<sup>2</sup> as stated in the CIL Additional Information Form dated [REDACTED], less [REDACTED] m<sup>2</sup> offset for 'in-use' floorspace of the retained buildings). Given the area of [REDACTED] in the Liability Notice, it would appear that the dispute in GIA of the scheme between the parties, relates to [REDACTED] m<sup>2</sup>.

The Appellant's tertiary dispute is in respect of the applied indexation – the Appellant contends that the CIL index to be applied is [REDACTED], due to the circumstances of the case and the delays instigated by the CA.

It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate of £[REDACTED] per m<sup>2</sup>, or the [REDACTED] Rate of £[REDACTED] per m<sup>2</sup>.

## Decision

7. The dispute between the parties relates to a development of 2 x four bedroom, three-storey terraced houses to the rear of [REDACTED]. The two unit development forms an extension to a terrace of six units, which was previously granted on [REDACTED] ([REDACTED])

which had a revised consent in [REDACTED] ([REDACTED]). Of note, this appeal relates to the subject development of 2 x four bedroom, three-storey terraced houses, which comprise of Plots [REDACTED] ([REDACTED]).

8. The Appellant is of the view that the CIL calculation and net chargeable area should reflect 'in-use' floorspace of two buildings, which amount to [REDACTED]m<sup>2</sup>. Specifically (and as shown in the CIL Additional Information Form) the two buildings comprise of two 'concrete rear shed garages' (*sic*) which have component areas of [REDACTED]m<sup>2</sup> and [REDACTED]m<sup>2</sup>.
9. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
10. Furthermore, Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;
  - a. retained parts of 'in-use buildings', and
  - b. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.
11. "In-use building" is defined in the Regulations as a relevant building that contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.
12. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.
13. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".
14. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6<sup>th</sup> Edition) is the generally accepted method of calculation.

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

Including:-

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally

- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:-

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property.

15. The Appellant considers that the GIA of the two outbuildings, which total [REDACTED]m<sup>2</sup> should be offset in the CIL calculation and has submitted photographic evidence of the structures. Whilst there is photographic evidence of the physicality of the structures, I have received no evidence whatsoever of their lawful use, beyond the tick boxed date of [REDACTED], as shown in the CIL Additional Information Form. The CA considers that the disputed outbuildings are 'sheds' which fall under 'Greenhouses, garden stores, fuel stores, and the like in residential property'. In studying the two submitted photographs, it is clear to me that given their relative small sizes ([REDACTED]m<sup>2</sup> and [REDACTED]m<sup>2</sup>) and clear absence of any vehicular access to them, I am readily drawn to the conclusion that they are not garages. In conclusion, I agree with the CA that the two disputed buildings fall under 'Greenhouses, garden stores, fuel stores, and the like in residential property' and do not constitute GIA; thus their areas cannot be offset.

16. I will now turn to the Appellant's secondary dispute – the GIA of the scheme. The CA has not offered any comment on this aspect. Having studied and scaled the submitted plans (Drawing No. [REDACTED] dated [REDACTED]) in line with the accepted definition of GIA (i.e. the RICS Code of Measuring Practice (6th Edition)), I have concluded that the GIA of the chargeable area of the scheme is [REDACTED]m<sup>2</sup>. This figure is supported by the delineated figures of the two dwellings ([REDACTED]) which are noted on the plan. I therefore determine that the GIA of the chargeable area is [REDACTED]m<sup>2</sup>.

17. I will now turn to the Appellant's tertiary dispute – the indexation applied by the CA in the Liability Notice. The Appellant opines that it is incorrect and frankly unfair for the CA to utilise the indexation figure published by RICS for early [REDACTED], instead of that of late [REDACTED]. The Appellant further explains that the [REDACTED] RICS CIL Index figure of [REDACTED] is substantially higher in comparison to the [REDACTED] Index figure (of [REDACTED]) which resulted in a substantial rise in the overall chargeable amount. At the heart of the matter is the Appellant's contention that the CA deliberately delayed granting consent and the delay (on the part of the CA) resulted in the determination of the application in the subsequent Indexation year.

18. As the Appointed Person, I must make my determination based upon the submitted facts of the case, determined under the Community Infrastructure Levy Regulations 2010 (as amended). Whilst I acknowledge the Appellant's comments on the conduct and behaviour of the CA, they are wholly outside my purview. As I have mentioned above, Regulation 9(1) of the CIL Regulations states that chargeable development means "*the development for which planning permission is granted*", the grant of which is clearly in [REDACTED].
19. The calculation of the chargeable amount is contained in the provisions of Schedule 1 of the 2019 Regulations. In this case (which is a 'Standard Case' under Schedule 1) the provisions of paragraphs (3), (4) and (5) of Part 1, Schedule 1 are key; they state:-

*(3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.*

*(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—*

$$\frac{R \times A \times I_p}{I_c}$$

*where—*

*A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);*

*I<sub>p</sub> = the index figure for the calendar year in which planning permission was granted; and*

*I<sub>c</sub> = the index figure for the calendar year in which the charging schedule containing rate R took effect.*

*(5) In this paragraph the index figure for a given calendar year is—*

- (a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;*
- (b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;*
- (c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;*
- (d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.*

Given the above Regulations (specifically *I<sub>p</sub> = the index figure for the calendar year in which planning permission was granted*) and the facts of the case, it is clear to me that the CIL Index adopted by the CA in the Liability Notice of [REDACTED] is correct.

20. Having determined the chargeable area and the indexation in this case, I calculate the payable CIL as follows:-

[REDACTED]

$$\begin{aligned}
 & \blacksquare \text{ m}^2 @ \text{£} \blacksquare \text{ per m}^2 \text{ (Residential) } \times \text{ index } \blacksquare = \text{£} \blacksquare \\
 & \blacksquare \text{ CIL (} \blacksquare \text{)} \\
 & \blacksquare \text{ m}^2 @ \text{£} \blacksquare \text{ per m}^2 \text{ (} \blacksquare \text{ General) } \times \text{ index } \blacksquare = \text{£} \blacksquare \\
 & \text{Total CIL (} \blacksquare \text{)} \quad \text{£} \blacksquare
 \end{aligned}$$

21. On the basis of the facts in this case and the evidence submitted before me, I therefore determine a CIL charge of £ $\blacksquare$  ( $\blacksquare$ ).

$\blacksquare$  MRICS VR  
 Principal Surveyor  
 RICS Registered Valuer  
 Valuation Office Agency  
 18<sup>th</sup> July 2023