# 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

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**Appeal Ref: 1814528**

***Address**:* [redacted]

***Proposed Development:*** Demolition of existing house (retrospective) and erection of an end of terrace house.

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

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## 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] 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) CIL Appeal Statement of Case letter from Appellant (undated letter, which was received on [redacted]).

   c) Grant of Conditional Planning Permission [redacted], dated [redacted].

   d) The CIL Liability Notice (ref: [redacted]) dated [redacted].

   e) The CA's Regulation 113 Review, dated [redacted].

   f) The CA's Statement of Case e-mail document dated [redacted].

   g) Appellant's comments on the CA's Statement of Case document (the Appellant's comments letter is undated, but was received on [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] m² and a Charging Schedule rate of £[redacted] per m², including indexation.

4. On [redacted], 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. The Appellant is of the opinion that CIL payable should be the sum of £[redacted] (which the Appellant calculates from £[redacted] x [redacted] m²).

6. The Appellant's appeal can be summarised to a single, contention in that the CIL calculation 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).

**Decision**

7. The dispute between the parties relates to a two-storey end of terrace dwellinghouse known and addressed as [redacted]. The background of this appeal stems from a previous [redacted] planning application of the subject property -[redacted], which was the grant of planning permission on [redacted], for:- *Erection of a two storey side extension, single storey rear extension and alterations to roof from hip end to gable end for provision of dormer window in rear elevations and roof lights in front elevation in connection with providing additional rooms in the roof space.*

8. The Appellant is of the view that the CIL calculation should reflect 'in-use' floorspace of the dwelling house and the CIL calculation should only be based upon the areas of the additional two-storey side extension and the additional rear single-storey extension, which amount to [redacted] m². The Appellant contends that the CIL charge is unfair, unreasonable and unjust.

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) defines the chargeable development as the development for which planning permission is granted. It is stipulated within the permission that the development shall be carried out in accordance with the plan of [redacted]

14. The CA is of the view that the existing dwelling house was demolished prior to planning permission [redacted] being granted and therefore the [redacted] m² floorspace of the existing house could not be off-set against the granted planning permission of the house. The CA has evidenced photographs in support of its opinion, that the dwelling was demolished on or around [redacted] and prior to the submission of the planning application [redacted].

15. Although the Appellant cites that the side wall of the house had collapsed and opines that he had replaced the walls like for like, stronger and safer, it is clear to me that the dwelling of [redacted] was demolished on or around [redacted]. I find the date-stamped photographic evidence submitted by the CA to be compelling evidence in support of its demolition. Indeed, the Appellant has also submitted photographic evidence; given the time-stamps of the Appellant’s photographs, it would appear beyond doubt to me, that the building was indeed demolished prior to the grant of application [redacted] and the building footprint of the dwelling was re-built with the addition of a two-storey side extension and the addition of a single-storey rear extension. The submitted photographic evidence clearly supports that the reconstruction of the external walls and roof had been completed on or before [redacted], well before the grant of [redacted] on [redacted]. In conclusion, it is clear to me that that application [redacted] was submitted to seek retrospective permission to demolish the house and build out what was approved in [redacted], under [redacted].

    Given that I have concluded that the existing dwelling building was demolished, it cannot therefore be a “relevant building” because it was not a building, which was situated on the relevant land on the day planning permission first permits the chargeable development.

16. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *“the development for which planning permission is granted*”. The CIL liability herein under appeal, therefore relates to the development allowed by planning permission [redacted], which is clearly retrospective, and includes the erection of an end of terrace house. The appellant opines that he was living in an on-site outbuilding throughout the build. He offers no evidence or explanation if the outbuilding accommodation relates to existing accommodation or if it is new or temporary accommodation. Indeed, the Appellant offers no evidence of its *actual* use or even its accommodation size. In the absence of any information on the outbuilding and no evidence of its *actual* use, I cannot accept the accommodation of the outbuilding to be off-set. Alternatively, if I considered the outbuilding as new or temporary accommodation, it clearly had no lawful use in planning terms under Schedule 1 (b) of the 2019 Regulations and cannot be off-set. In conclusion, I do not accept that any accommodation can be off-set in the CIL calculation.

17. It is clear to me that the building that was situated on the relevant land on the day planning permission first permits the chargeable development similarly does not qualify. This is since it was neither:-

    a) an in-use building; nor
    b) did it have 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.

    It doesn't qualify for either - the relevant building required planning approval for the erection of an end of terrace house, therefore it could not have qualified for either deduction as it there could have been no lawful use of it.

18. The Appellant cites that he has built his home himself with help from his family; he opines that his situation is different given that he is not a developer or corporation and that the CIL calculation should reflect this. The Appellant has not cited the CIL self-build exemption provisions (under Regulation 54B). However, it is clear from the submitted evidence that no valid claim was made. In response to the Appellant's contention that the CIL charge is unfair, unreasonable and unjust, I cannot offer any redress to the Appellant under the legislation; in arriving at my decision, I must make my determination based upon the submitted facts of the case, determined under the Community Infrastructure Levy Regulations 2010 (as amended).

19. The Appellant appears to contend that the Chargeable Rate per m² is £[redacted], yet offers no explanation or evidence in support of this contention. Having interrogated the publicly available [redacted] 2014 CIL Approved Charging Schedule, I am satisfied that the CA's rate of £[redacted] per m², plus indexation is correct.

20. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
27th April 2023