# Appeal Decision

## by [redacted] MRICS

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

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**Appeal Ref: 1832188**

**Planning Permission Reference:** [redacted]

**Location:** [redacted]

**Development: Demolition of existing single family dwelling and construction of new detached dwelling.**

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## Decision

I determine the Community Infrastructure Levy (CIL) payable in this case is £[redacted] ([redacted]) as calculated by the Collecting Authority and hereby dismiss this appeal.

## Reasons

1. I have considered all the submissions made by [redacted] (the Appellant), [redacted] (as agent to 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] granted by the CA dated [redacted] for "*Part single, part two storey rear extension, two storey side and front extension, raised ridge height to accommodate a loft conversion*."
    b. Planning Permission [redacted] granted by the CA dated [redacted] for "*Demolition of existing single family dwelling and construction of new detached dwelling*."
    c. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
    d. The CIL Demand Notice issued by the CA dated [redacted] stating a deemed commencement date for the development of [redacted] on the basis that "*Development is deemed to have commenced*". The liable amount was stated as being £[redacted]
    e. The CA's response dated [redacted] to the Appellant's request for a Regulation 113 review.
    f. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto and also further documents submitted on [redacted].

g. The CA's comments submitted to the Appointed Person dated [redacted] together with documents and correspondence attached thereto.

## Background

2. Planning Permission [redacted] was originally granted on [redacted] for "*Part single, part two storey rear extension, two storey side and front extension, raised ridge height to accommodate a loft conversion*."

3. During construction, a section of external wall and internal wall of the existing structure became unsafe and, in sections, collapsed. All walls were therefore demolished to ground level. The Appellant then made a retrospective application for planning permission to demolish the existing structure and undertake a rebuild.

4. Planning Permission [redacted] was granted on [redacted] for "*Demolition of existing single family dwelling and construction of new detached dwelling*." It is this later permission to which the current Appeal applies.

5. A CIL Liability Notice reference [redacted] dated [redacted] was issued by the CA in respect of Planning Permission [redacted] to [redacted] (as agent for the Appellant) with CIL Liability calculated as follows:-

   *Residential Zone 2* [redacted]
   *Chargeable Area* [redacted] *m2 @ CIL Rate £*[redacted] */m2*
   *Indexed @* [redacted]
   *= £*[redacted] *CIL Liability*

6. A CIL Demand Notice dated [redacted] was also issued by the CA to the Appellant stating a deemed commencement date for the development of [redacted] on the basis that "*Development is deemed to have commenced*". The liable amount was stated as being £[redacted]

7. The Appellant submitted a request for a Regulation 113 review to the CA on [redacted].

8. On the [redacted] the CA issued the outcome of their Regulation 113 review and commented "*It is clear from the Officers Report and the Design and Access statement accompanying the planning application that at the time of grant of this permission demolition had already occurred and there was no longer any retained original structure above ground*."

9. The CA further stated "*To benefit from self-build housing exemption any claim must be granted prior to commencement of the development, the CIL regulations state that where planning permission is granted for development already carried out the commencement date is the day on which planning permission is granted, in this case the Council considers the commencement date to be* [redacted]*. In addition a person applying for self build exemption must also have assumed liability to pay CIL for that development, the Council is not in receipt of an Assumption of Liability Form for this development. For these reasons any claim for self-build exemption relief is denied*." and the CA concluded "*To be a relevant building the building must be situated on the land on the day planning permission first permits the chargeable development, as established above there was no longer any retained original structure above ground on the day that planning permission was granted. As such the original dwelling fails to meet the in-use tests and cannot be offset*."

10. An Appeal against the chargeable amount was submitted by the Appellant dated [redacted] to the VOA and received on the same date.

## Appeal Grounds

11. The Appellant contends that the CIL charge should either be £Nil or at least should off-set the Gross Internal Area (GIA) of those parts of the original building that are in use under schedule 1 of the CIL Regulations.

## Consideration of the Appeal Representations

12. The Appellant argues they were originally informed that CIL would be payable in respect of only the additional floorspace arising from construction of the new dwelling (which would be [redacted]m2 GIA). They were, however, subsequently served with a CIL Liability Notice based on [redacted]m2 of chargeable development, which includes the original and proposed buildings.

13. The Appellant states that (other than the walls that collapsed) the demolition works carried out were in accordance with the original [redacted] planning permission for an extension, and that since then they have not carried out any further demolition work.

14. They contend that Planning Permission [redacted] was intended to authorise any further demolition works required along with the subsequent rebuilding of the dwelling with the extra walls required to replace those that had collapsed, and argue they submitted the application following advice from the CA.

15. The Appellant further comments that if Planning Permission [redacted] is considered retrospective, the original dwelling can still meet the criteria for an "in-use building" under the CIL Regulations.

16. They argue that the Appellant's family occupied the property from [redacted] until [redacted] when building works commenced, and that the property had been in lawful use as a dwelling since its construction in [redacted]. They contend that this meets the criteria of lawful occupation for a period of at least 6 months in the last 3 years for an in-use building under Schedule 1, notwithstanding the fact it is not currently occupied.

17. The Appellant notes that under the Town and Country Planning Act 1990 the term "Building" in planning terms includes part of a building and includes any structure or erection. They state that just because some of the existing dwelling had collapsed or had been partially demolished does not mean there is no longer a structure or building on the property.

18. The Appellant therefore contends that the building being replaced qualifies as an "in-use" building for the purposes of Schedule 1 of the CIL Regulations and the [redacted]m2 of GIA in the existing building should be deducted or off-set from the CIL liability calculation.

19. The CA note that "demolition" is included within the description of development within Planning Permission [redacted], and when this was granted the demolition had already occurred.

20. They argue that in accordance with Regulation 9. (1) The "chargeable development" is the development for which permission is granted, which in this case is "*demolition of existing single family dwelling and construction of new dwelling*".

21. The CA state the view that as demolition had already occurred when Planning Permission [redacted] was granted, development was deemed to have already commenced when that permission took effect.

22. The CA further argue that self-build exemption cannot be applied because, in accordance with Regulation 54B—(3) Subject to paragraph (3A), a claim under this Regulation will

lapse where the chargeable development to which it relates is commenced before the CA has notified the claimant of its decision on the claim.

23. The CA refer to the Delegated Officer's report that states "*whilst undertaking the works* [for the [redacted] permission] *the original walls of the dwelling fell down*" and that "*the current application seeks retrospective permission to demolish the original dwelling, and to construct a new replacement dwelling*".

24. They also refer to notes from the Building Control officer dated [redacted] confirming that on that date all walls had been removed.

25. The CA note that Schedule 1 of the CIL Regulations stipulates that for the purpose of GIA off-set an in-use building means a building which is a relevant building, and that "relevant building" means a building which is situated in the relevant land on the day planning permission first permits the chargeable development. They argue that as the building was not standing when the [redacted] permission was granted means that regardless of it meeting the in-use criteria it does not fall under the "relevant building" description.

26. The CA refer to a previous CIL Appeal Decision [redacted] in support of their view that, as all that remains are the foundations and footings of the original dwelling, they do not consider this to be a building for the purposes of CIL.

## Consideration of the Decision

27. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties and also reviewed the previous Appointed Person decision on CIL Appeal 1782295 as noted by the CA.

28. 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 "*Demolition of existing single family dwelling and construction of new detached dwelling*." CIL Regulation 9 (1) is clear on this point, that the "*chargeable development is the development for which planning permission is granted*".

29. 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. The later Planning Permission [redacted] is therefore a new full permission for the demolition of the original dwelling and erection of a house as a rebuild and does not merely change a condition of an earlier permission.

30. As such, the chargeable amount must be calculated in accordance with Schedule 1 - Part 1 – standard cases - of the CIL Regulations.

31. One of the areas of the grounds for Appeal regards a disagreement between the parties over the matter of "in-use buildings" within 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.

32. 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.*

33. 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”.

34. The CA does not believe that a relevant building existed on the site when planning permission was granted on [redacted]. They argue that as the building was not standing when the [redacted] permission was granted it does not fall under the “relevant building” description.

35. The Appellant argues that under the Town and Country Planning Act 1990 the term “building” in planning terms includes part of a building and includes any structure or erection. They state that just because some of the existing dwelling had collapsed or had been partially demolished does not mean there is no longer a structure or building on the property.

36. 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.

37. 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.

38. 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”.

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

40. The Building Control Officer’s comments dated [redacted] state “…*now that all the walls have been removed, it is effectively a new build application*…”. This appears to follow comments made in the Delegated Officer report (undated) that “*Whilst undertaking the works, the original walls of the dwelling fell down. Given that the works now constitute the construction of a replacement dwelling rather than the construction of approved extensions, the Applicant was advised that a new application would be required to regularise the works*” and “*The current application seeks retrospective permission to demolish the original dwelling, and to construct a new replacement dwelling*.”

41. The CA’s representations do not confirm which date the site was visited, but it is assumed this took place on or around [redacted] as per the Building Control Officer’s note. Unfortunately, no photographs have been submitted of any structure in place at the time.

42. The Appellant has submitted an annotated image [redacted] of the Building Control plan reference [redacted] dated [redacted] showing the proposed ground floor, where the area edged green represents the foundations and footings to be retained from the original building and the area hatched green is the existing solid floor that will remain of the original building. They state that these foundations and footings were not demolished but have been retained as per this plan and the [redacted] planning permission. The area edged orange represents the area to be constructed under the [redacted] planning permission. This information would seem to support the Delegated Officer and Building Control Officer comments that “*all the walls have been removed*”.

43. By [redacted] only the foundations and footings and solid ground floor of the original structure would appear to have remained. 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 that could be used for the purposes of considering off-set of GIA within the CIL calculation.

44. Applying the POED definition of a building, I determine 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 GIA deduction for the area of the original building.

45. 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.

46. The total GIA of the proposed development (including the original and proposed buildings) is calculated as [redacted]m2 GIA, and neither the Appellant nor CA would appear to indicate any disagreement with this total GIA figure. Similarly, there appears to be no dispute in relation to the area charge or to the indexation rate used in calculating CIL Liability.

47. The only other area of the grounds for Appeal regards the matter of whether an exemption for self-build housing should be applied to the chargeable amount to determine the overall liability for CIL. This does not fall for consideration in a Regulation 114 appeal however, and the matter is not an issue the Appointed Person can determine under a Regulation 114 appeal.

48. 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

49. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I determine that the Community Infrastructure Levy (CIL) payable in this case is £[redacted] ([redacted]) as calculated by the Collecting Authority and hereby dismiss this appeal.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
29 November 2023