

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](mailto:[redacted]@voa.gov.uk)

Appeal Ref: 1870044

Address [redacted]

Proposed Development: Residential development (up to 200 dwellings), a local centre of [redacted] ha ([redacted] acres) (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of [redacted] sqm of which no more than [redacted] sqm (GIA) shall be used for retail (Class E(a)). No single retail (Class E(a)) unit shall comprise of more than [redacted] sqm (GIA)). Associated works, infrastructure, ancillary facilities, open space and landscaping. Vehicular access from [redacted] with the western end of [redacted] re-aligned to form the minor arm of a junction with the site access road.

Planning Permission details: Granted by an appointee of the Secretary of State, on [redacted], under planning appeal reference [redacted], in connection with the earlier planning application reference [redacted], which was refused by [redacted], by notice dated [redacted].

Reserved Matters Application: Reserved matters application dated [redacted], for access following outline application [redacted] approved under appeal reference: [redacted].

Reserved Matters Approval: Notice of Approval of Reserved Matters, granted by [redacted] Council, 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's agent, **[redacted]** of **[redacted]**, acting on behalf of 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 Outline Planning Permission by an appointee of the Secretary of State, on **[redacted]**, under planning appeal reference **[redacted]**, in connection with the earlier planning application reference **[redacted]**, which was refused by **[redacted]** Council, by notice dated **[redacted]**.
- c) Reserved Matters application dated **[redacted]**, for access following outline application **[redacted]** **[redacted]**, approved under appeal reference: **[redacted]**.
- d) Notice of Approval of Reserved Matters document dated **[redacted]**, under reference **[redacted]**.
- e) The CIL Liability Notice (ref: **[redacted]**) dated **[redacted]** in respect of planning application reference **[redacted]**.
- f) The CA's Regulation 113 Review, dated **[redacted]**.
- g) Various plans of the subject development.
- h) The citation by both parties, of a previous VOA CIL Appeal Decision (1860756) located in the same Local Planning Authority area as the subject development.
- i) The Appellant's Statement of Case document (undated but received on **[redacted]**).
- j) The CA's Statement of Case document dated **[redacted]**.
- k) The Appellant's comments on the CA's Statement of Case document (undated but received on **[redacted]**).

Grounds of Appeal

2. Outline Planning permission was granted for the development on **[redacted]**, under planning appeal reference **[redacted]**. With the address of "**[redacted]**", the approved planning permission was:

Residential development (up to 200 dwellings), a local centre of **[redacted]** ha (**[redacted]** acres) (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of **[redacted]** sqm of which no more than **[redacted]** sqm (GIA) shall be used for retail (Class E(a)). No single retail (Class E(a)) unit shall comprise of more than **[redacted]** sqm (GIA)). Associated works, infrastructure, ancillary facilities, open space and landscaping. Vehicular access from **[redacted]** with the western end of **[redacted]** re-aligned to form the minor arm of a junction with the site access road.

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 with indexation at **[redacted]** (**[redacted]**) with an offset of Social Housing Relief, stated at £**[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.
 5. On **[redacted]**, the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA's calculation is incorrect and opines that the CIL charge should be £**[redacted]**. Specifically, the Appellant opines that the Ip index date in the Liability Notice was incorrect and that it should have been the date of the outline planning permission used to inform Ip, rather than the date of the approval of the reserved matters application.
- It would appear that there is no dispute between the parties in respect of the Charging Rate or the measurement of constituent areas, which make up the net chargeable area.
6. At the heart of this Appeal is an Indexation dispute between the parties. This Appeal turns on whether the value for Ip should be that for the year when the outline permission was granted as opined by the Appellant (**[redacted]**), or that for the year when the reserved matters application was approved as argued by the CA (**[redacted]**).

Approved Development in Dispute

7. The property subject to this Appeal comprises an irregular shaped parcel of undeveloped land, which is located outside of the defined limits of development for the market town of **[redacted]**. The land is zoned for residential development in the main with a small element of commercial use. Specifically, the Appeal site is located north of **[redacted]** and south of the **[redacted]** and **[redacted]** canal.

Decision

8. Outline Planning permission was granted for the development on appeal, on **[redacted]**, under planning appeal reference **[redacted]**. The approved planning permission was:

Residential development (up to 200 dwellings), a local centre of **[redacted]** ha (**[redacted]** acres) (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of **[redacted]** sqm of which no more than **[redacted]** sqm (GIA) shall be used for retail (Class E(a)). No single retail (Class E(a)) unit shall comprise of more than **[redacted]** sqm (GIA)). Associated works, infrastructure, ancillary facilities, open space and landscaping. Vehicular access from **[redacted]** with the western end of **[redacted]** re-aligned to form the minor arm of a junction with the site access road.

9. The Appellant opines that the Ip index date in the Liability Notice was incorrect and that it should have been the date of the outline planning permission used to inform Ip, rather than the date of the approval of the reserved matters application. The Appellant contends that the CIL charge should be £**[redacted]**. The Appellant's calculation is:

$$A = \text{[redacted]} \text{ m}^2$$

$$R = \text{£[redacted]}$$

$$Ip = \text{[redacted]}$$

$I_c = [\text{redacted}]$

$$\begin{aligned} & \frac{[\text{redacted}] \times \pounds[\text{redacted}]}{[\text{redacted}]} \\ &= \pounds[\text{redacted}] \\ \text{less } & \frac{(\pounds [\text{redacted}])}{\pounds[\text{redacted}]} \text{ Social Housing Relief} \end{aligned}$$

10. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:

11. 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 sub-paragraph (6);

I_p = the index figure for the calendar year in which planning permission was granted; and

I_c = 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.

12. In addition, the following CIL Regulations are also relevant to this case:

Regulation 5 (amended by The Community Infrastructure Levy (Amendment etc.) (England) Regulations 2025) – Meaning of Planning Permission

- (1) For the purposes of Part 11 of PA 2008, “planning permission” means –
- a) planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA 1990(a);
 - b) planning permission granted by the Secretary of State under the provisions mentioned in sub-paragraph (a) as applied by sections 76A(10), 76C(1), 77(4), and 79(4) and 293H(1) of TCPA 1990(b) (including permission so granted by a person appointed by the Secretary of State in accordance with section 76D(1) or 293I(1) of TCPA 1990 or regulations made under Schedule 6 to TCPA 1990);

Regulation 8 – Time at which planning permission first permits development

(1) This regulation has the effect for determining the time at which planning permission is treated as first permitting development for the purposes of Part 11 of PA 2008.

(2) Planning permission first permits development on the day that planning permission is granted for that development.

(3) Paragraph (2) is subject to the following provisions of this regulation.

(3A) In the case of a phased planning permission, planning permission first permits a phase of the development—

- (a) for any phase of an outline planning permission which is granted in outline—
 - (i) on the day of final approval of the last reserved matter associated with that phase; or
 - (ii) if earlier, and if agreed in writing by the collecting authority before commencement of any development under that permission, on the day final approval is given under any pre-commencement condition associated with that phase; and
- (b) for any other phase—
 - (i) on the day final approval is given under any pre-commencement condition associated with that phase; or
 - (ii) where there are no pre-commencement conditions associated with that phase, on the day planning permission is granted.

(3B) In this regulation a “pre-commencement condition” is a condition imposed on a phased planning permission which requires further approval to be obtained before a phase can commence.

(4) In the case of a grant of outline planning permission, which is not a phased planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.

Regulation 9 – Meaning of Chargeable Development

- (1) The chargeable development is the development for which planning permission is granted.
- (2) Paragraph (1) is subject to the following provisions of this regulation.
- (3) ...
- (4) In the case of a grant of phased planning permission, each phase of the development is a separate chargeable development.

13. I note that the parties are in agreement that the Ic figure should be **[redacted]**.
14. The parties have not presented me with any calculations in respect of the qualifying amount for Social Housing Relief. Indeed, I have not been asked by the parties to determine the amount of Social Housing Relief under Regulation 50. However, the parties appear to be in agreement that the Social Housing Relief figure is either £[redacted] (based upon the [redacted] indexation rate) or alternatively, £[redacted] (based upon the [redacted] indexation rate). As part of my decision, I will determine which of these Social Housing Relief figures will be incorporated into the CIL charge.
15. In arguing that the CA has applied incorrect indexation, the Appellant opines that development pursuant to an outline planning permission cannot take place unless and until reserved matters have been approved; the reserved matters are submitted to discharge a condition to which the outline planning permission is subject and are not themselves a planning permission. In support of this contention, the Appellant cites the case of *R (Fulford Parish Council) v City of York Council* [2019] EWCA Civ 1359, where Lewison LJ, stated:

“In the light of the provisions of the Act and the case law, I accept that the approval of reserved matters is not, itself, a planning permission and that an application for such approval is not, itself, an application for planning permission.”

Concluding at paragraph 28:

“...the conditional approval of reserved matters is itself a condition subject to which the planning permission has been granted.”

16. The CA disagrees with the indexation argument of the Appellant – the CA contends that it has correctly applied the indexation figure for Ip, specifically citing Regulation 8(3A)(a)(i) :
- (3A) In the case of a phased planning permission, planning permission first permits a phase of the development—
- (a) ...for any phase of an outline planning permission which is granted in outline—
(i) on the day of final approval of the last reserved matter associated with that phase;

The CA also cites Regulation 9(4):

- (4) In the case of a grant of phased planning permission, each phase of the development is a separate chargeable development.

Given that it is a phased development, the CA argues that the outline planning permission is not the permission to develop, but an agreed outline and the Reserved Matters is the agreed planning permission. The outline planning permission cannot be the chargeable planning permission, as no design detail is agreed at this stage. The CA further elaborates that the outline description does not define or describe the housing numbers/types; as such the CA contends that it cannot be the chargeable development as per Regulation 40, and opines that it is the Reserved Matters, where the subject development proposed is submitted and approved.

17. It is clear to me that the subject Outline Planning Approval of **[redacted]**, approved in **[redacted]**, is a phased planning permission; both parties agree that it is a phased

development. Indeed, Condition 8 in the Schedule of Conditions of the of the approval states:

“No development shall commence until a phasing plan identifying the sequencing of the proposed development (including the local centre and play and amenity areas) has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved phasing plan.”

It is important to note that in the CIL Regulations, there is a distinct, separate pathway for the application of indexation. The indexation pathway is dependent upon the factual matter if the development is a phased development or not; this is key to this Appeal and contrasts with the decision in VOA CIL Appeal Decision 1860756, which is cited by both parties.

18. Of note, both parties cite a previous VOA CIL Appeal Decision 1860756 ([redacted]), which is located in the same Local Planning Authority area as the subject development. The Appointed Person in Appeal Decision 1860756 held that in respect of Ip, the date planning permission first permits the development was the index figure for the year in which planning permission was granted. However, I would emphasise that in the **case of 1860756, that development was not a phased development**; that is a clear distinction to the **subject Appeal, which is clearly a phased permission**. The fact that the subject development is a phased development is a key factor in determining the pathway for the application of the indexation figure for Ip. I determine that the pathway in this case is Regulation 8(3A)(a)(i) — given that the subject development is an outline phased development, the date of the grant of planning permission is regarded to be the day of final approval of the last reserved matter, which is associated with that phase.
19. I do not disagree with the Appellant’s contention that an approval for reserved matters is not a planning application. Indeed, the case of R (Fulford Parish Council) v City of York Council [2019] is clear in that regard. However, I disagree with the Appellant’s application of the ‘Fulford’ case to this CIL Appeal; it’s application is irrelevant in this case as Regulation 8(3A)(a)(i) is clear in its provisions.
20. Given that the subject development is an outline phased development, CIL Regulation 8(3A)(a)(i) is clear – the date of the grant of planning permission is regarded to be the day of final approval of the last reserved matter, which is associated with that phase. Given that the CA approved the final reserved matters on [redacted], I determine that the Ip indexation rate for [redacted] is the relevant rate. In conclusion, given the provisions of CIL Regulation 8(3A)(a)(i), I agree with the CA that it has adopted the correct indexation rate in its CIL calculation.
21. For clarification, the CA’s calculated CIL charge as stated in the Liability Notice dated [redacted], is as follows:

A = [redacted] m²

R = £[redacted]

Ip = [redacted]

Ic = [redacted]

$$\frac{[\text{redacted}] \times \text{£}[\text{redacted}]}{[\text{redacted}]}$$

= £[redacted]

less (£ [redacted]) Social Housing Relief
 £[redacted]

Of note, the calculation of Social Housing Relief is not a matter for this Appeal, as the parties appear to be in agreement that the Social Housing Relief figure is either £[redacted] (based upon the [redacted] indexation rate) or alternatively, £[redacted] (based upon the [redacted] indexation rate). Given that I have determined that the correct indexation rate to be adopted is at [redacted], I determine that the Social Housing Relief figure is £[redacted] [redacted], which is based upon the [redacted] indexation rate.

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]

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
5th September 2025