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: 1873657

Address: ```redacted```

Proposed Development: Change of use of garage building as a standalone residential property. Retention of external cladding, easterly facing window, roof lights and boundary fencing (part retrospective), (Resubmission of planning application ```redacted```).

Planning Permission details: Granted by ```redacted``` via the Planning Inspectorate Appeals process on ```redacted```, under planning reference ```redacted``` and Appeals 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 Appellants, ```redacted``` and ```redacted```, via their Agent, ```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) A copy of the planning application to which the CIL liability relates (reference ```redacted``` including copies of all plans, drawings and documents forming part of the application and the Appeal Decision Notice dated ```redacted```, appeals reference ```redacted```.

c) A copy of the ```redacted``` refusal (reference ```redacted```) and officer's report.

d) A copy of earlier planning permissions including decision notice and approved plans.

e) A copy of the CIL Liability Notice dated ```redacted``` (LN Ref: ```redacted```).

f) A copy of the submission made to the Council under regulation 113 of the CIL Regulations dated ```redacted```, which included a Statutory Declaration from the APP.

g) A copy of the Council's response to the request for review under regulation 113 of the CIL Regulations dated ```redacted```.

h) The CA's representations on the APP's Grounds of Appeal dated ```redacted```.

i) The APP's final comments dated ```redacted```.

Grounds of Appeal

2. Planning permission was granted for the development on ```redacted```, via an Appeal Decision Notice (```redacted```). This was following a refusal date ```redacted``` (reference ```redacted```). The approved planning permission was:-

   Change of use of garage building as a standalone residential property. Retention of external cladding, easterly facing window, roof lights and boundary fencing (part retrospective), (Resubmission of planning application ```redacted```).

3. On ```redacted```, the CA issued a Liability Notice (ref: ```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 plus indexation of ```redacted```.

4. The APP issued a Regulation 113 Review dated ```redacted``` stating the chargeable area should extend to only to ```redacted``` sq m; the difference between the GIA approval of Application Reference ```redacted```, which was approved in ```redacted``` and the latest permission (```redacted``` – approval subject to this appeal). The APP proposed a CIL sum of £```redacted```. The CA upheld their CIL liability sum and consequently, the APP made this Regulation 114 chargeable amount appeal to the Valuation Office (VO) on the ```redacted```.

5. The APP has set out their Grounds of Appeal referring to the majority (```redacted``` sq m) GIA being offset on the basis the building has been in continuous "lawful use" for more than six of the preceding thirty six months.

6. In summary, I consider the issues before me are whether the GIA of the building previously approved under Application Reference ```redacted``` can be offset in accordance with Schedule 1 Part 1 1. (6) of the CIL Regulations 2010 (as amended).

7. There is no dispute around the charging rate or indexation adopted.

Approved Development in Dispute

8. The dispute between the parties relates to ```redacted```; a large, detached property with associated detached outbuilding (subject to this appeal). The site is located within a residential area on ```redacted``` and to the north of ```redacted```.

9. The Property has been subject to a number of planning applications in recent times. The development has not been built in accordance with approved plans which has led to the dispute.

Decision

10. The core dispute between the parties in this case relates to the interrelated CIL Regulation concepts of 'relevant building' and lawful use.

11. Schedule 1 (6). of the Regulations "KR" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

    i. retained parts of '**in-use buildings**', and

    ii. 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.

    In this particular case "KR (i)" is the relevant part to consider.

12. Further clarification under Schedule 1 (10) is provided. An "**in-use building**" means a building which—

    (i) is a **relevant building**, and

    (ii) 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**.

"Relevant building" means **a building which is situated on the relevant land on the day planning permission first permits the chargeable development.**

Meaning of **"chargeable development"** is set out in Regulation 9.—(1) **The chargeable development is the development for which planning permission is granted.**

13. Both parties have advanced to me evidence in support of their respective viewpoints.

14. The CA opines the APP has incorrectly applied the principle of Schedule 1 (6) of the Regulations "KR" purely because the GIA only became lawful through the granting of the planning permission (reference ```redacted``` via appeal ref ```redacted```) on ```redacted``` - the chargeable development; consequently, no offset can be applied. This is evidenced by the relevant planning history set out in the CA's representation.

15. The APP opines the GIA of the floorspace approved under reference ```redacted``` (approved in ```redacted```) should be considered a 'relevant building' where the GIA of ```redacted``` sq. m is offset.

16. The APP acknowledges that existing floor area can only be deducted if it has been in lawful use for a period of at least 6 months in the last 3 years. A Statutory Declaration by ```redacted``` was submitted as an appendix to the APP's representation. The Statutory Declaration confirmed the building was used for purposes ancillary to the main dwelling at ```redacted``` for a period of just over ```redacted``` months (within the last 3 years). The Declaration also confirmed that the building was completed in ```redacted``` and used from ```redacted``` until ```redacted``` for purposes ancillary to the main building at ```redacted```. Exhibits were attached to the Declaration for further evidence.

17. Within the Final Comments from the APP dated ```redacted```, the APP opines that the change of use had not yet commenced because the planning approval was granted in part under 73A and the part of the permission that specifically and only triggers the CIL liability is not granted using the powers in S73A of the Town and Country Planning Act 1990. The APP further details the four aspects which took place prior to the Appeal being allowed as:

    - The retention of first floor window at the eastern elevation;
    - Retention of unobscured roof light;
    - Retention of white cladding; and
    - Retention of 1.8m close boarded fence.

18. The APP contends that, "None of the above were carried out in relation to or in pursuance of or to facilitate the change of use, which has not yet taken place."

19. The APP opines that none of the above (listed above at paragraph 17) would, in themselves, trigger CIL liability as they are operational works to an existing building which is not a standalone dwelling, and was first approved, built and used as an ancillary outbuilding. It is their view it is the change of use to a separate dwelling which causes the development allowed on appeal to trigger CIL liability.

20. It is the APP's view that the question as to whether a development is lawful is not necessarily dependent on whether or not it is approved retrospectively.

21. The CA opposes the APP's assertion that the GIA for the existing unlawful building should be deducted and refers to the Planning Inspector's comments in the Appeal Decision, "It is appreciated that the building is larger, in both footprint and height, than that of the previously approved garage and that the windows in the west and east elevation are also different from those previously approved" (Paragraph 11) and that for this reason "the application is partly retrospective" (Paragraph 4).

22. From the information presented before me, the building approved under reference ```redacted``` was never completed as per the approved plans. As a result of the building not complying, this subsequently led to the pursuance of an additional application, following an Enforcement Notice dated ```redacted```, which is subject to this appeal. For clarity, I have assessed the 'lawful use' aspect with the following considerations:

    1. Was the building legal under current planning laws? No, not in its current form prior to the submission of ```redacted```.
    2. Did the building require a new planning application? Yes, it did, hence the requirement for Application ```redacted```.

23. I agree with the CA, had the building been completed as per the approval at the time (```redacted```), further consideration of this matter would have been appropriate. The building was not lawful because it was built contrary to the planning permission (```redacted```), therefore, any use of an unlawful building could not be in lawful use in accordance with the definition of **chargeable development** set within the CIL Regulations. Consequently KR(i) is not applicable in this case.

24. 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).

25. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that the relevant building had not been lawful and the APPs failed to satisfy the CIL Regulations Part 5 Chargeable Amount, Schedule 1.

26. In conclusion, having considered all the evidence put forward to me, I hereby dismiss this appeal.

```redacted```

```redacted``` MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
Date: 8 October 2025