

# Appeal Decision

By ``redacted`` **MRICS FAAV**

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``

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**Appeal Refs:** 1865680, 1865689, 1865692, 1865694

**Address:** ``redacted``

## Proposed Development and Planning Permission details:

1. Planning Ref ``redacted`` (Outline) & ``redacted`` (Reserved Matters)  
Phase 5 - Appeal Ref; 1865680, Liability Notice Ref; ``redacted``  
Outline application with all matters reserved except access for the erection of 4 dwellings following demolition of 2 dwellings, garages, and parking area (revision of ``redacted``) and approval of reserved matters (appearance, layout and scale) following outline permission granted under ``redacted`` for the erection of 4 dwellings following demolition of 2 dwellings, garages and parking area.
2. Planning Ref ``redacted`` (Outline) & ``redacted`` (Reserved Matters)  
Phase 4 - Appeal Ref; 1865694, Liability Ref; ``redacted``  
Outline application with all matters reserved except access for the erection of 4 dwellings following demolition of 2 dwellings, garages, and parking area (revision of ``redacted``) and approval of reserved matters (appearance, layout, and scale) following outline permission granted under ``redacted`` for the erection of 4 dwellings following demolition of 2 dwellings, garages and parking area.
3. Planning Ref ``redacted`` (Outline) & ``redacted`` (Reserved Matters)  
Phase 5 - Appeal Ref; 1865689, Liability Ref; ``redacted``  
Outline application with all matters reserved except access for the erection of 4 dwellings following demolition of 2 dwellings, garages, and parking area (revision of ``redacted``) and application under S73 to vary Condition 1 (approved plans) of ``redacted`` (reserved matters application) to amend scale, appearance and location of dwelling on plot ``redacted``
4. Planning Ref ``redacted`` (Outline) & ``redacted`` (Reserved Matters)  
Phase 4 - Appeal Ref; 1865692, Liability Ref; ``redacted``  
Outline application with all matters reserved except access for the erection of 4 dwellings following demolition of 2 dwellings, garages, and parking area (revision of ``redacted``) and Application under S73 to vary Condition 1

(approved plans) of ""redacted"" (reserved matters application) to amend scale, appearance and location of dwelling on plot ""redacted"" .

## Decision

I determine that the Community Infrastructure Levy (CIL) payable in these Appeals should be:

Appeal	Liability Notice	CIL Charge £
1865680	""redacted""	£""redacted"" ""redacted"" .
1865689	""redacted""	£""redacted"" ""redacted"" .
1865692	""redacted""	£""redacted"" ""redacted""
1865694	""redacted""	£""redacted"" ""redacted""

## Reasons

### Background

- I have considered the submissions made by the appellant's agent, ""redacted"" of ""redacted"" (acting on behalf of the Appellant, ""redacted"" ) and the submissions made by the Collecting Authority (CA), ""redacted"" .

I have considered the information and opinions presented in the following documents for the above four CIL Appeals: -

- CIL Appeal Forms, submitted to the Valuation Office Agency (VOA) on ""redacted"" , lodged under Regulation 114.
- Planning permissions to which the CIL liability relates:
  - ""redacted"" valid from ""redacted"" for outline consent for the erection of 4 dwellings following demolition of 2 dwellings, garages and parking area;
  - ""redacted"" for the erection of 4 dwellings following demolition of 2 dwellings, garages and parking area (a revision of ""redacted"" );
  - ""redacted"" valid from ""redacted"" ; Approval of reserved matters (appearance, layout and scale) following outline permission granted under ""redacted""
  - ""redacted"" valid from ""redacted"" ; Application under Section 73 to vary condition 1 (approved plans) of ""redacted"" (reserved matters application) to amend scale appearance and location of dwelling on Plot ""redacted"" .
- CIL Liability Notices as issued on ""redacted""; ""redacted"" , ""redacted"" , ""redacted"" and ""redacted"" .
- The Regulation 113 review request submitted to the Council on ""redacted"" .
- The Council's response to the Regulation 113 request, dated ""redacted"" .
- The CA's representations dated ""redacted"" and ""redacted"" together with documents and correspondence.
- The Appellants representations dated ""redacted"" , ""redacted"" and ""redacted"" ""redacted"" , ""redacted"" , ""redacted"" , ""redacted"" , ""redacted"" and ""redacted"" together with documents and correspondence.

## Grounds of Appeal

2. Outline planning permission was granted on ``redacted`` (``redacted``) for the erection of 4 dwellings following demolition of 2 dwellings, garages and parking area.

This outline application was later revised, resubmitted (``redacted``) and approved on ``redacted``. All matters were reserved.

Approval of reserved matters (appearance, layout and scale) was granted on ``redacted`` (``redacted``).

A Non-Material Amendment (NMA) to ``redacted``, was granted on ``redacted`` which changed the description of the development and conditions 5,7 and 15.

An application under S73 was submitted to vary condition 1 of ``redacted`` to amend the scale, appearance and location of the dwelling on Plot ``redacted``. This was approved from ``redacted``.

3. On the ``redacted``, the CA issued Liability Notices:
- Reference ``redacted`` for a sum of £``redacted``. \*S73 was shown in the rate and indexation columns on the liability notice.
  - Reference ``redacted`` for a sum of £``redacted``. This was based on a net chargeable area of ``redacted`` sqm and a Charging Schedule Rate of ``redacted``/m<sup>2</sup> plus indexation of ``redacted``.
  - Reference ``redacted`` for a sum of £``redacted``. \*S73 was shown in the rate and indexation columns on the liability notice.
  - Reference ``redacted`` for a sum of £``redacted``. This was based on a net chargeable area of ``redacted`` sqm and a Charging Schedule Rate of £``redacted``/m<sup>2</sup> plus indexation of ``redacted``.
4. The appellant submitted a Regulation 113 review request to ``redacted`` (the CA) on ``redacted`` on the grounds that the CA 'failed to make appropriate allowance for the existing residential properties on site, which are scheduled for demolition under the terms of the Planning consents'.

The Appellant considers the GIA of the existing two cottages (which they declared as being ``redacted`` sqm in the CIL Form 1 (ref application ``redacted``) should be deducted for the purposes of calculating the CIL charge for the development. Attached to their same letter, was an email and measurements from ``redacted`` Architects, stating measurements of ``redacted`` sqm (No ``redacted``) and ``redacted`` sqm (No ``redacted``) respectively (which totals ``redacted`` sqm not ``redacted`` sqm as previously declared).

The Appellant also included water and council tax bills within their Regulation 113 review request, to evidence that the properties were in lawful occupation for the required 6 month period.

5. The CA issued their response to the Regulation 113 review (as follows) on 02 April 2025 stating its original decision was correct and should be upheld:

- a) VOA Ref 1865680/``redacted``, relates to Phase 5/Phase E of the development. The CA note the request was lodged as the appellant considers there are existing buildings which should be taken into account within the calculation of the chargeable amount and the amount of apportionment was queried for the buildings that were in 'lawful use'.

'Whilst the CA hold that the existing semi-detached building which is to be demolished, is partly within the area of 'Phase 5', they do not consider sufficient evidence has been submitted to be able to take the buildings into account for the calculation of the chargeable amount.

The GIA was estimated as opposed to undertaken in accordance with the RICS Code of Measuring Practice and no plans provided which would enable the GIA to be established and verified by the CA.

Given that the existing semi detached buildings are located across two different phases of the development, the need for accurate, measurable floor plans is imperative to ensure that any GIA associated with 'in use' buildings is correctly credited to each relevant phase of the development.

Consequently, the CA can make no deductions for the existing dwelling within their calculation of the chargeable amount and the CIL charge remains unchanged.'

- b) VOA Ref 1865689/``redacted``, also relates to Phase 5/Phase E of the development and the CA responded as above.
- c) VOA Ref 1865694/``redacted`` relates to Phase 4/Phase D of the development. 'The CA note the request was lodged as the appellant considers there are existing buildings which should be taken into account within the calculation of the chargeable amount and the amount of apportionment was queried for the buildings that were in 'lawful use'.

Whilst the CA hold that the existing semi-detached building which is to be demolished, is partly within the area of 'Phase 4', they do not consider sufficient evidence has been submitted to be able to take the buildings into account for the calculation of the chargeable amount.

The GIA was estimated as opposed to undertaken in accordance with the RICS Code of Measuring Practice and no plans provided which would enable the GIA to be established and verified by the CA.

Given that the existing semi detached buildings are located across two different phases of the development, the need for accurate, measurable floor plans is imperative to ensure that any GIA associated with 'in use' buildings is correctly credited to each relevant phase of the development.

Consequently, the CA can make no deductions for the existing dwelling within their calculation of the chargeable amount and the CIL charge remains unchanged.'

- d) VOA Ref 1865692/``redacted`` relates to Phase 4/Phase D of the above development. The CA responded as above.

The Council did not dispute the cottages as being a relevant building but did not consider the evidence presented demonstrated the building was in continuous lawful use for the required period (continuous lawful use for at least 6 months within the relevant period (``redacted`` and ``redacted``)).

The Council considered the plans and measurements provided by the appellant to be inadequate; The existing semi-detached dwellings are located across two phases of the development and the need for accurate, measurable floor plans is imperative to ensure that any amount of GIA (associated with the 'in use' buildings) is correctly credited to each relevant phase of the development.'

6. The Regulation 114 Appeals submitted by the Appellant, cited 'the failure of ``redacted``, to give appropriate relief against CIL in respect of existing residential properties (to be demolished) to allow construction of Plots ``redacted`` and ``redacted`` as consented under Outline Planning Consent ``redacted``, Reserved Matters Consent ``redacted`` (as amended via S73)' as the primary reason for review request. Further representations have been submitted by the Appellant.
7. To enable the Appointed Person to properly form considered decisions for these appeals, additional information was requested from the Appellant on ``redacted`` and shared with the CA who were also given an opportunity to respond.
8. Within a letter dated ``redacted``, the Appellant questions the argument put forward by the CA, that RICS compliant, scaled plans are required in order to check and calculate the GIA of the existing buildings and to correctly apportion any potential offset between the phased developments.
9. The most recent representations from both parties indicate they agree that the existing semi-detached cottages have been in lawful use for a continuous period of at least six months during the relevant period and that the GIA of the existing building totals ``redacted`` sqm.

10. The table below, sets out the CIL Liability charges and the Appellants opinion of liability (as per their letter dated ``redacted``), taking account of the offset they consider should be deducted from the cottages:

VOA CASE REF	LIABILITY NOTICE	CIL CHARGE (£)	APPELLANTS VIEW (£)
1865680	``redacted``	``redacted``	``redacted``
1865689	``redacted``	``redacted``	``redacted``
1865692	``redacted``	``redacted``	``redacted``
1865694	``redacted``	``redacted``	``redacted``

11. Following the Appointed Persons request for additional information from the Appellant, the CA, in their representation response, reiterated the lack of provision of scale plans. In their letter of ``redacted`` (dated ``redacted`` in error) the CA reiterate that scale plans of the existing cottages (which are to be demolished) have not been provided and the location of the existing dwellings and the location of the new, proposed dwellings also needs to be shown to calculate the precise GIA of the existing building and to apportion the existing floorspace to the respective Liability Notice (as this is a phased development).
12. The CA requested this information for their Regulation 113 Review, but the Appellant has provided and relied upon a plan, prepared and provided by the Council (which was to detail the complexity of the existing building across different phases of the development). The Council have consistently stated this is not to scale and is not to be relied upon for apportionment purposes.
13. Following the request for additional information from the Appointed Person on ``redacted``, the Appellant, provided the Councils plan rather than a scale plan, to show the location of the existing cottages and the overlap with the proposed new dwellings.

### Approved Development in Dispute

14. The dispute between the parties relates to ``redacted``. The subject site measures ``redacted`` hectares and comprises a pair of semi-detached properties, garaging and gardens. The site is outside the greenbelt but within ``redacted`` and is accessed via ``redacted`` and ``redacted``.

The property has been subject to a number of planning applications, relating to the demolition of the existing semi-detached cottages and replacement with four new dwellings.

## Decision

15. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows “the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development” to be deducted from “the gross internal area of the chargeable development.
16. “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. Both parties seem to now agree that the cottages were in lawful use for at least six months between ``redacted`` to ``redacted``.
17. “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 for development by way of a general consent, and no notice of chargeable development is submitted under regulation 64(2), the land identified in the plan prepared by the collecting authority and served in accordance with regulation 64A(3), where outline planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates”.  
The CA accept the semi-detached cottages as being a relevant building.
18. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.
- The CA are claiming the existing semi-detached dwellings are located across two different phases of the development and they have not been supplied with accurate, measurable floor plans to ensure the correct amount of GIA (associated with the ‘in use’ buildings) is credited to each relevant phase of the development. Hence, due to a lack of sufficient information of sufficient quality, the Council have made no deductions for the existing dwellings within the calculation of the chargeable amount.
19. Based upon the evidence provided by the Appellant, I concur with the CA. The CIL Regulations 2010 (as amended) provide that ‘Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish- (b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero’.
20. Scale plans, to enable the calculation of the correct GIA apportionment of the existing semi detached dwellings, across the two relevant phases of the development were requested by the CA and then later by the Appointed Person. The same plan provided in both instances, by the Appellant had been

drafted by the CA who had stated previously that it was not to scale and could not be relied upon for apportionment purposes.

21. On the basis that the quality of the evidence provided is not sufficient to enable the accurate measurement of the existing GIA and importantly, does not enable the apportionment of that GIA between the two relevant phases of the development, I conclude that the Community Infrastructure Levy (CIL) payable for these Appeals should be as detailed in the table below and hereby dismiss all four appeals.

Appeal	Liability Notice	CIL Charge £
1865680	redacted	£ redacted redacted
1865689	redacted	£ redacted redacted
1865692	redacted	£ redacted redacted
1865694	redacted	£ redacted redacted

redacted BSc (Hons) MRICS FAAV  
Principal Surveyor  
RICS Registered Valuer  
Valuation Office Agency  
20 October 2025