Appeal Decision

by ```redacted``` MRICS BA Hons, PG Dip Surv

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW
Email: ```redacted```

Appeal Ref: 1875514

Planning Permission Details: ```redacted```

Location: ```redacted```

Development: Demolish existing garage and erection of 2 No. single storey semi-detached dwellings.

Decision

I determine that the Community Infrastructure Levy (CIL) charge stated in the Liability Notice issued on ```redacted``` is excessive and confirm a chargeable amount of £```redacted``` (```redacted```).

Reasons

1. I have considered all of the submissions made by ```redacted``` on behalf of ```redacted``` (the Appellant) and ```redacted```, the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

a. Decision notice ```redacted``` issued on ```redacted```.
b. CIL Liability Notice ```redacted``` issued on ```redacted```.
c. The request for a Regulation 113 review made to the CA by the appellant on ```redacted```.
d. The Chargeable Amount review decision issued by the CA on ```redacted```.
e. The CIL Appeal form and statement received by the Valuation Office Agency (VOA) on ```redacted``` and submitted by the appellant under Regulation 114, together with documents attached thereto.
f. The CA's representations to the Regulation 114 Appeal ```redacted```

g. Comments made by the Appellant on ```redacted``` in response to the CA's representations.

Background

2. The subject site comprises of a garage block that I understand was originally used in connection with offices known as ```redacted``` and ```redacted```.

3. The wider site was granted consent for a change of use from offices (```redacted```) to 104 residential units under ```redacted```/PNO (Prior Notification) on ```redacted```.

4. A further Prior Notification application was granted in relation to ```redacted``` on ```redacted``` under reference ```redacted```. This approved the conversion of the offices into 15 residential units.

5. The subject buildings sit within the "red line" area of the above mentioned residential permissions. In addition, a further permission relating solely to the subject buildings was granted on ```redacted``` under reference ```redacted``` for the demolition of existing garages and erection of 2 No. residential dwellings.

6. I understand a CIL liability of zero was confirmed in respect of permission ```redacted``` the CA being satisfied the buildings at that point had been in a lawful use. I am advised this permission was never implemented and as such has now lapsed.

7. The subject permission was granted on ```redacted``` under reference ```redacted```. The application form that accompanied this permission stated the existing use was residential and the site was not currently vacant.

8. Liability Notice ```redacted``` was issued on ```redacted``` following the grant of the subject permission. The chargeable amount stated within this Liability Notice is the same as that within the subject, £```redacted``` (```redacted```). The charge is based upon a chargeable area of ```redacted``` square metres (sq. m.) chargeable at £```redacted``` per sq. m. No appeal was made against this notice and the subject notice ```redacted``` was issued on the ```redacted``` following the CA's receipt of CIL From 2: Assumption of Liability.

9. The Appellant requested a Regulation 113 review on the ```redacted``` advising that in their opinion, the chargeable amount should be nil as the net chargeable area should be zero given the area of the existing subject buildings are eligible to be offset as they were "in-use."

10. The CA responded on the ```redacted``` maintaining that the chargeable amount was correct at £```redacted```. The CA advise that whilst they do not dispute the garages were in-use during the relevant period they do not consider this use to have been lawful.

11. The Appellant submitted a Regulation 114 chargeable amount appeal on ```redacted``` citing two grounds of appeal. The primary ground is that the Appellant

believes the buildings were in lawful use and as such their area should be offset. A secondary issue has been put forward as part of this appeal relating to the indexation factor used by the CA. The Appellant contends that the correct indexation factor is ```redacted``` and not ```redacted``` as stated by the CA, contending that the CA have not adopted the published (and locked) RICS factor as at the date planning permission was granted.

12. The CA by way of response has provided their views on the lawful use and the indexation factor adopted. The CA reiterate their position in respect of the lawful use; the evidence provided is not sufficient to confirm there had been a lawful use for a continuous period of at least six months within the three year period ending on the day planning permission first permits the chargeable development. In respect of the second ground of appeal, the CA highlights that there appears to be no unanimity amongst Charging Authorities as to the indexation to be applied prior to the introduction of the 2019 CIL Regulations on 01 January 2020. The CA point out they are not the only authority to have adopted this rate but also highlight the lack of consistency across a number of authorities.

Ground 1 – Lawful Use

13. It is clear a disagreement has arisen in respect of the application of Schedule 1 Regulations 40 and 50 of the CIL Regulations 2010 (as amended) within which, a calculation of the deemed net chargeable area of a development (known as A) provides for the deduction of the gross internal area of an 'in use building' that is to be demolished as part of the development, as well as certain retained parts.

> (6) The value of A must be calculated by applying the following formula—
>
> $$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$
>
> where—
> G = the gross internal area of the chargeable development;
> GR = the gross internal area of the part of the chargeable development chargeable at rate R;
> KR = the aggregate of the gross internal areas of the following—
> (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;
> E = the aggregate of the following-
> (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
> (ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above

14 . Schedule 1 (10) (ii) provides that an ‘in-use building’ means a building; “which 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”.

15. Schedule 1 (8) states that; “where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building”.

16. Both parties agree the subject building to be a relevant building and that the relevant period during which at least six months continuous use must be demonstrated is between ```redacted``` and ```redacted```. Furthermore, the parties agree that the buildings were used during this time but they disagree on whether that use was a lawful one.

17. The Appellant has submitted two statutory declarations, one from ```redacted``` and one from ```redacted``` both dated ```redacted```. ```redacted``` stated he occupied two of the garages from ```redacted``` to ```redacted``` for the storage of stock, materials and machinery in connection with his construction business. ```redacted``` advises his occupation has been rent free given the garages were surplus to requirements and of limited viability. ```redacted``` states he has partially occupied one of the garages from the ```redacted``` until the ```redacted``` and has used the property for storing wood stock materials and the erection of exterior flat partitioning in connection with his construction business. ```redacted``` states his occupation has been rent free as his usage has been in connection with ```redacted```.

18. The Appellant considers that the subject buildings fall within the residential permission ```redacted``` and have been used by independent contractors involved in the construction of the residential units across the ```redacted``` development. As such, the Appellant is of the view the aforementioned use of these buildings is lawful and consistent with the approved redevelopment of these component parts of ```redacted``` given the subjects sit within the red line area and location of the ```redacted``` and ```redacted``` and Court conversions.

19. The Appellant believes the temporary use of the subject garages as storage and workshops in connection with the wider site’s redevelopment sits within the relevant temporary buildings and uses as set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 4, Class A which states:

> “Permitted development
> A. The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.”

20. The Appellant also considers that the original office use of the site (and the ancillary garages) would fall under A2 and or B1a of The Town and Country Planning (Use Classes) Order 1987 (as amended) and then Class Use E from 01 September 2020. The Appellant notes that Class E allows for a lawful use under g) (iii) that permits any industrial process that can be carried out in any residential area without

causing determinant to the amenity of the area. The Appellant opines the use of the buildings for contractor's storage and workshop where they receive deliveries, breakdown pallets and undertake some assembly or minor construction prior to fitting within the residential units, is lawful under Class E.

21. In response, the CA considers that there has been no permission that permits the change of use of the subject garages to storage in connection with business or commercial use. As the statutory declarations provided show this use did not commence until ```redacted```, this use has not had time to become an established use in planning terms therefore the CA does not consider it lawful.

22. The CA rebuts the Appellant's claim that the use was lawful under permitted development. The CA points out that ```redacted``` granted on ```redacted``` by prior notification had to comply with Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (2) (a) which requires the development to be completed within a period of 3 years starting with the prior approval date. The CA therefore considers the development had to have been completed by the ```redacted```. The CA note the same condition applied to the later Prior Notification application ```redacted``` granted on ```redacted``` and as such completion was required by the ```redacted```. The CA highlight that the statutory declarations confirm occupation of the subject buildings as starting in ```redacted``` which is after the conversion of the adjacent offices needed to have been completed. The CA notes the statutory declarations state the subjects were used for storage of materials to the present day and one specifically mentions this was in connection with ```redacted```. As such, the CA consider these claims contradictory to the Appellant's view that the use was permitted development considering the approved developments would have been completed by this point and many if not all of the dwellings would have been sold.

23. The Appellant has responded to the CA's comments asserting that a Certificate of Lawful Existing Use or Development (CLEUD) is not a necessary step in proving lawful use and considers there are many instances within planning law that determine lawful use without any formal planning application or grant of CLEUD. The Appellant reasserts their belief that the use was lawful and falls within Class E, g)iii) which permits any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area). The Appellant states the garages have been used by two construction related tenants for storage of materials and equipment and for occasional fabrication of construction elements. The Appellant considers these uses to be consistent with Class E and that the garages would previously have been ancillary to the legacy office use –" through out and since completion of the ```redacted``` redevelopment scheme and also servicing other nearby construction sites where the occupiers are engaged as supplies/subcontractors".

24. In respect of this point, I find in favour of the CA. Whilst the statutory declarations help to evidence a use of the subject buildings during the relevant period, I concur with the CA, there is no evidence that this use was lawful.

25. It seems apparent that the original planning use of the garages would have been ancillary to the office development, (though this is not documented). I have not been provided with details of the use of the garages prior to the occupation by the contractors in ```redacted```. The offices were subject to planning permissions

granted in ```redacted``` for residential consent. The subject buildings were included within the red line of this development. Both parties agree these permissions have been implemented and competed, therefore I am of the opinion the ancillary use to the offices ceased once these permissions were implemented.

26. The Appellant opines the use of the garages as store/workshops falls under Use Class E. However, it appears from the limited information provided that the garages were used predominantly for storage which falls under Class B8 of the Town and Classes Use Class Order 1987 (as amended). This means that even if we accept the Appellant's argument that the garages had Class E permission originally, further planning permission was required for their use as storage. I am not convinced that the limited fabrication described by the Appellant amounts to an industrial process under Class E (g) (iii). For a B8 use to become lawful without planning permission, the Appellant would need to have demonstrated over ten years of this use without any enforcement action having taken place in accordance with s171B of the Town and Country Planning Act 1990. The submissions provided do not evidence any use prior to ```redacted```.

27. In addition, I do not consider the Appellant's view that the garages fall under Permitted Development as defined by Schedule 2, Part 4 Class A as temporary storage and workshops for contractors working on adjacent sites to be well founded. As the CA points out, the conversion carried out under ```redacted``` and ```redacted``` had to be completed by ```redacted``` and ```redacted``` respectively. The Appellant's own submissions state the Hopewood redevelopment scheme has completed (representations ```redacted``` para.10 "…throughout and since the completion of the ```redacted``` redevelopment scheme. We understand these units are in part also servicing other nearby construction sites/projects"). Permitted development under Class A only allows for the temporary provision for the duration of the operations which seem to have been completed by the date of the stated used.

28. Furthermore, permitted development only applies when the subject building is **required** for the operations not just desirable or convenient as the subjects here appear to be. If they had not already existed it is doubtful a temporary building would have been erected for the contractors in this location.

29. Therefore, it is my conclusion that whilst the buildings were occupied for the requisite time during the relevant period, the Appellant has not provided sufficient information nor information of sufficient quality to demonstrate that their use was indeed lawful. As such the area of the existing buildings cannot be offset under KR(i) and therefore the deemed net chargeable area (A), is ```redacted``` sq. m.

Ground 2 – Indexation

30. The dispute here relates to the value of Ic, the index figure for the calendar year in which the charging schedule containing R took effect. It is understood the parties are in agreement as to the chargeable area, the chargeable rate and the IP rate adopted.

31. Ic is included within the formula for determining the chargeable amount as follows:

$$\frac{R \times A \times I_P}{I_C}$$

32. Paragraph (5) of Schedule 1 Part 1 1. States, “In this paragraph the index figure for a given calendar year is –
(a) in relation to any calendar year before 2020, the figure for the 1st of 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.”

33. Paragraph 10 states “relevant charging schedules” means the charging schedules which are in effect – (i) at the time planning permission first permits the chargeable development, and (ii) in the area in which the chargeable development will be situated.”

34. The Appellant asserts that the indexation factor used by the CA is incorrect. They believe ```redacted``` should have been adopted instead of the ```redacted``` adopted by the CA for Ic. The Appellant elaborates upon their view stating that the chargeable amount can only be correctly calculated at the date planning permission is granted. Ic should accord with data published on that date, at which point Ic was ```redacted```.

35. The CA have not gone into detail around their rationale for adopting ```redacted``` beyond that is what has historically been applied and has not been challenged. However, they have pointed out that there is a lack of consistency in approach amongst Charging Authorities when calculating Ic. The CA has provided examples of Charging Authorities adopting the same Ic factor and also examples where a different figure has been adopted.

36. The Regulations do not provide definitive guidance as to what date of publication should be used when considering the Ic rate to be adopted. Both the Appellant and the CA recognise there is a difference in this figure depending on what publication date is assumed. The Appellant highlights that where indexation has been raised as an issue within a CIL appeal, the consistent and favoured approach by the VOA is to adopt the Ic figure as published on the date planning permission first permitted the chargeable development.

37. It seems logical to me that as Schedule 1 Part 1 1. (10) states, “relevant charging schedules means the charging schedules which are in effect (i) at the time planning permission first permits the chargeable development” that we also look to the published indexation rates at this date. In this instance, planning permission first permitted the chargeable development on the ```redacted```. At this time, the RICS All in Tender Price index for Quarter 4 of 2016 was 291. Therefore, in respect of this point I find in favour of the Appellant.

Award for costs

38. As part of their appeal the Appellant has made a request for costs under Regulation 121, citing the delays by the CA in issuing their Regulation 113 review, as well as the CA disputing the subject buildings having fulfilled the “in-use” criteria and

the application of the wrong indexation factor amounting to unreasonable behaviour that has led to unnecessary and avoidable costs.

39. Having reviewed the matter I do not consider costs warranted in this case. The late serving of the Regulation 113 review did not prevent the Appellant from submitting their Regulation 114 appeal. A Regulation 114 appeal is open to those who have submitted a review request under Regulation 113 but have not been advised of the outcome within 14 days. Having not found in favour of the Appellant with respect of the buildings being "in-use" this point falls away. Whilst I have found in favour of the Appellant with regards to the indexation figure to be adopted, I do not find the CA to have acted unreasonably here. The Regulations are not explicit on this point and while I agree and consider the Appellant's position logical, I can see no wrong doing by the CA interpreting the Regulations differently.

Decision

40. I have reviewed all of the evidence submitted by both parties in relation to the issues before me and in this case, I consider that there is insufficient information or information of sufficient quality to prove that the subject buildings had been in continuous lawful for at least six months in the three years period ending on the day planning permission first permitted the chargeable development. Whilst the buildings were occupied and used as storage, I do not consider the Appellant has successfully demonstrated that use was also lawful.

41. In terms of the secondary issue of indexation, I find in favour of the Appellant and agree that the Ic index should be taken as the data published on the day when planning permission was granted. I understand the Charging Schedule came into effect on the 01 January 2017. In accordance with Regulations, we are to use the indexation figure for the 1st of November of the preceding calendar year, i.e. 01 November 2016. Using the date of the grant of planning permission of ```redacted``` as the publication date, the fixed indexation figure for Quarter 4 of 2016 is ```redacted```. Therefore, I calculate the chargeable amount as follows;

$$£\text{```redacted```} * \text{```redacted```sq. m.} * \frac{\text{```redacted```}}{\text{```redacted```}} = \text{```redacted```}$$

42. I determine the chargeable amount in this case to be **£**```redacted``` **(**```redacted```**).**

```redacted```
```redacted``` BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
Valuation Office Agency
05 November 2025