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```

Appeal Ref: 1858130

***Address**:* ```redacted```

Proposed Development: *A (stand-alone) renewal application for Outline Planning Permission for the erection of a pair of semi-detached dwellings on Plots numbered* ```redacted``` *&* ```redacted``` *with demolition of existing dwelling (consent sought for access, appearance, layout and scale with all other matters reserved).*

Planning Permission details: Granted by ```redacted``` on ```redacted``` and ```redacted```, under references ```redacted``` & ```redacted``` respectively.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £```redacted``` (```redacted```).

Reasons

Background

I have considered all the submissions made by ```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 documents:-

In particular, I have considered the information and opinions presented in the following documents:-

a) CIL Appeal form dated ```redacted```.

b) Grant of Planning Permission ```redacted``` dated ```redacted```.

c) The CIL Liability Notice (ref: ```redacted``` in the sum of £```redacted```) dated ```redacted``` (This notice superseded ```redacted``` issued on ```redacted``` in the sum of £```redacted```) which was issued as part of the CA's Regulation 113 review.

d) The CA's Regulation 113 Review dated ```redacted```.

e) The Appellant's Appeal Statement of Case document dated ```redacted```, which includes various attachments and appendices.

f) Plans of the existing buildings and the proposed development.

g) The CA's representations of ```redacted``` which includes various attachments and appendices.

h) The Appellant's comments on the CA's representations, which was received on ```redacted```.

Grounds of Appeal

1. The background to this Appeal stems from planning applications, ```redacted``` & ```redacted```, which were granted on ```redacted``` and ```redacted``` respectively, for "A (stand-alone) renewal application for Outline Planning Permission for the erection of a pair of semi-detached dwellings on Plots numbered ```redacted``` & ```redacted``` with demolition of existing dwelling (consent sought for access, appearance, layout and scale with all other matters reserved)." Reserved Matters application in respect of "landscaping pursuant to outline planning permission ref: ```redacted``` for the erection of a pair of new semi-detached dwellings with new vehicular entrances onto ```redacted``` following demolition of the existing dwelling*".*

2. This Appeal Decision relates to the CA's Liability Notice ```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 indexed at ```redacted```. It is noted that ```redacted``` replaced ```redacted``` (issued ```redacted``` in the sum of ```redacted```). I also note that the CA wrote to the appellant on ```redacted``` stating that that they were revising the sum in ```redacted``` to £```redacted``` to account for their belief that the development of 'Plot ```redacted```' had already begun and that as a consequence the appellant had forfeited their right to have the existing building on the site offset against the charge because they were already using this offset against the development of Plot ```redacted```.

3. Following a review of the CIL charge carried out under Regulation 113 on ```redacted``` by the CA, on ```redacted``` the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect, by virtue of a difference in floor area and the indexation applied and that CIL in the sum of £```redacted``` (```redacted```) should be payable.

4. The Appellant's appeal can be summarised as follows:-

   The Appellant disputes the floorspace of the chargeable area in the CIL calculation, contending that it should remain as previously set by the VOA in an earlier decision dated ```redacted``` relating to ```redacted``` (which was subsequently replaced by the updated planning permissions ```redacted``` and ```redacted```). The Appellant also disputes the indexation amount applied by the CA because they had used the 2024 index figure instead of the 2021 index figure – this point since accepted by the CA.

The Appellant opines that this appeal is strictly a factual inquiry into the accurate calculation of the CIL charge set out in the Liability Notice dated ```redacted``` which must be adjudicated strictly on this basis, without the introduction of extraneous matters.
The Appellant opines that the Collecting Authority (CA) has improperly attempted to introduce arguments and evidence beyond the scope of this appeal, and such submissions should be disregarded. The appellant avers that the chargeable amount of £```redacted``` stated in the Liability Notice has been miscalculated and has sought resolution on this matter alone.

Further the Appellant believes that Regulation 114 of the CIL Regulations 2010 governs this appeal, limiting its scope to reviewing the accuracy of the chargeable amount stated in the Liability Notice and that the appeal must determine whether the CIL charge was correctly calculated based on the facts as they stood at the time of the notice, excluding any extraneous matters, such as new arguments or retrospective information introduced by the CA.

The following are shortened extracts of the Appellant's case (verbatim).

Case law, including decisions from the VOA, confirms that a CIL appeal under Regulation 114 cannot increase the charge beyond the amount specified in the revised Liability Notice. The purpose of the appeal is to assess whether the charge was correctly calculated, not to reassess or revise it based on new or retrospective information. Regulation 114 governs this process by ensuring that once a revised Liability Notice has been issued, the chargeable amount remains the upper limit, even if an appeal is submitted. In this case, the chargeable amount of £```redacted```, as stated in the Liability Notice dated ```redacted```, represents the maximum amount that can be considered.

The CIL charge must be determined based on the planning permission and circumstances in effect at the time the revised Liability Notice was issued. Any subsequent developments or procedural errors do not justify an increase in the originally determined amount. The focus should remain on the chargeable amount as originally determined, and the adjudicator should disregard any submissions that fail to address whether the charge was correctly calculated.

Despite the CA's extensive representations, the Manager fails to challenge or refute the argument set out in para 5.7 of the Grounds of Appeal. This omission is particularly revealing, as it suggests an implicit concession on a crucial point of law—namely, that under Regulation 114 of the CIL Regulations 2010, an appeal cannot result in a charge greater than that specified in the revised Liability Notice.

It is important to note that there are two dedicated CIL Officers who should have been available during the period allowed for the Regulation 113 review. Therefore, the argument that the dedicated CIL Officer was on leave during this period is untenable. The absence of one should not have impeded the timely completion of the review, especially given the statutory requirements for a senior officer, uninvolved in the original calculation, to conduct the review. Even if the senior officer was on leave, the junior officer could have assisted in the review, or the senior officer could have provided remote support if needed. The suggestion that such an absence could prevent the timely and proper execution of the review process reveals a lack of contingency planning and poor internal management.

The CA argues that this appeal is invalid due to the revised decision letter issued on 'Christmas Eve' ```redacted```, claiming it supersedes the revised Liability Notice. This argument is both factually and legally incorrect. The letter in question does not have

the same legal standing as the revised Liability Notice issued on ```redacted```, which is the relevant and valid document and carries the legal consequences of a local land charge.

The appeal directly challenges the revised Liability Notice dated ```redacted```, which remains the operative document. The CA's attempt to rescind and reissue a revised Liability Notice after an appeal has been lodged is flawed and constitutes an abuse of process. The CIL Regulations do not permit ongoing revisions once an appeal is in progress, and such actions seek to circumvent the established appeal process.

The fundamental principle governing the appeal process is that the time limit for appealing is triggered by the issuance of the first Liability Notice. The CA's attempt to reset this clock by issuing a revised letter is procedurally improper and should be rejected. Regulation 113 provides for a single review decision. Once a revised Liability Notice has been issued, the CA has no statutory authority to continually revise or rescind it. The 60-day statutory time limit for appealing to the VOA is calculated from the first issued Liability Notice. Allowing the CA to issue successive notices would undermine the appeal process and create an absurd procedural scenario. Once an appeal is made under Regulation 114, the CA's jurisdiction over the matter ends. The CA's claim that the appeal is “invalid” due to a later-issued notice is without legal foundation.

By the CA's own admission, it has demonstrated that the indexation method used in the original Liability Notice dated ```redacted``` for £```redacted```, and subsequently revised in response to a request for a ‘Review of the Chargeable Amount under Regulation 113’ in the revised Liability Notice of ```redacted```, was incorrect. The correct methodology for determining the chargeable amount must follow the procedure outlined in Schedule 1 of the CIL Regulations 2010. The CA has admitted its indexation was incorrectly applied to the Reserved Matters application (```redacted```).

The CA, as a key actor within the CIL regulatory framework, is legally required to comply with statutory provisions when issuing Liability Notices. However, it has twice admitted to miscalculating indexation—first in the original Liability Notice for £```redacted``` dated ```redacted```, and again in the revised notice issued on ```redacted``` following a Regulation 113 review.

In accordance with the precedent set by the previous appeal decision, as outlined in the Grounds of Appeal, and using the Gross Internal Areas (GIAs) of both the proposed development and the existing building as determined by the VOA, the CIL charge should have been calculated as follows (assuming the applied index multiplier in 2021 was correct, after applying a corrected inflationary adjustment):

GIA of the proposed development: ```redacted```m² (not ```redacted```m², as calculated in ```redacted```) - Less GIA of the existing development: ```redacted```m² = ```redacted```m²

This applies to two semi-detached houses, one of which qualifies for self-build relief. Therefore, only half of the calculated chargeable development applies, reducing the total chargeable area to ```redacted```m². Thus, the calculation is as follows:

£```redacted```/m² x ```redacted``` (index multiplier adopted by the Council in 2021) = £```redacted``` CIL.

The CA claims that a discrepancy of ```redacted``` square metres (```redacted```%) is “within acceptable tolerances.” This assertion is wholly arbitrary and unsupported by

any regulatory or technical basis. The CIL charge is a precise financial obligation, and the CA's attempt to dismiss this discrepancy without justification is procedurally improper. The appellant requests that the VOA apply strict measurement standards in accordance with the Royal Institution of Chartered Surveyors (RICS) guidelines rather than rely on vague tolerance arguments by the CA.

By repeatedly amending Liability Notices, the CA appears to be circumventing proper legal scrutiny and obstructing the appellant's right to a fair appeal process. The CIL Regulations provide a strict framework under which liability is established and contested. If (it) were permitted to issue an unlimited number of revised notices post-appeal, it would fundamentally undermine the certainty and finality of the CIL system.

The VOA must determine the appeal based only on the disputed ```redacted``` revised Liability Notice. If the CA were permitted to revise liability indefinitely, it would render the appeal process meaningless and strip appellants of their statutory rights under Regulation 114.

5. The Collecting Authority state that they have reviewed the information submitted as part of the appeal process.

   It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate, the applied indexation (since corrected to ```redacted```). But there is a minor difference of opinion relating to the floor area of the buildings to be developed. The in-use evidence submitted has been reviewed and accepted. However the CA opines that as the in-use floor space has been used to offset the CIL liability for development on Plot ```redacted```, it cannot be used again to offset CIL liability for this development.

   The following are shortened extracts of the Collecting Authority's case (verbatim).

   The appellant has appealed the outcome of a Regulation 113 review issued on ```redacted```, and subsequent revised CIL Liability Notice issued ```redacted``` (```redacted```) however, it should be noted that this review was subsequently revised and superseded on ```redacted```, following an internal review where it was concluded that the granting of self-build exemption and use of the existing building to offset the chargeable area were not available. Therefore, the Collecting Authority considers that this appeal under Regulation 114 is invalid, as it does not reflect the correct and most up to date Regulation 113 Review decision from the Collecting Authority.

   The wider site (Plots ```redacted```) has been subject to ```redacted``` planning applications and associated CIL since ```redacted``` for development proposals of up to 7no. homes in a variety of arrangements and compositions. ```redacted``` of these planning applications have been submitted by the appellant. The appeal site comprises an 'L' shaped plot of land accommodating a 1920s era 2.5 storey detached dwelling and detached garage occupying the northern part of the plot. This aligns with Plots ```redacted```, ```redacted``` and ```redacted```. Accordingly, many of the of the associated CIL submissions on the wider site sought to use the floorspace of the existing buildings to offset the CIL charges; and claim for self-build exemption.

   Until ```redacted``` this position was acceptable to the CA as no development had commenced, and it was therefore possible for any of the extant planning permissions to be implemented. A commencement notice was received in respect of Plot ```redacted``` under planning approval ```redacted``` and accepted on ```redacted```. The associated Liability Notice included a reduction in the CIL charge

due to the floorspace of the existing building(s) on the site. Therefore, it is the CA's position that from ```redacted```, no other implementation of other valid planning approvals at the site could use the existing buildings on the site to offset any CIL charge. Further to this, the appellant was granted self-build exemption on ```redacted``` for one of the properties under planning approval ```redacted```. It is thus the CA's position that from ```redacted```, no other implementation of other valid planning approvals at the site could also benefit from a self-build exemption to the appellant.

The planning application subject to this appeal ```redacted``` was approved on ```redacted```, in respect of landscaping matters pursuant to outline planning permission ref: ```redacted``` for the erection of a pair of new semi-detached dwellings following demolition of the existing dwelling. This was the first new planning approval at the site since ```redacted```. The CA advised the appellant that they could not claim self-build exemption as they had already claimed and used self-build exemption for a development on Plot ```redacted``` (```redacted```).

A Liability Notice (```redacted```) was then issued on ```redacted```. This noted a chargeable area of ```redacted``` sqm and a CIL Liability of £```redacted```. This did not use the area of the existing building to offset the chargeable area and did not grant any self-build exemption. The appellant submitted a request for a review of the ```redacted``` chargeable amount under Section 113 on ```redacted```.

The Collecting Authority emailed the appellant to confirm that the Section 113 review would be carried out and advised that in order to claim self-build exemption, a new CIL-Form 7: Self Build Exemption Claim Form Part 1 would be required. A deadline of ```redacted``` was given for this form to be sent, to allow the exemption to be reflected in the review. This email also advised that evidence of lawful use was required to use the existing building on the site to offset the chargeable area. Again, a deadline of ```redacted``` was given for this evidence to be provided. Finally, this email cautioned that self-build exemptions could be rescinded upon the implementation of one of the developments, as the appellant could only claim self-build exemption for a single property. On ```redacted```, the appellant sent via email a revised CIL Form 7 Part 1 and evidence to support the position that the existing building had been in lawful use for at least six months in the three years preceding the granting of planning permission ```redacted```.

On ```redacted```, the Collecting Authority issued its decision regarding the CIL Regulation 113 Review of Chargeable Amount. This recalculated the chargeable area to ```redacted``` sqm and included the existing building on site (```redacted```). The self-build exemption was also granted to the appellant and applied to one of the properties on the site. With the existing building accounted for an exemption applied, the chargeable area became ```redacted``` sqm. This resulted in a revised CIL Liability of £```redacted```. A revised Liability Notice (```redacted```) was issued on ```redacted``` to reflect this review. It should be noted that during the period allowed for review by the CIL Regulations, the Collecting Authority's dedicated CIL Officer was on leave, and to comply with the mandatory review timescales, a review was undertaken – absent of the full knowledge of the preceding and complicated background to the appeal site.

Following the return of the CIL Officer, the issuance of the Regulation 113 Review was re-considered along with the wider site and planning context to ensure the correct assessment of the proposed/committed developments' CIL liabilities were properly taken into account. Consequently, an email was sent to the appellant on ```redacted```, asking whether application ```redacted``` (Plot ```redacted```), which

benefitted from a self-build exemption for the appellant, had been implemented. No response was received to this email. Accordingly, a site visit was undertaken by the CIL Officer on ```redacted``` and concluded that development on Plot ```redacted``` (```redacted```) had commenced – as per the commencement notice received on ```redacted```.

It was thus found that the initial Section 113 Review was unfortunately incorrect, as the existing building on site had already been used to offset the chargeable area for the development at Plot ```redacted``` (```redacted```); and the granting of a further self-build exemption was not valid, as no assumption of liability had been received, and the appellant was already benefitting from self-build exemption granted for the development at Plot ```redacted``` (```redacted```), which had commenced.
A revised Section 113 Review Decision was issued as expediently as possible to the appellant on ```redacted```. It was explained via email that as per the Collecting Authority's emails of ```redacted```, a further review had been undertaken due to the complicated nature of the site and number of similar planning applications and permissions that had been approved. The review letter advised that a further revised CIL Liability Notice would be issued in due course.

An email from the appellant was sent by the appellant and received by the Collecting Authority on ```redacted``` with a CIL Form 2: Assumption of Liability attached. This form was dated as ```redacted``` (significantly preceding its receipt).

The appellant has now submitted an appeal under Regulation 114, with an appeal form dated ```redacted```. The appellant's Grounds of Appeal refer solely to the CIL Liability Notice issued ```redacted``` (```redacted```). However, the appellant has disregarded the revised Section 113 Review decision issued on ```redacted```.

As set out earlier, the wider site and appeal site are covered by multiple planning applications/permissions which are similar in nature. It is the firm view of the CA that this appeal is invalid due to the original Section 113 review decision being superseded by a valid revised decision, issued to the appellant on ```redacted```. The CA has further reviewed the CIL Regulations and it is noted that the indexation adopted for the reserved matters application (```redacted```) was unfortunately incorrect, as the indexation for outline planning permission can only run between the relevant index figure for the year in which the charging schedule was adopted and the relevant index figure for the year in which the outline planning permission was granted. In this regard, the indexation should have been ```redacted``` (indexation adopted by the Council in 2021) rather than ```redacted``` (indexation adopted by the Council in 2024).

The CA advised the appellant 'that while you may have secured self-build exemptions for other residential developments in (the locality), these may be rescinded upon the implementation of one of the developments, as you can only claim self-build exemption for yourself in relation to a single property, in which you intend to live/ are living. The specifics of the circumstances surrounding any decision to rescind other self-build exemptions will depend on the specific circumstances at the relevant time, which will be communicated to you if, or when necessary'.

Decision

6. It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate, the applied indexation (corrected to ```redacted```). But there is a minor difference of opinion relating to the floor area of the buildings to be developed. The in-use evidence submitted had been reviewed and accepted. However the CA opines that as the in-use floor space has been used to offset the CIL liability for

development on Plot ```redacted```, it cannot be used again to offset CIL liability for this development.

7. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

   a. retained parts of 'in-use buildings,' and

   b. 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.

8. "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.

9. "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 which expressly permits development to be implemented in phases, the land to which the phase relates.

10. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".

11. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 6th Edition definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

12. I note that the appeal centres around ```redacted``` which has been pointed out is directly related to ```redacted``` (which was subsequently replaced by the updated planning permissions ```redacted``` and ```redacted```). I accept that as the proposed development under ```redacted``` is (in terms of size of the existing building and replacement buildings materially precisely the same) that the calculated GIAs should remain as previously set by the VOA in the earlier decision dated ```redacted```.

13. I consider that after taking a holistic view of the evidence submitted I would agree that the Appellant's core argument that the appeal be centred upon the CIL Liability Notice (ref: ```redacted```) dated ```redacted``` (which superseded ```redacted``` issued on ```redacted```) which was issued as part of the CA's Regulation 113 review. I also accept that, whatever the complications and complexities perceived to be involved, it cannot be right to attempt to correct or reissue the Liability Notice once the CA's Regulation 113 review had been completed.

14. I agree that the planning history associated with the (wider) site is indeed complicated this I believe is immaterial because the Appellant has simply acted within their rights under planning legislation in applying for the various planning permissions that they

have done over the years. Whilst I have a degree of sympathy for the Collecting Authority in respect of trying to keep track of the over-lapping nature of the applications and permissions at the wider site (and the complexities involved with related CIL calculations for instance) it is of course their obligation (where the Appellant has acted within their rights in law) to do so accurately and without complaint.

Whilst I agree that some historical context was useful here and being fair to the CA did at least offer some justification and support of their actions for one to consider again I would agree with the Appellant that these matters were not necessarily relevant to the precise matter in hand I do note that a commencement notice was served in relation to one of the other extant planning permissions in ```redacted``` (```redacted``` aka 'plot ```redacted```') and that the CIL charge to the Appellant benefitted from off-set and self-build exemption so I can fully understand the Collecting Authority's concern that the application of the off-set and self-build exemption were duplicated for ```redacted``` and why they acted as they have done in what can be described as a protective measure.

15. Having fully considered the representations made by both parties and all the evidence submitted, I agree with the appellant that the CIL Charge should therefore be based upon an increase in overall GIA of the new development measured by deducting the lawful 'in-use' GIA for a minimum period of six months within the three years prior to ```redacted``` [that is continuous use during the entire period between ```redacted``` and ```redacted```] from the total GIA of the new development i.e. ```redacted```m^2 less ```redacted```m^2 = ```redacted```m^2. Split between the two houses ```redacted```m^2, one of which qualifies for self-build relief.

Description	Chargeable Area (m2)	Rate £	Index	Multiplier	Area Charge	Relief	TOTAL
Private Market Houses	```redacted```	```redacted```	```redacted```	```redacted```	```redacted```	```redacted```	```redacted```
(Hot Charging Zone)							(Rounded)

It is at this point that I should reiterate what the Collecting Authority have advised the Appellant in the course of their communications 'that while you may have secured self-build exemptions for other residential developments, these may be rescinded upon the implementation of one of the developments, as you can only claim self-build exemption for yourself in relation to a single property, in which you intend to live/ are living. The specifics of the circumstances surrounding any decision to rescind other self-build exemptions will depend on the specific circumstances at the relevant time, which will be communicated to you if, or when necessary'. I trust that this statement assures both parties that the exemptions from full CIL can only be received once and can be rescinded from any Liability Notice should duplication occur once any of the extant planning permissions are properly commenced in the future.

With regard to the Application for Award of Costs, the main issue would appear to be whether the CA or the Appellant acted unreasonably taking all relevant matters into account. I do think that it is relevant that a commencement notice was served in ```redacted``` on ```redacted``` aka 'plot ```redacted```' with a claim for off-set and

self-build exemption in place for that development and that with an assumption that this was proceeding would appear the CA did not therefore act unreasonably in attempting to reflect this within the recalculation sent to the Appellant on ```redacted``` – it is noted that no attempt appears to have been made to clarify the situation regarding 'plot ```redacted```' with the CA during the latter half of ```redacted``` which to me balances matters out to a degree, and I feel that under these circumstances an award for costs should not be made.

16. In conclusion, having considered all the evidence put forward to me, I therefore confirm that a CIL charge of £```redacted``` (```redacted```) should be stated in a revised Liability Notice and hereby confirm this appeal and no award for costs will be made.

```redacted``` MRICS
Principal Surveyor
Valuation Office Agency
11 September 2025
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