Appeal Decision

by [redacted] BSc FRICS

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

Correspondence address:

Valuation Office Agency (VOA)
Wycliffe House
Green Lane
Durham
DH1 3UW

[Please note Durham is our national postal centre, contact by digital channels is preferred]

Email: [redacted]@voa.gov.uk

VOA Appeal Ref: 1877887

Planning Application: [redacted]

Proposal: Planning Permission Granted For: Retrospective application for a new dwelling.

Address: [redacted]

Decision

Appeal dismissed.

Reasons

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

    a) Planning decision in respect of Application No: [redacted], dated [redacted]. Permission granted for retrospective application for a new dwelling.

    b) CIL Default Liability Notice: [redacted], dated [redacted] for £[redacted].

    c) VOA CIL Appeal form dated [redacted], along with supporting documents referenced as attached.

    d) Written representations from the Appellant.

    e) Written representations from the CA.

f) Appellant's Comments on the Representations from the CA.

2. Planning Permission [[redacted] – not the 'subject' permission] was granted [redacted] for development comprising "Two-storey front/rear extension; single storey rear extension. Rear dormer roof extension to accommodate a second floor level and associated internal alterations." The Decision Notice contained an informative [IL24] that the development was liable for CIL.

3. CIL Relief Claim Decision Notice [[redacted] – not the 'subject' permission] dated [redacted] granted Residential Extension Exemption for the chargeable development in question under Regulation 42A (as amended). This notice states an Extension Exemption of £[redacted] based on a "Net Deemed Area" of [redacted] sqm [Total Development [redacted] sqm less Existing Use [redacted] sqm]. The effect of that was no CIL was payable as the qualifying amount of Residential Extension Exemption calculated for this chargeable development [[redacted]] was to be deducted from the CIL chargeable amount for the chargeable development.

4. Planning Permission for the subject proposal was granted [redacted].

5. The CA issued a Default Liability Notice reference: [redacted], dated [redacted] for £[redacted], based on a chargeable area of [redacted] square metres.

6. On [redacted] the Appellant submitted a request for Regulation 113 Review to the CA.

7. On [redacted] the CA responded by apologising that the statutory timescales under Regulation 113 for it to provide its decision of the review and reasons for the decision had passed. The CA advised the Appellant of their entitlement to appeal under Regulation 114 and also provided information in response to the Appellant's grounds of appeal.

8. On [redacted], the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.

9. **The Appellant's grounds of appeal can be summarised as follows:**

a) The Appellant does not agree with the CA's position that CIL is chargeable and submits that CIL should be £Nil.

b) The Appellant requests two aspects are considered:

i. Exemption for self-build housing,

ii. Off-set of in-use building, as end result matches approved footprint and layout.

c) The Appellant describes the timeline, works and grounds of appeal in detail which I summarise as follows:

i. Appellant occupied the property as main family residence from [redacted].

ii. Ground of Appeal 1: Self-Build Exemption Previously Granted (Regulation 54A) - The Appellant states that self-build exemption under Regulation 54A was granted for [redacted], confirming CIL liability as exempt. Conditions were met: the Appellant is the self-builder, the property has been the sole residence since [redacted], and it has not been sold or let. Please note that this relates to [redacted], not the current permission.

iii. The Appellant states the only reason for a further planning permission application was unforeseen technical construction issues, which led to advice from the CA to submit a retrospective application in [redacted]. Further, the Appellant states they were not advised this would affect their existing exemption. Furthermore, that resubmitting Form 7 or Form 9 in [redacted] would have been impossible, as construction had already been completed. The Appellant submits this demonstrates they acted in good faith and complied fully with the exemption requirements.

iv. Ground of Appeal 2 - Continuity of Development & Identical Plans - The Appellant submits the retrospective permission was a technical step to regularise works, as design, scope, and residential use were unchanged. At commencement, they held valid permission and an active exemption.

v. Ground of Appeal 3 - Default Liability Notice Timing & Good-Faith Reliance - The CA issued the Default Liability Notice on [redacted], after retrospective planning approval was granted on [redacted]. The retrospective application was under consideration for over two years. If the CA deemed the development chargeable, it is unclear why the Liability Notice was not issued earlier. Had this been flagged, the Appellant would have resubmitted Form 7 or 9. The delayed notice caused uncertainty and shows the Appellant's good faith reliance on the existing exemption.

vi. Ground of Appeal 4 - Continuous Residence During Construction - The Appellant states they maintained continuous residence at the property, their sole home since [redacted], confirming all self-build exemption conditions were met.

vii. Ground of Appeal 5 - Ongoing Financial Commitment & Planning Obligations - The Appellant states they paid a 100% Council Tax premium for two years and met Section 106 obligations, demonstrating continuous occupation, compliance, and financial commitment despite CA delays.

viii. Ground of Appeal 6 - Procedural Delays & Lack of Advice - The Appellant states the retrospective application ([redacted]–[redacted]) was delayed over two years, and they were not advised it would void their exemption or require resubmitting forms. The CA's failure to provide this guidance directly caused the current charge.

ix. Ground of Appeal 7 - Application of Late Payment Interest - The Appellant states the CA applied £[redacted] interest from [redacted] to [redacted], yet they only received the Liability Notice on

[redacted], two months after approval. Applying interest from the approval date is unfair as they had no prior notice. The Appellant further states they also submitted a Regulation 113 review on [redacted], which should have paused enforcement. The interest was therefore incorrectly and unfairly applied.

x. Ground of Appeal 8 - Disproportionate and Unaffordable Outcome - The Appellant states the £[redacted] demand is an extreme burden for a self-build project with no profit and that it is their long-term family home, and such liability is unaffordable and contrary to the Regulations, which protect self-builders through exemption.

xi. Ground of Appeal 9 - Double Charging: S106 and CIL - The Appellant states they have paid the full S106 commuted sum for this development and submits that:

1. issuing a CIL Demand Notice for the same project creates a duplicative financial burden, effectively charging twice.

2. the Appellant further submits this is unfair, disproportionate, and contrary to the intent of the Regulations, which prevent overlapping charges, and

3. that the retrospective approval mirrors the [redacted] plans for which S106 was paid.

4. imposing both S106 and CIL on a self-build family home places an unreasonable and crippling burden.

xii. The Appellant concludes by re-stating / requesting:

1. this is not a speculative development but their family home.

2. the exemption was properly granted and its conditions continuously satisfied.

3. the exemption be reinstated.

4. the recognition of the self-build exemption originally granted in [redacted] as valid and continuing to apply to the development.

5. amending the chargeable amount accordingly to reflect this exemption.

10. **The CA has submitted representations that I have summarised as follows:**

a) The CA summarises its understanding of the Appellant's grounds of appeal as follows 1. to 6. below:

1. Self-Build exemption has not been carried over to the new planning permission.

2. The new planning permission was to regularise the works undertaken but ultimately the development has not changed.

3. The Default Liability Notice was issued over 2 months after the planning permission was granted.

4. The appellant was not advised that the new planning permission would be CIL Liable.

5. The CA has applied Late Payment Interest to the amount payable.

6. S106 financial obligations have been entered into in addition to CIL being charged.

b) The CA states Regulations 113 and 114 afford an interested person the right to request a review and appeal of the calculation of a chargeable amount. The chargeable amount for a development is calculated in line with Schedule 1, Part 1 paragraph of the CIL Regulations. The CA then highlights that the Appellant has not challenged the chargeable amount calculation, such as the charging schedule rate applied, the gross internal area calculated by the CA, or the indexation rates applied.

c) The CA also highlights the Appointed Person has no power under Regulation 114 to determine any of the grounds listed at 1. To 6. above however states that for the Appellant's benefit, proceeds to address these:

1. Self-Build exemption has not been carried over to the new planning permission:

The CA notes that [redacted] ('the original permission') allowed extensions only: two-storey front/rear, single-storey rear, and a rear dormer for a second floor with internal alterations. The Appellant claimed a Residential Extensions Exemption under Regulation 42A, and no self-build exemption was sought as the permission was for extensions only.

Application [redacted] was submitted after enforcement revealed the property had been rebuilt, not extended. Its description, 'Retrospective application for a new dwelling,' confirms the work was already completed.

Under Regulation 7, development granted under section 73A TCPA (retrospective permission) is deemed to commence on the date that permission is granted.

Regulation 54B(2)(b) requires self-build exemption claims to be submitted before commencement, except under 54B(3A), which waives this if an exemption was granted and the self-build provision changes after commencement.

The chargeable development is deemed to have commenced on the date planning permission was granted, making a self-build exemption claim invalid. Paragraph 3A does not apply as no prior exemption was granted. The original permission and its exemptions are irrelevant because this is a different scheme.

2. The new planning permission was to regularise the works undertaken but ultimately the development has not changed:

Regulation 9 defines chargeable development as “the development for which planning permission is granted”. The original permission was for extensions, whereas the current permission is for a new dwelling, so they are not the same development.

3. **The Default Liability Notice was issued over 2 months after the planning permission was granted.**

Regulation 65 requires a liability notice to be issued ‘as soon as practicable’ after planning permission first permits development, which here was the grant date. The notice was issued 8 weeks and 6 days later. While the Regulations do not define ‘as soon as practicable’, Trent v Hertsmere [2021] held that delays should be weeks or months, not years. On that basis, this delay is not significant.

4. **The appellant was not advised that the new planning permission would be CIL Liable.**

The Decision Notice states the permission creates a chargeable scheme under CA and Mayoral Charging Schedules. CIL liability arises only once permission is granted, so the CA could not issue a valid liability notice before the decision.

5. **The CA has applied Late Payment Interest to the amount payable.**

Late Payment Interest was applied to the Demand Notice under Regulation 87. It is mandatory, and the CA has no discretion.

6. **S106 financial obligations have been entered into in addition to CIL being charged.**

CIL is separate from s106 Agreements, and both can apply simultaneously. The CA’s Planning Obligations Supplementary Planning Document [SPD] outlines when s106 contributions are sought and how they are calculated. The Appellant entered a Unilateral Undertaking under the SPD to secure an Affordable Housing Contribution.

d) The CA concludes by requesting the VOA dismiss this appeal as the chargeable amount calculation is unchallenged and the grounds cited cannot be determined under Regulation 114.

11. **The Appellant submitted comments on the CA’s representations which I summarise as follows:**

a) The Appellant submits the term ‘retrospective’ does not create new development or interrupt lawful continuity. Its use has resulted in an excessive CIL charge despite compliance with permissions, exemptions, and good-faith conduct.

b) The Appellant submits the CA’s position is incorrect in asserting:

(i) “The retrospective permission creates a new chargeable scheme, separate from the original [redacted] permission.”

(ii) No deduction for existing floorspace is applicable, and submits that:

c) The retrospective consent is not a new chargeable scheme; it regularised works commenced under [redacted].

d) Existing floorspace deductions (KR(i), KR(ii)) apply due to continuous residential use.

e) Further, delays in determining the retrospective application, failing to respond to the Reg.113 review, and issuing the liability notice two and a half years later constitute Wednesbury-unreasonable behaviour, causing financial prejudice and loss of lawful deductions.

f) The chargeable amount should be revised to reflect continuity and applicable floorspace deductions.

g) Self-Build Exemption Mischaracterisation - The CA's claim that no valid self-build exemption applied because the development was retrospective is misconceived. The CA required the retrospective application after enforcement and invited full documentation — including CIL Form 1, Form 9, and relief claim confirmation — from the Architect. The CA did not indicate a new exemption claim was needed or that Regulation 54B(2)(b) timing would bar it. The delay arose from the CA's chosen section 73A process, not any Appellant omission.

h) Self-Build Exemption Mischaracterisation - R (Giordano Ltd) v Camden LBC [2014] EWHC 3773 (Admin) confirms the chargeable development must be identified from the permission, which regularised an existing C3 dwelling, not a new unit. It is incorrect to claim this is a 'different scheme entirely.' The CA's position ignores its own permission, which records no floorspace loss and continuity of residential use (as shown in the granted retrospective application form).

i) Self-Build Exemption Mischaracterisation - The CA uses 'retrospective application for a new dwelling' loosely. The approved form and permission confirm the lawful use was C3 and no floorspace was lost (0 sqm). The permission simply regularised prior works to an existing residential property — not the creation of a new dwelling.

j) Continuity with Original Permission ([redacted])] - The Appellant refers to the permitted works under the previous planning permission [redacted] and states works began in [redacted] with excavation, foundations, and structural changes. Full demolition was required due to unsafe conditions, ensuring safety and compliance. The retrospective permission ([redacted], [redacted]) maintained the same footprint, layout, and residential use, regularising the development administratively.

k) Contradiction in Council's CIL Statement - The CA's claim that the chargeable development is a new dwelling conflicts with its own permission ([redacted]), which confirms Use Class C3, no floorspace loss, and continuity of residential use. The description 'retrospective application for a new dwelling' merely regularised prior works under the [redacted] permission, not a new planning unit.

l) Under Regulation 9(1) CIL Regulations 2010, the chargeable development is defined by the granted permission. The CA cannot re-characterise it for CIL purposes where its decision notice and plans confirm continuity of C3 use. R (Giordano Ltd) v Camden LBC [2014] EWHC 3773 (Admin) affirms permissions and plans are determinative. The development is lawful regularisation of an existing C3 dwelling; redefining it as a 'new dwelling' for CIL is factually and legally flawed.

m) KR(i) / KR(ii) Deductions] KR(i) Deduction – In-Use Building Credit - The property was in lawful residential use for over six months, ending [redacted] when works began. Water bills and Council Tax confirm intent to continue use, consistent with Hourhope Ltd v Shropshire Council [2015] on the 'in-use' requirement.

n) Had permission been granted by [redacted], this period would fall within the three-year look-back. Loss of KR(i) is due solely to CA delay, causing financial prejudice.

o) KR(ii) Deduction – Lawful Use Retained: Even if not "in-use," the planning use before the [redacted] grant was residential. Impact: Both deductions offset CIL liability; chargeable amount should be zero.

p) Procedural Delays and Wednesbury-Unreasonableness - The permission, expected within 8 weeks ([redacted]), took over two years ([redacted]). Despite repeated progress requests, the CA gave no guidance on Form 7 Part 1 while advising on other documents. This delay undermined the six-month occupancy requirement for KR(i), shifting the statutory three-year window and causing financial prejudice.

q) Regulation 113 Review Response - Submitted [redacted]; response due in 14 days. CA replied only after follow-up on [redacted]. Demand notice issued [redacted] with interest backdated to [redacted].

r) Response to Council on Delay in Liability Notice & Procedural Delay - The CA claims the Liability Notice issued 8 weeks post-permission complies with Regulation 65, but ignores its two-year delay ([redacted]–[redacted]) in granting that permission. Regulation 65 requires issuing "as soon as practicable" after permission; delays of years, as noted in R (Trent) v Hertsmere BC [2021], fall outside reasonable discretion. The prejudice arises from this prolonged delay, not the 8-week period, as it retroactively imposed interest and CIL during a time when compliance was impossible. Further, the CA missed the 14-day deadline for the Regulation 113 review, responding only after a reminder, then issuing a Demand Notice with interest backdated to [redacted]. This conduct is procedurally unfair and exemplifies Wednesbury unreasonableness, penalising the appellant for acting in good faith while benefiting from its own delay.

s) Form Submissions - CIL Form 1 was submitted on time. Form 9, used instead of Form 7 Part 1, effectively initiated the self-build exemption claim. The retrospective permission should not invalidate this claim, especially as the CA failed to advise on Form 7 Part 1.

t) Inconsistency Between Council Tax and CIL Position - If the CA denies lawful residential use and KR(i)/KR(ii) deductions, it contradicts its own Council Tax treatment. From [redacted] to [redacted], the CA levied full Council Tax, including a 100% empty homes premium, recognising the property as a dwelling. Treating it as residential for tax yet non-residential for CIL is irrational and unfair,

imposing double penalties. This inconsistency exemplifies Wednesbury unreasonableness and lack of procedural fairness. If the CA persists, logic dictates refunding all Council Tax (including premiums) with interest.

u) Requested Outcome - The Appellant concludes by summarising their requested outcome in five points:

(i) **Acknowledge lawful commencement** under [redacted] in [redacted].

(ii) **Confirm chargeable amount is £0**, as KR(i)/KR(ii) deductions offset any additional GIA.

(iii) **No CIL liability**: Retrospective permission only regularised existing use; Decision Notice shows no new floorspace. Fairness demands no double charge (Council Tax plus CIL).

(iv) **Apply previous CIL relief**: Consistent with [redacted] Decision Notice granting Residential Extension Exemption (£[redacted]) under Regulation 42A; same building completed per approved design.

(v) **Consider Council delays and unfair conduct**, which caused financial and emotional prejudice over years.

12. **Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:**

a) In this case, the Appellant does not agree with the CA's imposition of CIL charge and has submitted their views in support of why CIL should not be applicable as summarised above.

b) A request for a Regulation 113 review was made [redacted]. The CA provided a response on [redacted], which is [redacted] days after the review start date and therefore, under CIL Regulation 114. (1)(b) and (3A), this chargeable amount appeal was permitted.

c) The Appellant has stated that whilst undertaking building works permitted under the previous planning permission, [redacted], that full demolition of the existing structure was necessary due to poor structural and unsafe conditions discovered during initial works and that this was essential to ensure public safety and structural compliance.

d) The Appellant has therefore explained the reasons why the works were desired in the first instance and also their reasons for undertaking specific works as the construction project progressed.

e) Referenced above are the CA's Planning Enforcement findings, which was prior to the subject planning application. As it was found that the house, the subject of the previous planning permission, [redacted], had been demolished, the CA requested the Appellant make a retrospective application for planning permission to match the extent of the works undertaken by the Appellant.

f) The CIL liability in this case has been generated by the grant of the subject planning permission, [redacted], combined with the physical attributes of the Appellant's property on the date planning permission first permitted the development, [redacted].

g) Turning to the off-setting of the floor area of the previous dwelling from that of the new build floor area, this is covered by Schedule 1 Part 1 – Chargeable amount: standard cases. This part of the CIL Regulations covers what makes a building eligible so that existing floor area can be off-set from the floor area of the proposed development. Most pertinent to this case is the criteria for a "relevant building" which means a building which is situated on the relevant land [relevant land means the land on which the chargeable buildings will stand] on the day planning permission first permits the chargeable development. In this case, the day planning permission first permitted the chargeable development was [redacted] and therefore, as verified by the CA, no such building existed on that date because it had already been demolished.

h) It is therefore the unsanctioned demolition, when considered against the CIL Regulations, which is the reason why the two reliefs / exemptions [self-build and in-use building] are unavailable to the Appellant.

i) Unfortunately, when circling back to the timeline and information presented, relative to subject planning permission and chargeable development, the property was demolished prior to grant of retrospective permission. The CIL Regulations are clear in respect of the criteria for exemption for self-build and off-setting the floor area of an eligible building which is to be demolished as part of a new build development.

j) The Appellant raises and reiterates matters out with the scope of this Regulation 114 Appeal including Council Tax payments, Section 106 [Town and Country Planning Act 1990 (as amended)] Agreement, procedural delays and lack of Advice. Under a Regulation 114 CIL appeal, the scope is limited to challenging the chargeable amount stated in the Liability Notice. This means the Appointed Person can only consider whether the calculation of the CIL charge was correct. Issues such as late payment interest, surcharges, or enforcement matters fall outside the jurisdiction of a Regulation 114 appeal and cannot be adjudicated within that process. Late payment interest is governed by Regulation 87, not 114, of the CIL Regulations 2010, and disputes about interest or surcharges would typically need to be addressed directly with the CA or through other legal routes, not by a Reg. 114 appeal. The appeal form and VOA guidance confirm that representations must relate to the calculation of the chargeable amount only, following a prior review under Regulation 113.

13. There is no dispute in relation to the chargeable area, rates adopted or indexation and I therefore dismiss this appeal.

[redacted] BSc FRICS
Valuation Office Agency
9 December 2025