Appeal Decision

By [redacted] BSc (Hons) MRICS FAAV

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [redacted]@voa.gov.uk

Appeal Refs: 1853378 (Regulation 114) and 1851137 (Regulation 115)

Planning Permission Reference: [redacted] (Amendment of Planning Permission [redacted]

Address: [redacted]

Development:
Amendment: Application under Section 73A to vary Condition 1 of [redacted] to allow for alterations to fenestration and addition of a front porch, a rear glass box and rear potting shed to approved dwelling; replace approved boundary fence with brick wall to [redacted] .

Original Planning Permission Development ([redacted] dated [redacted]); Change of use from hotel (class C1) to 7 dwellings (class C3) with associated alterations, rear extension, parking and landscaping.

Decision

I determine that the Community Infrastructure Levy (CIL) in this case should be a total of £[redacted] ([redacted]) apportioned accordingly; [redacted], £[redacted] ([redacted]), [redacted] £[redacted] ([redacted]) and [redacted] (total combined amount) £[redacted] ([redacted]).

Background

1 I have considered all the submissions made by [redacted] of [redacted] on behalf of [redacted], [redacted] and [redacted] (the appellants) and

[redacted], the Collecting Authority (CA). This Appeal Decision is for the Regulation 115 Appeal (1851137) and the Regulation 114 Appeal (1853378) because of the CIL Liability Notices served in connection with [redacted].

In particular I have considered the information and opinions expressed in the following submitted documents:-

1) The CA's response dated [redacted], to a Regulation 113 Review request which was submitted by the appellant, [redacted] on [redacted] in respect of the original development of the site, [redacted]. It was agreed the existing 'in use' buildings measured [redacted] sqm and the calculation of the CIL Liability was based upon a chargeable area of [redacted] sqm.

2) CIL Liability Notice [redacted] dated [redacted] for planning ref [redacted] (the original permission) with CIL Liability calculated at £[redacted].

3) CIL Demand Notice issued [redacted] for Liability Notice [redacted], amount payable £[redacted] (included surcharges due to late payment of an instalment; original CIL Liability being £[redacted]).

4) Acknowledgement Notice for payment of CIL, dated [redacted], with payment having been made on [redacted] of £[redacted] for [redacted].

5) Planning Application Form for [redacted], 'Application for removal or variation of a condition following grant of planning permission or Listed Building Consent, for [redacted] , on behalf of [redacted], dated [redacted], to 'allow the erection of porch, car port, potting shed, brick wall, external glass box and minor changes to the fenestration of the approved dwelling.'

6) The Decision Notice for planning permission reference [redacted] ([redacted]) dated [redacted] for 'Application under Section 73A to vary Condition 1 (approved plans) of [redacted] to allow for alterations to fenestration and addition of front porch, a rear glass box and rear potting shed to approved dwelling; replace approved boundary fence with brick wall to [redacted] (as amended by plans received [redacted]).

7) A Planning Officers report for [redacted], dated [redacted].

8) A Regulation 113 Review request (via email), dated [redacted] from [redacted] (the former agent for [redacted]) following receipt of two CIL Liability Notices dated [redacted] for [redacted] for £[redacted], together with a demand notice dated the same and further CIL Liability Notice, dated [redacted] for the property known as [redacted] ([redacted]) for £[redacted] together with a Demand Notice for the same. Three of the four envelopes were dated [redacted] (received by [redacted] on [redacted]) the other was undated and received on [redacted].

9) An email from the CA dated [redacted] to the agent, confirming receipt of the Regulation 113 Review request on behalf of [redacted] for Liability Notices reference [redacted] in respect of [redacted] and [redacted].

10) Regulation 113 Review response from the CA dated [redacted] to the request lodged on [redacted]. This response details Liability Notice [redacted] (not [redacted], as per the CA's previous email).

11) CIL Liability Notice reference [redacted] dated [redacted] as apportioned and served on [redacted], [redacted] and [redacted]. The CIL charge was based upon [redacted] sqm x £[redacted] /sqm and an indexation rate of [redacted], giving a total CIL Liability of £[redacted].

12) A Regulation 113 Review request submitted to [redacted] on [redacted], to review the chargeable amount, on behalf of [redacted], [redacted] and [redacted] following the serving of the CIL Liability Notice reference [redacted] (dated [redacted].)

13) A Regulation 115 appeal submitted by the appellants agent on [redacted] on behalf of [redacted], in respect of CIL Liability Notice [redacted] (as issued on [redacted]) for the total sum of £[redacted] (apportioned between different parties).

14) A Regulation 114 appeal submitted by the appellants agent on [redacted] in respect of CIL Liability Notice [redacted] (as issued on [redacted]) by the CA for the sum of £[redacted] ([redacted]), [redacted] ([redacted]) and £[redacted] (each to [redacted]).

15) Representations received on [redacted] from the appellants regarding the Regulation 115 appeal.

16) An email dated [redacted], to the CIL Appeals Team from the CA, querying the validity of the two CIL Appeals, ref 1853377 and 1853378.

17) Representations from the CA received on [redacted] including two articles by [redacted] on 'Retrospective planning permissions and Community Infrastructure Levy' and 'Community Infrastructure and Professional Negligence', respectively.

18) Additional representations received from the CA on [redacted] regarding indexation of the CIL Calculation.

19) Additional representations received on [redacted] from the appellants agent, regarding indexation of the calculated CIL Liability, in response to the CA's additional representations.

20) Additional representations from the CA dated [redacted], outlining their representations to the Regulation 114 Appeal.

21) Additional representations received on [redacted] from the appellants agent.

22) Response and representations received from the CA on [redacted].

2. This appeal decision relates to two appeals (under Regulation 114 and Regulation 115) that have been submitted in respect of planning permission [redacted] (granted [redacted]). This permission is for alterations (the erection of a porch, car port, potting shed, brick wall, external glass box and minor changes to the fenestration) at the property known as [redacted].

3. The [redacted] is part of a wider development known as [redacted]. Planning permission was granted in [redacted] for the change of use of the hotel to seven dwellings with associated alterations and rear extension, under planning permission [redacted] (the original permission).

4. Two other CIL appeals have also been received, from two of the three parties in this appeal. CIL Liability Notices were served upon them in relation to another detached property within the same [redacted] ' development, called [redacted]. These appeals (Ref 1853377 and 1851158) relate to [redacted], granted [redacted]. Whilst not included within the scope of this appeal decision, many of the representations submitted by the agent and CA relate to all four appeals.

5. There is significant history to the site and multiple Liability Notices have been served in connection with [redacted] (the Original Permission), [redacted] ([redacted]) and [redacted] ([redacted]). This appeal decision relates to [redacted] and the associated Liability Notices, although mention may be made of other Liability Notices where applicable.

6. The [redacted] development was owned by [redacted]. [redacted] purchased the detached property, [redacted] on [redacted]. [redacted] was sold to [redacted] in [redacted].

7. A Regulation 113 Review request was submitted by the appellant, [redacted] on [redacted] in respect of CIL Liability for the Original Permission. The CA responded on [redacted]. It was agreed the existing 'in use' buildings measured [redacted] sqm and the calculation of the CIL Liability was based upon a chargeable area of [redacted] sqm.

8. A revised CIL Liability Notice, [redacted] was issued by the CA on [redacted] for [redacted] with CIL Liability calculated at £[redacted].

9. A CIL Demand Notice was further issued on [redacted] with an amount payable of £[redacted], which included surcharges due to late payment of an instalment. This was paid on [redacted] by [redacted].

10. The development of the site commenced. The site was later subdivided into three 'Blocks'.

- Block One (the former main hotel building) was retained by [redacted];

- Block Two (now called [redacted]) was converted from hotel accommodation into a private dwelling (under [redacted]) and sold to [redacted] in [redacted] and
- Block Three (now called [redacted]/[redacted]) was converted from hotel accommodation to a private dwelling (under [redacted]) and sold to [redacted] in [redacted].

11. On [redacted] an 'Application for Removal or Variation of a Condition following Grant of Planning Permission or Listed Building Consent' was submitted on behalf of [redacted]; site address, [redacted], for the erection of a porch, car port, potting shed, brick wall, external glass box and minor changes to the fenestration and of the approved dwelling ([redacted]).

12. A Planning Officer Report dated [redacted] recommended permission be granted for [redacted] as 'Application under Section 73A to vary Condition 1 (approved plans) of [redacted] to allow for alterations to fenestration and addition of a front porch, a rear glass box and rear potting shed to approved dwelling, replace approved boundary fence with brick wall to [redacted] (as amended by plans received [redacted]' at [redacted]
13. Planning Permission ([redacted]), was granted under Section 73A on [redacted] to vary Condition 1 of [redacted].

14. Two CIL Liability notices and two demand notices were served on [redacted] via post by the CA, which he received [redacted] and [redacted]. The CA refer to both as [redacted]. These stated CIL charges of £[redacted] for [redacted] ([redacted], Notice Date [redacted]) and £[redacted] for [redacted] ([redacted], Notice dated [redacted]).

15. The appellant submitted a Regulation 113 review request on [redacted], having previously agreed with the CA the effective date of both Liability Notices was [redacted]. This was the date of receipt and not the date on the Notices, as considerable time had elapsed prior to [redacted] receiving them. The CA issued their response on [redacted].

16. In the course of carrying out the Regulation113 review the CA became aware that [redacted] had been sold to [redacted] and further likely material interest might be held by [redacted] although these were not confirmed.

17. With this knowledge the CA sought to apportion the CIL charge for [redacted] in accordance with Regulation 33 (2) of the CIL Regulations between the different material interests in the land. They required additional information to establish the apportionment of the charge, as per Reg 34 so stated further Liability and Demand Notices would be issued in due course.

18. In their response on [redacted], the CA stated:

    a) 'Section 73 of the TCPA 1990 is used for determination of applications to develop land without compliance with conditions previously attached. Section 73A of the TCPA1990 is used to grant planning permission for development already carried out.
    b) As the planning permission was granted under S73A the wider development permitted via [redacted] is re-permitted under S73A.

c) The consequences of this is that the liability for the development becomes due on the date planning permission is granted.
d) Regulation 42 does not apply in this case because the S73A permission re-permits the development consented in [redacted] for 'Change of use from hotel (class C1) to 7 dwellings (class C3) with associated alterations, rear extension, parking and landscaping.
e) Therefore, the development includes the creation of new dwellings and is over 100sqm in GIA.

19. Within their Regulation 113 review response, the CA stated revised Liability Notices would be served, apportioned according to the material interests of each party, having been made aware that [redacted] had been purchased by [redacted]. (Land Registry records the date of sale as [redacted] yet the CA stated [redacted].)

20. On [redacted] the CA issued CIL Liability Notice [redacted] as follows:
    - Residential dwellings 10 or less
    - Chargeable area [redacted] sqm
    - Rate £[redacted] Indexed ([redacted]) to £[redacted] (Total Liability)
    - Recipients of the Notice (liable parties); [redacted], [redacted] and [redacted]

21. The CIL Charge was apportioned between the parties:
    - The market values adopted by the CA in determining the apportionment were £[redacted] for [redacted], £[redacted] for [redacted] and £[redacted] for [redacted].
    - The resultant CIL charge apportionment being; £[redacted] ([redacted]), £[redacted] each to [redacted] and £[redacted] ([redacted])

22. A Regulation 113 Review request was submitted to the CA on [redacted] on behalf of [redacted], [redacted] and [redacted].

23. The CA disputed the validity of the Regulation 113 review request and failed to provide a response. They did not consider the request to be valid, on the basis that Regulation 113 (9) stipulates that a person may not request a review a) of the decision reached on an earlier review or b) subject to para (9A), once the relevant development has been commenced.

24. The CA emailed the VOA on [redacted], to confirm their dispute of the Regulation 113 Review Request and to also dispute the validity of the Regulation 114 Review Request.

25. The VOA held that the Regulation 114 Appeal as received on [redacted] was valid as it was made within 60 days of the Liability Notices being issued ([redacted]) and the Liability Notices had included parties additional to those who previously had a Notice served upon them.

26. It is the VOA's consistent practice for CIL appeal purposes to treat all communications received electronically at any time during a particular day, as

being received on that day. The appeal was therefore considered to have been received on [redacted], within the time limits of the Regulations.

27. A Regulation 115 appeal was submitted by the appellants agents on [redacted] in respect of CIL Liability Notice [redacted] (as issued on [redacted] by the CA for the sums of £[redacted] ([redacted]), £[redacted] each to [redacted] and £[redacted] ([redacted]) questioning the apportionment of the chargeable amount.

28. A Regulation 114 appeal was submitted by the appellants agent on [redacted] in respect of CIL Liability Notice [redacted] (as issued on [redacted]) by the CA for the sums of £[redacted] ([redacted]), £[redacted] each to [redacted] and £[redacted] ([redacted]) questioning the calculation of the chargeable amount.

29. Further representations have been submitted by the CA regarding indexation and measurement of the areas, which the appellant has contested and also provided further comments on.

30. The information provided by the Appellants and CA outlines the following chronology:

[redacted]	Grant of the Original Permission – [redacted]
[redacted]	Works under the Original Permission commence (according to [redacted] letter dated [redacted], para 6).
[redacted]	Grant of [redacted] Permission – [redacted]
[redacted]	Works under the Original Permission completed (according to [redacted] letter dated [redacted], para 6)
[redacted]	[redacted] move into [redacted], having completed their acquisition of it on [redacted] (according to [redacted] letter dated [redacted], para 6).
[redacted]	Grant of [redacted] Permission ref [redacted]). Planning Officer report for [redacted] permission (dated [redacted]) states inter alia: 'However, it is a highly material consideration that there is an existing permission, and works are under way and substantially complete' (section 10). 'The proposed amendments are minor in scale and would not detract from the overall appearance of the approved dwelling which is now substantially complete' (section 11).
[redacted]	Works undertaken to construct 'glass box' extension under the [redacted] permission (according to [redacted] letter of [redacted]).

Grounds of Appeal

31. The main grounds of appeal for the Regulation 115 appeal are:

- Apportionment is incorrect; The CA has mistakenly calculated the CIL charge on the basis of the whole site and has attributed CIL charges to all parties with a material interest in the site, rather than just those with an interest in the individual property and permission.

- The CIL calculation for [redacted] ([redacted]) is apportioned between three parties whilst the CIL charge for [redacted] which does not form part of this appeal ([redacted]) is apportioned between just two parties, which is contested.

- The GIA is incorrect; there are inconsistencies with the adopted GIA's utilised by the CA on the two planning permissions [redacted] and [redacted] (which is not part of this appeal decision).

32. The main grounds of appeal for the Regulation 114 appeal are:

- Primary ground for review; Incorrect application of 'relevant land'.

    i. The appellant considers the CA has incorrectly calculated the amount due as they have included buildings to which the planning permission does not relate. They consider the CA have incorrectly interpreted the definition of 'relevant land' as per Regulation 2 of the CIL Regulations.

    ii. The site of The [redacted] for which planning permission [redacted] was granted and CIL payment made ([redacted]), has been divided into three parts: Block 1, the main part of the redevelopment, retained by [redacted]; Block 2, [redacted], which had been converted to a residential dwelling and sold to [redacted] and Block 3, [redacted] which had been converted to a residential dwelling and sold to [redacted]. The agent for the appellant states the land in question is owned separately and can be clearly defined as such.

    iii. The appellant considers the relevant planning permission for the planning application ([redacted]) should fall within the Minor Development Exemption under Reg 42 of the CIL Regulations.

    iv. The appellant believes the CA acted unreasonably by adding documents to the approved permission, which did not form part of the requested amendment. The application was for variations in a condition relating to the approved plan for [redacted]. The drawings submitted with the application, related to the amendment. The appellant contests the motive for the CA choosing to include the additional drawings and suggests this was to maximise CIL receipts.

v. The appellant provides a schedule of the Gross Internal Areas (GIA's) for each of the three planning permissions relating to the wider site to evidence their opinion, that the CA had adopted an excessively high GIA for the calculation of CIL.

- Secondary Ground for appeal- Incorrect Calculation of CIL under Regulation 40 and Schedule 1.

i. The appellant contests that as a result of what they consider 'additional buildings' being included in the CIL charge, the calculation of CIL under Reg. 40 and Schedule 1 has consequently been incorrectly measured and incorrectly calculated (as the adopted GIA is too high). They consider when assessed against what they believe to be the relevant building, CIL should not be applied as the additional GIA is less than 100sqm and thus Regulation 42 'Minor Development Exemption' applies.

The appellant reiterates an agreed and non contested point, that the hotel and associated buildings (Blocks 2 and 3), both operated as guest bedrooms and the hotel was operational and 'in use' up to and including [redacted]. The main site was subject to a wider permission ([redacted]), granted [redacted], since implemented and CIL paid in full.

ii. [redacted] was granted on [redacted]; within the relevant period, the buildings were in lawful use for over 19 months. The agent considers permission [redacted] adds [redacted] sqm, post completion of the original permission and disagrees with the CA, who have charged for an additional [redacted] sqm in CIL Liability Notice [redacted]. The appellant contests this adopted approach, incorporating the whole site within the CIL calculation, instead opining that the addition of an external porch ([redacted] sqm) and a 'glass box' conservatory should be exempt in accordance with the Minor Development Exemption. The agent considers the CA have acted unreasonably.

iii. The appellant reiterates that they consider the additional [redacted] sqm should be subject to Minor Development Exemption and thus the CIL charge should be zero.

iv. The Ic indexation factor adopted by the CA in their calculations is incorrect and should be [redacted] and not [redacted]. The appellant quotes CIL Appeal Decision 1864814 and opines that the CA should use the official RICS published factors under the All-in Tender Price Index (All-in TPI) that correlate to the date the charging schedule was implemented. Accordingly, if any CIL is to be calculated the indexation for Ic should be [redacted] not [redacted].

33. The appellant has applied for an award of costs on the grounds that the CA have acted unreasonably.

34. The appellant has submitted extensive representations and there is significant overlap within their grounds of appeal.

Appeal Decision

35. For ease of reference, I have categorised the appellants grounds of appeal and detailed the points raised below, together with my decision:

Relevant Land

36. The CA and appellant agree that the CIL Regulations define the term 'relevant land' to mean 'the land to which the planning permission relates'. They do not however agree on what land is included within that definition:

    a) The appellant opines it is just the land as conveyed to [redacted], the property known as [redacted] (Block 2), which has a separate title ([redacted]).

    b) The CA opines it is the whole development site (Blocks 1, 2 and 3), as defined on the location plan which was submitted with application [redacted], which outlines in red, the same site as shown in [redacted].

37. To support their opinion, that the 'relevant land' is the whole site, the CA quote Regulation 7 of The Town and Country Planning Order 2015; an application must include 'except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A (2) (planning permission for development already carried out) of the 1990 Act or is an application of a kind referred to in article 20 (1) (b) or (c) to be accompanied, whether electronically or otherwise by-: (i) a plan which identifies the land to which the application relates.'

38. The CA continue 'a plan which identifies the land' is commonly called a location plan and that NPPG Guidance on 'Making an application' states 'the application site should be clearly edged in red on the location plan.'

39. Hence the CA maintain that the 'relevant land' is as shown on the location plan which was submitted with application [redacted], which outlines in red, the same site as shown in [redacted].

40. The appellant contests the CA's argument; although the location plan included with application [redacted] denotes the whole site; the application form, the description of the works and plans clearly denote the intended work relate solely to [redacted]. They also dismiss the CA's dependence on the NPPG as they consider this guidance for planning purposes and not part of the CIL Regulations.

41. In arriving at my decision with regard to the “relevant land”, I have referred to the CIL Regulations. These define ‘relevant land’ as;

    a) where planning permission is granted for development by way of a general consent, the land identified in the plan submitted to the collecting authority in accordance with regulation 64(4)(a),

    b) 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),

    c) where outline planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates, and

    d) in all other cases, the land to which the planning permission relates.

42. The Regulations confirm that the relevant land is the land to which the planning permission relates. As planning permission has been granted for the entire development and not just for alterations to the [redacted], I opine that the “relevant land” is the entire former [redacted] development site, as per the location plan included with application [redacted] and [redacted].

Material Interest

43. Regulation 33 of the CIL Regulations states:

    Default liability - 33.—(1) This regulation applies where a chargeable development is commenced in reliance on planning permission and nobody has assumed liability to pay CIL in respect of that development. (2) Liability to pay CIL must be apportioned between each “material interest” in the “relevant land”.

44. Regulation 4 define a ‘material interest’ as being:
    2) A material interest in the relevant land is a legal estate in that land which is—
    a) a freehold estate; or
    b) a leasehold estate, the term of which expires more than seven years after the day on which planning permission first permits the chargeable development.

45. The appellant considers that [redacted] should be solely responsible for any CIL Liability arising from [redacted], as they are the owners of [redacted].

46. The CA consider the relevant land to be the whole development site and thus the persons with material interests are [redacted], [redacted] and [redacted].

47. In respect of the appellants view that any CIL Liability arising from [redacted] should be the sole responsibility of [redacted] as they are the owners of

[redacted], I refer to the issue of "material interests". Having established the "relevant land" as being the entire site, I opine that the parties with a "material interest" in that land are [redacted], [redacted] and [redacted]. Each party owns separate legal interests, but all fall within the curtilage of the wider site.

48. The appellant raises and contests the CIL calculations and apportionment of CIL with regard to planning permissions [redacted] (and [redacted] which is not part of this appeal decision) as the adopted GIA's are different; the CIL calculation for [redacted] ([redacted]) is apportioned between two parties, [redacted] and [redacted], whilst the CIL calculation for [redacted]) is apportioned between three parties, [redacted], [redacted] and [redacted].

49. I dismiss this ground of appeal; the explanation for serving Liability Notices on the different parties aligns with the dates of ownership/purchase of [redacted] and the date the planning permission was granted for [redacted]. [redacted] had no material interest in the relevant land as at the date planning permission was granted under S73A for [redacted] amendments.

Minor Development Exemption

50. The appellants consider that the CA has deliberately and unreasonably sought to misapply the rules regarding relevant land to extract CIL payment and that the addition of an external porch and a 'glass box' conservatory should be exempt under the Minor Development Exemption.

51. The CA state that Regulation 42 does not apply because the S73A permission re-permits the development consented in [redacted] for 'Change of use from hotel (class C1) to 7 dwellings (class C3) with associated alterations, rear extension, parking and landscaping'. As the development creates a new dwelling, regardless of its GIA, CIL remains chargeable.

52. The appellant response is that the subject permission was not the creation of a new dwelling but rather than extension/modification of that dwelling. Thus Reg 42(2) is not relevant and Minor Development Exemption does apply.

53. Minor Development Exemption does not apply "where the development will comprise one or more dwellings" (Reg. 42(2)). The development permitted was "Change of use from hotel (class C1) to 7 dwellings (class C3)…" As this development involves conversion to residential dwellings, I opine that the minor development exemption is not applicable, regardless of the GIA.

Gross Internal Area (GIA)

54. The GIA of the original planning permission [redacted] is agreed between all parties as being:

Total Development	[redacted] sqm
Demolitions	0 sqm
Existing Use	[redacted] sqm
Chargeable Area	[redacted] sqm (rear extension to former hotel)

55. [redacted] grants permission for;
    a) An open sided front porch, measuring approximately [redacted]m x [redacted]m with a hipped roof design and two open sides;
    b) A glass box, measuring [redacted]m x [redacted]m and [redacted]m high.
    c) Alterations to fenestration
    d) A potting shed to the rear measuring approximately [redacted]m x [redacted]m
    e) The replacement of a rear boundary fence with a brick wall.

56. The appellant contests the adopted GIA for CIL Liability under [redacted]. They consider it should be [redacted] sqm and just relate to the porch.
57. I have measured the proposed additions to the [redacted] from the plans provided, in accordance with the RICS Code of Measuring Practice 6th Edition:
    a) I opine that the glass box creates a GIA of [redacted] sqm.
    b) I consider the porch to come under the category of 'canopy' and thus be excluded from the GIA.
    c) I opine that the other works also fall outside of the GIA calculation.
    d) Planning Permission [redacted] therefore creates a total additional GIA of [redacted] sqm.

58. The CA have calculated the GIA for CIL Liability under [redacted], by adding the [redacted] sqm from the hotel extension (granted under permission [redacted]), to an additional [redacted] sqm which is to be created at [redacted].

59. The CA have treated [redacted] sqm of the total development as "existing use" under KR(i). This is the original hotel. I accept this as correct, as agreed by all parties.

60. To arrive at my decision in respect of the [redacted] sqm (rear extension to the hotel) I have considered that development retrospectively authorised by a S73A planning permission may be capable of being a "retained part" of a building within the meaning of KR(ii) subject to satisfying certain criteria.

61. KR(ii) states "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;"

- "Retained part" is defined as part of a building which will be on the relevant land on completion of the chargeable development but excluding "new build". If authorised by a S73A (retrospective) permission the development cannot be classed as "new build".
- "New build" is defined as "that part of the chargeable development which will comprise new buildings and enlargements to existing buildings". That definition uses the future tense ("will") and does not apply to existing buildings / constructions.

- The definition of “new build” is expressly extended in respect of S.73 planning permissions to include certain buildings which have already been constructed, but this does not apply to S.73A planning permissions. The CIL Regulations specifically distinguish between S.73 and S.73A planning permissions, which further evidences that “new build” does not extend to S.73A permissions for CIL purposes.

62. KR(ii) requires that in the retained part “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”.

63. The Original Permission permitted the use of the [redacted] sqm extension and therefore this use could be carried on “lawfully and permanently” on the day prior to the grant of the [redacted] Permission. This extension was not granted under a S73A permission.

64. The CA, in their letter of [redacted] raise an argument that the use would not have been lawful, prior to the grant of the [redacted] Permission, because it was in breach of a planning condition on the Original Permission ([redacted]), i.e. the condition requiring compliance with the approved plans.

65. Failure to comply with a pre-commencement condition which goes to the heart of the planning permission may mean that a development is not lawfully commenced and does not benefit from planning permission at all.

66. Any breaches of planning conditions are generally confined to the “particular aspect” of the development to which the breach relates. It has not been stated that the [redacted] sqm was built without planning permission, nor that its residential use breached any conditions. In my opinion, the extension granted under the Original Permission would therefore have been lawful, even if the subsequent alterations to the [redacted] were not.

67. An important point within the CIL Regulations, is the specific provision made to ensure that S73 planning permissions are not subjected to double liability. Although the CIL Regulations do not contain parallel provisions in respect of S.73A planning permissions, construing “new build” to include existing buildings which are the subject of a s.73A planning permission would create a real risk of double liability arising in respect of developments which have already been the subject of a s.70 planning permission and are being amended through a s.73A planning permission.

68. Repeatedly charging CIL for essentially the same development appears to be contrary to the statutory purpose of CIL as set out in s.205(2) of the Planning Act 2008, which requires that developers only pay what is appropriate to cover the impact they have on the costs incurred in supporting development.

> “In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable”.

69. I have considered the following evidence to determine whether the extension permitted under the Original Permission was substantially complete and could therefore be considered a "relevant building" at the time that the [redacted] permission was granted.

- [redacted] permission was granted on [redacted].
- The officer report (dated [redacted]) for the [redacted] Permission states that "there is an existing permission, and works are under way and substantially complete" (section 10).
- The appellant states "This building – Block 2 – [redacted] – was converted from hotel to residential under permission [redacted] and those works began in [redacted] and completed in [redacted] after which [redacted] acquired the dwelling on [redacted] and moved in on [redacted] (para. 6 of the [redacted] letter dated [redacted]). That move in date is corroborated by the email evidence from the removal firm of the Appellants.
- [redacted] have also provided a chronology which states that in "Construction works began across Hotel site, including conversion of Blocks 2 & 3 from Hotel to C3". It does not state when the works to any part of the site finished.
- Both the planning officer's report and the [redacted] letter indicate that the [redacted] sqm extension was substantially complete by the time of the [redacted] Permission. This is not contradicted by any other evidence provided.

70. Taking the above evidence into account, I opine the [redacted] sqm is not "new build" but is a "retained part" of a "relevant building" and thus falls within KR(ii) for CIL liability purposes.

71. In respect of the GIA attributable to the works detailed above and contained within planning permission, [redacted] as granted [redacted], these works did not form part of the Original Permission ([redacted]) and could not "be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development". Therefore, I opine the [redacted] sqm does not come within KR(ii).

72. The Appellants are aggrieved that the CA included the [redacted] sqm within the CIL liability charge for [redacted], when CIL has already been paid on that floorspace ([redacted] letter dated [redacted], para. 4). As the Appointed Person in these Appeals, my jurisdiction only extends to determining whether the chargeable amount has been calculated correctly as Per Regulation 114 (1). I cannot therefore provide comment on the Council's decisions to issue liability and demand notices which include GIA upon which CIL has already been paid.

Indexation

73. The calculation of CIL Liability incorporates indexation, as shown and explained in the formula below. The purpose of indexation is to align the CIL charging schedule with inflation. The appellant and CA agree the I_p indexation figure to be used is [redacted] (as per the RICS CIL Index) for [redacted] (permission granted [redacted]).

74. However, the appellant contests the I_c indexation figure used by the CA within the CIL calculation. They consider it should be [redacted] as per the current published BCIS All-In-Tender Price Index figure for Q4 2018 (as per 1st November for the preceding calendar year) and not [redacted], as used by the CA.

75. The CA state the All-In-Tender price for 1st November 2018 (preceding year in which CIL took effect in [redacted]) was [redacted], which they have evidenced with a screen shot taken of the index on the BCIS website as at 1st March 2019. They contend they have used the correct figure for I_c as this was the index figure on the date when the [redacted] Charging Schedule took effect.

76. The appellant quotes CIL Appeal Decisions 1852181 and 1864814 within their representations, both of which upheld the adoption of [redacted] for I_c.

77. The BCIS data that was available when the Charging Schedule was implemented showed a forecast figure for the relevant period. By the time that planning permission had been granted in [redacted], this forecast data had been finalised and the Index figure as at 1 November 2018 had been updated. I acknowledge the practical issues raised by the CA in their representations but opine that finalised data should be used when available, rather than forecast or provisional BCIS data.

78. I therefore uphold the appellants view that the figure to be adopted for the purposes of I_c within the CIL calculation formula, should be [redacted] and not [redacted], as used by the CA.

Chargeable Amount

79. The appellant may have sought to apply for planning permission under s.73, but the planning permission was granted under s.73A. The CIL charge must therefore be calculated in accordance with Schedule 1 Part 1 of the CIL Regulations.

80. The CIL Regulations 2010 (as amended), Regulation 40 requires the chargeable amount to be calculated in accordance with the provisions of Schedule 1. Schedule 1 Part 1 sets out the basis of the calculation of the chargeable amount for “standard” planning permissions.

81. Paragraph 1 sets out the calculation of CIL for ‘standard cases’ where the amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

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

where—
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
IP = the index figure for the calendar year in which planning permission was granted;
and
IC = the index figure for the calendar year in which the charging schedule containing rate R took effect,

and 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.

82. The original net chargeable area of [redacted] is agreed between the parties as being [redacted] sqm (as per CIL Liability Notice [redacted].)

83. The gross internal area is therefore [redacted] sqm, less KRi [redacted] sqm and KRii [redacted] sqm, which leaves a total net chargeable GIA following the granting of [redacted] of [redacted] sqm.

84. The RICS CIL index when planning permission was granted was [redacted].

85. The All-In-Tender Price Index figure for November 2018 (the preceding year which CIL took effect in [redacted] on 1st March 2019 was [redacted].

86. Therefore, the CIL Liability is calculated using rates and indices (as shown in the formula above) relevant at the date of planning permission [redacted] as:-

£[redacted] X [redacted] X [redacted]
[redacted]
= £[redacted] CIL Liability

Apportionment of the CIL charge

87. A separate calculation has to be carried out to reflect the three material interests in the relevant land as at the date the planning was granted.

88. The CIL Regulations (Reg. 34- Apportionment of Liability) state:

(1) This regulation applies where liability to pay CIL is apportioned between each material interest in the relevant land.

(2) The owner (O) of a material interest in the relevant land is liable to pay an amount of CIL calculated by applying the following formula—

$$\frac{V_O \times A}{V}$$

where—
VO = the value of the material interest owned by O;
V = an amount equal to the aggregate of the values of each material interest in the relevant land; and
A = the chargeable amount payable in respect of the chargeable development.

(3) But where O is granted relief in respect of the chargeable development, O is liable to pay an amount of CIL equal to the amount calculated in accordance with paragraph (2) less the amount of relief granted to O.

(4) For the purposes of paragraph (2)—
a) the value of a material interest is the price that it might reasonably be expected to obtain if sold on the open market on the day the apportionment takes place; and
b) the valuation shall assume that the chargeable development has been completed on the day before the apportionment takes place.

(5) The price referred to in paragraph (4) shall not be assumed to be reduced on the ground that the whole of the relevant land is to be placed on the open market at the same time.

89. I have received no representations regarding the market value of the material interests and I have therefore adopted the values used by the CA.

90. The apportioned CIL Charge is therefore:

[redacted] Material Interest:
£[redacted] x £[redacted]
£[redacted]
=£[redacted]

[redacted] Material Interest:
£[redacted] x £[redacted]
£[redacted]
=£[redacted]

[redacted] Material Interest:
£[redacted] x £[redacted] =
£[redacted]
£[redacted],

Award of Costs

91. The appellant has requested that the actions of the CA are considered as they believe they have been irrational and unreasonable in their approach and have misapplied CIL. The appellant is seeking costs to be recovered for the following reasons:

a) The two Appeals have been particularly complicated and time consuming, partly as a result of the history of the site and number of issues to be considered.

b) The wording of the Planning Officers report and Planning Permission went beyond the wording for the works applied for and whilst a variation of a condition was applied for, the merits of including additional drawings relating to the wider site, within the application file are questioned.

c) CIL Liability Notices and Demands were received on [redacted] and [redacted] by [redacted] yet were dated [redacted] and [redacted]. CIL Regulation 65 Liability notice states (1) The collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development, which the CA clearly did not.

d) There are errors within the CIL process such as serving Liability Notices on [redacted], unaware that part of the site had been sold, which resulted in additional CIL Liability Notices being served. The CA also failed to respond to the serving of the most recent Regulation 113 Review request, as they deemed this invalid, which was incorrect.

92. The appellant has submitted an award for costs under Regulation 121 of the CIL Regulations 2010. As the Appointed Person in these appeals, I note that there have been a number of administrative errors on the part of the CA, most notably the delay in issuing CIL Liability Notices. They failed to respond to a Regulation 113 Review Request deeming it invalid. They questioned the validity of a Regulation 114 request that was submitted to the VOA.

93. By seeking to impose and collect CIL payment on three separate occasions for the same Gross Internal Area (GIA), despite the fact that the developer had already discharged the CIL liability for this area they have instigated a costly and time-consuming appeal process. I opine that their intended repeated charging appears to be unjustified and contrary to the principles of fair and proportionate application of the CIL Regulations. I consider it is highly unlikely that an outcome where CIL Payment is charged three times, for the same area, is the outcome that was intended by the legislation. No such clear words may exist, but the wording and underlying objective of the legislation is to the opposite effect.

94. I therefore consider that the CA have acted unreasonably and I uphold the appellants request for an award of costs.

Conclusion

95. To conclude, on the basis of the evidence before me and having considered all of the information submitted in respect of these two Appeals,1851137 (Regulation 115 Appeal) and 1853378 (Reg 114 Appeal) I conclude the CIL charge should be apportioned accordingly; [redacted], £[redacted] ([redacted]), [redacted] £[redacted] ([redacted]) and [redacted] £[redacted] ([redacted]).

[redacted] MRICS FAAV
RICS Registered Valuer
Valuation Office Agency
04 December 2025