

# Appeal Decision

by ``redacted`` **BEM BSc (Hons) MRICS**

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

Valuation Office Agency  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

Email: ``redacted``

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**Appeal Ref:** 1882623

**Address:** ``redacted``

**Proposed Development:** Reserved Matters (appearance, landscaping, layout & scale) pursuant to outline permission ``redacted``

**Planning permission:** Outline Permission ``redacted`` granted by appeal on ``redacted`` for the development of 60 no. Dwellings, access and internal roads, parking, ancillary structures, landscaping and open space, drainage and other associated works. All matters reserved apart from access.

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## Decision

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

## Background

1. I have considered all of the submissions made by ``redacted`` on behalf of ``redacted`` (the Appellant) and ``redacted`` the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
  - a. The Appeal Decision (``redacted``) issued by The Planning Inspectorate in respect of outline permission ``redacted`` on ``redacted``.
  - b. The Decision Notice issued by ``redacted`` for the Reserved Matters Permission ``redacted``, granted on ``redacted``
  - b. The CIL Liability Notice (reference ``redacted``) issued by the CA on ``redacted``.

- c. The Appellant's request to the CA for a Regulation 113 review dated ""redacted"".
  - d. The CA's Regulation 113 decision e-mailed to the Appellant on ""redacted"".
  - e. The CIL Appeal form dated ""redacted"" submitted on behalf of the Appellant under Regulation 114, together with documents and correspondence attached thereto.
  - f. Further documents received by the Appellant dated ""redacted"" setting out their grounds of appeal.
  - g. The CA's representations to the Regulation 114 Appeal dated ""redacted"".
  - h. The Appellant's comments on the CA's representations received by the Valuation Office Agency (VOA) on ""redacted"".
2. Outline permission ""redacted"" was granted on ""redacted"" via the Planning Inspectorate for the development of 60 no. Dwellings, access and internal roads, parking, ancillary structures, landscaping and open space, drainage and other associated works. All matters reserved apart from access. This permission did not provide for phasing of the development and from the submissions provided, I understand that a Reserved Matters Approval was granted ""redacted"" (""redacted"") pertaining to the appearance, landscaping, layout & scale of the Outline Planning Permission.
  3. I am not aware of any earlier CIL Liability Notices having been issued. The relevant Liability Notice (CA's reference ""redacted"") was issued by ""redacted"" on ""redacted"" and is the subject of this appeal. This notice states a CIL liability of £""redacted"" (""redacted""). On the liability notice there is no information detailing how this amount has been arrived at. However, included within the Response to Grounds of Appeal under Regulation 114 submitted by the CA, it confirms the liability is based upon a chargeable rate of £""redacted"" per square metre (sq. m.) and ""redacted"" sq. m of chargeable floor area. Indexation for the year in which planning permission was granted (IP) has been adopted at ""redacted"" and indexation for the year in which the charging schedule started operation (IC) has been adopted at ""redacted"". This produces a charge of £""redacted"".
  4. On ""redacted"", the Appellant wrote to the CA requesting a review of the calculation of the chargeable amount pursuant to regulation 113 of the CIL Regulations. The letter sets out the Appellant's view that the IP index date was incorrect and that it should have been the date of the outline planning permission used to inform IP rather than the date of the approval of the reserved matters application.
  5. The CA issued their regulation 113 decision on ""redacted"", maintaining that their calculation of the CIL liability was correct.
  6. Consequently, on ""redacted"", the Appellant submitted a regulation 114 (chargeable amount) appeal to the VOA for determination.

### **Grounds of Appeal**

7. The grounds of the appeal are that the chargeable amount set out in the liability notice dated ""redacted"" has been calculated incorrectly. The Appellant opines that the indexation factor IP applied in the calculation is

incorrect. They contend that in relation to the indexation calculation at IP in Paragraph (4) of Schedule 1 of the CIL Regulations it is that the year of the Outline Planning Permission (OPP) fixes the index figure, not the year in which Reserved Matters is granted. The Appellant considers the correct value of IP should be “redacted” and not “redacted” as the CA has used, which is an indexation figure based on the date on which the reserved matters application was approved.

8. There are no disputes concerning the adopted rates for the charging rate, Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect.
9. The appeal turns on whether the value for IP should be that for the year when the outline permission was granted as opined by the Appellant, or that for the year when the reserved matters application was approved as argued by the CA.
10. Both parties have advanced to me evidence in support of their respective viewpoints.

## Reasoning

11. The relevant regulations are set out below:-

### **Regulation 5 – Meaning of Planning Permission**

(1) For the purposes of Part 11 of PA (Planning Act) 2008, “**planning permission**” means –

- a) Planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA1990(a);

### **Regulation 8 – Time at which planning permission first permits development**

- (1) This regulation has the effect for determining the time at which planning permission is treated as first permitting development for the purposes of Part 11 of PA 2008.
- (2) Planning permission first permits development on the day that planning permission is **granted** for that development.
- (3) In the case of a grant of outline planning permission which is not phased planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.

### **Regulation 9 – Meaning of Chargeable Development**

- (1) The **chargeable development** is the development for which planning permission is **granted**.

### **Schedule 1 Regulations 40 and 50 – Chargeable amount standard cases**

- (4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula-

$$\frac{R \times A \times Ip}{Ic}$$

Where –

A= the deemed net chargeable area 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 R took effect.

- (5) In this paragraph the index figure for a given calendar year is—

(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;

(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(d) if the national All-in Tender Price Index is not so published, the figure for 1<sup>st</sup> November for the preceding calendar year in the retail prices index.

12. The Appellant has sought a legal opinion, supported by case law, dated ``redacted``, which has been included within the Appellant's Grounds of Appeal. The Appellant's opinion can be summarised as follows:

- a) The Council's proposed interpretation runs contrary to the wording of the relevant statutory provision itself. If parliament's intention had been for the definition of IP to be the index figure for the calendar year in which planning permission first permits development, then it would have said so.
- b) The CA's interpretation of the "IP" does not make objective sense in the context of the other provisions within the CIL Regulations.
- c) The Explanatory Memorandum to 2019 Amending Regulations sets out parliament's intentions for these provisions very clearly; in particular page 18 where the memorandum states "the index Ip is determined from the point at which the outline planning permission is granted". In addition to page 19, it states that "With a phased planning permission, each phase is a

separate chargeable development. The relevant rates, including indexation, are those set out in the charging schedule which was in effect at the time of grant of planning permission (whether a full permission or in outline).

- d) The previous VOA Decision (1860756) confirms that Outline Permission is the chargeable development and that Reserved Matters do not determine indexation.

13. The CA argues via legal opinion the relevant planning permission is the underlying outline permission, but they contend Parliament has provided that it first permits development only when the last Reserved Matter is approved. The CA opines Schedule 1 must, therefore, be read by reference to that first-permits date, not the earlier outline decision date. The CA argues that prior to the grant of Reserved Matters approval the amount of CIL cannot be calculated since the floorspace to come forward remain undefined and unknown until this has occurred.

14. In their representations the CA challenges the Appellant's points summarised above at paragraph 13. The CA is of the view that to adopt the Appellant's approach would be to treat the outline permission as granting development rights detached from the statutory first-permits mechanism, contrary to Regulation 8 and section 208(6) of the PA 2008. In the CA's opinion, that is not how the CIL regime has been framed. Their case can be summarised as follows:

- a) Read in its proper context and construed purposively, the CIL regime enables and requires indexation by reference to the calendar year in which an outline permission first permits development, namely the year of the Reserved Matters approval for a non-phased outline permission.
- b) On that construction, the correct IP year in this case is ``redacted``, not ``redacted``, and the corresponding IP figure of ``redacted`` has been correctly applied.
- c) The resulting chargeable amount of £``redacted``, as stated in the Liability Notice dated ``redacted``, is therefore correct and lawful.
- d) The Appellant's contrary interpretation fails to engage with the statutory imperatives in the 2008 Act and the CIL Regulations, would frustrate the purpose of the CIL regime, and, if adopted, would amount to an error of law.
- e) In accordance with Regulation 8, as this case involves an outline permission that is not phased, the date planning permission first permits the development will be the ``redacted`` when the reserved matters were approved.
- f) The previous VOA Decision (1860756) does not take into account S. 208(6) and Regulation 8 on the timing of CIL liability and calculation and mandates a general outline-year rule for IP in all outline cases. The decision does not provide a sound or safe basis in law for rejecting the Council's statutory interpretation.

15. The Appellant's case is based on the definition of planning permission as defined for CIL purposes in Regulation 5. Their opinion is that the definition does not include approvals of reserved matters because reserved matters is not a planning permission.

16. The Appellant's legal opinion refers to the Court of Appeal case of *Gardiner v Hertsmere BC* [2022] EWCA Civ 1162 and refers to it as the correct approach to interpreting the CIL Regulations. The Appellant refers to the "natural and ordinary meaning of the language used in Paragraph 1 (4) of Part 1 of Schedule 1 of the CIL Regulations to define the meaning of "IP" is clear and unambiguous.

"IP = the index figure for the calendar year in which planning permission was granted".

17. The Appellant's case also refers to the Explanatory Memorandum to 2019 Amending Regulations, which sets out Parliament's intentions for these provisions very clearly and provides extracts from the said document.

18. The CA's case is based on its interpretation for the statutory purpose of CIL under the Planning Act 2008 and the integrated scheme of the CIL Regulations referring to Sections 211(1) and (2) of the Act. They contend that S. 208(6) provides the statutory anchor for the timing of CIL liability and calculation, stating that CIL is to be calculated "in accordance with CIL regulations" at the time when planning permission first permits development. In their opinion their case is supported by Regulation 65 which then requires the Council to issue a Liability Notice "as soon as practicable after the day on which planning permission first permits development", tying service of the Liability Notice, hence the crystallisation of the calculated charge, to the first-permits date under Regulation 8.

19. It is the CA's view that by tying Schedule 1 of the Regulations to an earlier outline decision date would frustrate the legislative purpose and produce systematic under-recovery of infrastructure funding for schemes where Reserved Matters are approved months or years after the outline grant.

20. The CA considers Schedule 1 must be construed in context and not in isolation. They refer to the wording of Regulation 8 (4) of the Regulations. Outline planning permission "first permits development" only "on the day on which the last reserved matter is approved". It is their view, until that date, the permission cannot lawfully be implemented and no development may commence. They refer to the specific wording in Schedule 1 to support their view, "calendar year in which planning permission was granted" is, for a non-phased outline, the calendar year of the Reserved Matters approval, being the year in which the outline permission takes effect in law to permit development under Regulation 8. The CA sets out justification of their position and concludes that the interpretive approach, they consider the Appellant has taken, has consequences. In their opinion, the CA's view provides a coherent and purposive effect to the 2008 Act and the CIL Regulations.

21. Within their representations, the CA refers to the case of *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687, para 8 (per Lord Bingham of Cornhill); *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 29-31 (per Lord Hodge). This case supports their view that statutory provisions are to be interpreted in

the light of their purpose. The CA argues that the Appellant's literal reading would undermine the alignment between section 208(6) of the Planning Act 2008 and Regulation 8, thus preventing the Council from receiving CIL on a basis that would reflect the actual and expected infrastructure costs at the time development becomes capable of implementation, contrary to section 211 of the Act and Regulation 14 of the Regulations.

22. The CA, following careful review of the VOA's previous decision 1860756, considers the decision was wrongly decided. They contend, amongst other details, the reasoning provided for within the decision do not take into account the effect of section 208(6) of the Planning Act 2008 and Regulation 8 in the Regulations on the timing of CIL liability and calculation, nor with the statutory purpose of aligning contributions paid to the actual and expected costs of delivering the infrastructure and the impact of the practical and policy consequences would have. The CA concludes that decision 1860756 does not provide a sound or safe basis in law for rejecting the Council's statutory interpretation.

### **Decision**

23. I agree with the Appellant, an outline permission falls under S. 70 (1A) Town and Country Planning Act 1990 and does fulfil the definition within Regulation 5. Therefore, the **chargeable development** is the development granted consent by the **outline permission** in accordance with **Regulation 9**.
24. In accordance with **Regulation 8**, as this case involves an outline permission that is not phased, the date planning permission **first permits** the development will be the ``redacted`` when the reserved matters were approved.
25. Having fully considered the representations made by the Appellant and the CA it is my decision that the Regulations at **Schedule 1 Part 1. (5)** clearly state that IP is to be the index figure for the year in which planning permission was **granted**, which in respect of this **chargeable development** will be the date of the **outline consent**.
26. In my view, the regulations clearly use the words grant and permit for different purposes and the use of these is intentional. There have been numerous occasions since 2010 when the definition of IP could have been amended if a different policy intent was desired and that has not happened.
27. I do not agree with the CA view that adopting the date of the outline consent would "frustrate the purpose of the CIL regime." The CA state that a literal reading disregards the statutory purpose of aligning contributions paid to the actual and expected costs of delivering the infrastructure. The Appellants set out Parliament's intentions in the Explanatory Memorandum to 2019 Amending Regulations, which state "the index Ip is determined from the point at which the outline planning permission is granted". In my view, this confirms the intentions of the statute - Parliament has accepted that indexation should

not continue after the date of planning permission. Therefore, adopting the date of the outline consent is in line with the purposes of the CIL regime.

28. The CA suggest that a purposive approach to the statute is necessary, as per the case law they have quoted. However, as explained above, I consider that a literal reading of the meaning of IP does conflict with the intentions of Parliament and, therefore, a purposive interpretation is not required.
29. The CA disagree with the reasoning provided for within the previous CIL decision 1860756 as it does not take into account the effect of section 208(6) of the Planning Act 2008 and Regulation 8 in the Regulations on the timing of CIL liability and calculation. In my opinion, Regulation 8 has its own purpose, that is not connected to the determination of IP.
30. (5) (b) of Schedule 1 states that, "in relation to any calendar year before 2020, the figure for 1<sup>st</sup> November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;" Having checked this index, I conclude that indexation of ""redacted"" should be adopted for IP. In terms of IC, both parties agree that indexation of ""redacted"" should be adopted.
31. This is a chargeable amount appeal and as such is calculated in accordance with Schedule 1. The amount determined is pre any reliefs and that remains a matter between the appellant and CA, falling outside the scope of this appeal.
32. On the evidence before me, having regard to the particular facts of this case, I conclude that the Schedule 1 chargeable amount calculation should be carried adopting the following values:

R = £""redacted""  
A = ""redacted"" sq. m.  
IP = ""redacted""  
IC= ""redacted""

$$\frac{\text{£""redacted""} \times \text{""redacted""} \times \text{""redacted""}}{\text{""redacted""}} = \text{£""redacted""}$$

33. I determine the chargeable amount to be £""redacted"" (""redacted"") and uphold this appeal

""redacted""

""redacted"" **BEM MRICS**  
RICS Registered Valuer  
Valuation Office Agency  
3 February 2026